

ORDINANCE NO. 929

**AN ORDINANCE AMENDING CHAPTER 2B
OF THE KENILWORTH VILLAGE CODE, 1959, AS AMENDED,
AND ORDINANCE NOS. 845, 864, 880, 885, AND 916
REGARDING THE DEMOLITION OF STRUCTURES**

WHEREAS, concerns have been raised that certain Village regulations concerning the demolition of structures in the Village do not provide the Building Review Commission (“BRC”) with sufficient time to gather the factual information necessary to adequately perform preliminary historic and architectural review as required by Section 110.9 of the BOCA National Building Code, 1999, as adopted and amended by the Village (“BOCA Building Code”);

WHEREAS, concerns have also been raised that the filing of a building permit application prior to completion of the prerequisites for a demolition permit does not further the intent of the demolition permit process; and

WHEREAS, the Building, Planning and Zoning Committee (the "Committee") of the Board of Trustees held a public meeting on December 1, 2004 to consider the amendments proposed in this Ordinance; and

WHEREAS, the Committee reported to the Board of Trustees on December 14, 2004, recommending that: (1) the BRC be provided with an additional 30 days in which to meet and determine whether a building and/or property which is subject to a demolition application is of special importance pursuant to the criteria set forth in Section 110.10 of the Village Code and (2) no application for a building permit that contemplates demolition work for which a demolition permit is required be accepted by the Village unless and

until all of the prerequisites for a demolition permit and the other conditions of Section 110.4.3 of the BOCA Building Code are met; and

WHEREAS, the Committee has submitted the proposed amendments to the Board of Trustees, and the Board of Trustees has received and considered resident comments and has determined that the current demolition procedures should be modified in the manner provided in this Ordinance; and

WHEREAS, pursuant to Ordinance Number 845, passed by the Board of Trustees and approved by the President on March 8, 1999, the Village adopted "The BOCA National Building Code, Fourteenth Edition, 1999" and the "1998 ICC International One and Two Family Dwelling Code" as the Building Code of the Village, subject to various additions, insertions, and changes set forth in Ordinance Number 845; and

WHEREAS, pursuant to Ordinance Number 864, passed by the Board of Trustees and approved by the President on November 8, 1999, the Village adopted an amendment to Ordinance Number 845 and the Building Code adding a new Section 110.4 relating to demolition permits; and

WHEREAS, pursuant to Ordinance Number 880, passed by the Board of Trustees and approved by the President on March 12, 2001, the Village adopted an amendment to Ordinance Number 845 amending Section 112.3.1 of the Building Code to allow for various fees, including fees for demolition permits to be determined from time to time by resolution of the Board of Trustees; and

WHEREAS, pursuant to Ordinance Number 885, passed by the Board of Trustees and approved by the President on November 13, 2001, the Village adopted an amendment to Ordinance Number 845 amending Sections 26-21 and 26-22 of the Village Code concerning the Building Review Commission and Sections 110.4 through 110.14 of the Building Code concerning the procedures for the application and review of demolition permits; and

WHEREAS, pursuant to Ordinance Number 916, passed by the Board of Trustees and approved by the President on April 12, 2004, the Village adopted an amendment to Chapter 2B of the Village Code, the BOCA Building Code and Ordinances Number 845, 864, 880 and 885 concerning the: procedures for BRC review of demolition permit applications; establishment of applicant escrow accounts; initiation of the BRC review period; participation by interested parties in the review process; and, conditions for the expiration of permits upon property transfers; and

WHEREAS, in light of the foregoing, the President and Board of Trustees find that the amendments set forth in this Ordinance are in the best interests of the health, safety, and general welfare of the Village, its residents and the public.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Kenilworth as follows:

SECTION 1. The foregoing recitals are hereby incorporated as the findings of the Board of Trustees of the Village, as if fully set forth herein.

SECTION 2. Section 2b-22, entitled “Powers and Duties,” of Chapter 2B, entitled “Boards and Commissions,” of the Code of the Village of Kenilworth, 1959, as amended, is hereby amended to read as follows:

Sec. 2b-22. Powers and Duties. The Building Review Commission shall have the following powers and duties:

- (a) To review applications for demolition permits and to determine whether a proposed demolition affects a property of special importance due to its historic and/or architectural significance, as provided in Section 110 of the Building Code;
- (b) To order that the issuance of a demolition permit be delayed to allow an opportunity to determine alternatives to demolition of buildings or structures that are historically or architecturally significant, as provided in Section 110 of the Building Code;
- (c) To require the Village Manager to retain outside professional assistance to (i) determine whether the criteria for a finding of special importance, as contained in Section 110.10 of the Building Code, are met, and (ii) develop alternative plans to save buildings of special importance, and develop an analysis of rehabilitation and construction alternatives as contemplated by Section 110.11 of the Building Code; provided that, without the approval of the board of trustees,

the costs thereof shall not exceed the amounts which the applicant for a demolition permit is required to deposit, and has deposited, in escrow to reimburse the village;

- (d) To adopt rules of procedure not inconsistent with this Chapter, the Building Code, or applicable law; and
- (e) To charge fees, and require making of deposits in escrow for the payment of costs in amounts set from time to time by ordinance or by resolution of the board of trustees.

SECTION 3. Ordinance No. 845, adopting the 1999 BOCA National Building Code, and Ordinance Nos. 864, 880, 885, and 916 shall be amended by amending Sections 110.4 through Section 110.14 to read as follows:

110.4 Demolition permit required.

110.4.1 Permit required. A demolition permit shall be required before any person proceeds with any of the following work:

- (a) The demolition or removal of 50 percent or more of the floor area of any building (or buildings on the same lot) in any district zoned R-1, R-2, R-3, R-4, B-1, B-2 or B-3; or
- (b) The demolition or removal of 50 percent or more of the structural elements of the walls or facade of a building (or buildings on the same lot) facing a street in any district zoned R-1, R-2, R-3, R-4, B-1, B-2 or B-3.

110.4.2 Demolition work. No part of any demolition work for which a permit is required under this Section 110 shall be commenced unless and until:

(a) A demolition permit is applied for and issued in the name of the owner and/or applicant in accordance with this Section 110 and has not expired; and

(b) Unless the code official shall issue a demolition permit pursuant to Section 110.5, a building permit is issued by the code official for the proposed new structure or improvements to the existing structure.

110.4.3 Building Permit. No building permit that contemplates demolition work for which a demolition permit is required pursuant to this Section 110 shall be applied for or accepted by the code official unless and until:

(a) A demolition permit shall be applied for, approved and issued in the name of the owner and/or applicant in accordance with this Section 110;

(b) All required fees shall have been paid by the owner or applicant; and

(c) The owner or applicant shall have reimbursed the village, pursuant to the demolition escrow required by Section 110.8.1, for all costs that the owner or applicant is required to reimburse under this Section 110.

110.5 Emergency permit. A demolition permit may be issued by the code official without compliance with Sections 110.6 through 110.13 upon a determination by the code official that the building or structure in question presents a threat to public safety.

110.6 Permit application. All applications for demolition permits shall be submitted in accordance with Section 107.3 on forms provided by the code official, in such number of copies as the code official shall require, and shall include an undertaking to establish a demolition escrow in accordance with Section 110.8.1, to pay expenses of the Village and the Building Review Commission in reviewing and acting on the application, subject to the limitation in Section 110.11. No demolition permit application shall be accepted for processing unless it is complete and is accompanied by all applicable fees, deposits and all items required by Section 110.7.

110.7 Content of application. Except for a demolition permit to be issued pursuant to Section 110.5, the application for demolition permit shall include the following:

- (a) A legible property survey, prepared and sealed by a surveyor licensed by the State of Illinois. The survey shall

include the legal description of the property and shall accurately depict lot boundaries, lot area and current improvements.

(b) A utilities plan, drawn to scale, depicting the location of all proposed protective scaffolding and fencing and the location of all existing underground utilities on the property.

(c) A proposed demolition and construction schedule.

(d) A list of the addresses of all properties located in whole or in part within 500 feet of the subject property.

(e) Disclosure and proof of all persons holding ownership of fee simple title to, as well as any person who is a party to any contract, agreement, option, memorandum of understanding, letter of intent, lease, or other document affecting the owner's interest or providing for transfer of a future interest in, the subject property consisting of one of the following, whichever is applicable:

(1) If one or more individuals, the name and address of each such individual;

(2) If one or more partnerships, the names and addresses of all general partners, the date the partnership was formed, the name of the partnership, the location of the principal office of the partnership, and evidence that the

partnership is registered in the assumed name registry for Cook County for each partnership;

(3) If one or more corporations or limited liability companies or a partnership of which the general partner(s) is (are) a corporation or limited liability company, the names and addresses of the directors, officers and shareholders of the corporation or the managers, officers and members of the limited liability company, the location of the principal office of the corporation or limited liability company, the name and address of the corporation's or limited liability company's registered agent, and proof that the corporation or limited liability company is authorized to do business in the State of Illinois for each such entity; and

(4) If one or more trusts, the name and address of the trustees and the names and addresses of all beneficiaries of each trust.

All such persons disclosed shall execute the application and be considered co-applicants, and shall be bound by the terms of this Code in the review of the application and the terms of the permit, if issued.

(f) The name and address of the demolition contractor.

(g) A summary of the architectural and historic character of the building to be demolished, including:

- (1) Original date of construction;
- (2) Name of architect, if known;
- (3) List of previous owners and occupants;
- (4) Photographs of all exterior elevations;
- (5) Photographs of all major interior features;
- (6) Detailed close-up photographs of distinctive interior and exterior architectural features;
- (7) Description of distinctive architectural features and building materials;
- (8) Scale drawing of the floor plan of the building showing all dimensions; and
- (9) Search of previous permits granted.

(h) Such other information and documentation of the type described in this Section 110.7 as the code official or the Building Review Commission may determine to be reasonably necessary to process the application in accordance with the provisions of this Section 110.

110.7.1 Changes in ownership. In the event of any change in or addition to the persons required to be disclosed under Section 110.7(e) above, the persons filing the application shall file an amendment to the application not more than five (5) days after the change containing all disclosures and proof required in Section 110.7(e) about the additional persons, which shall be

executed as provided in Section 110.7(e). No filing under this provision shall be permitted between either: (1) a finding of no special importance under Section 110.9.1 or (2) the end of the stay period required by Section 110.9.3, and the issuance of a demolition permit.

110.8 Processing of application. Upon receipt of an application for a demolition permit, the code official, in consultation with a member of the Building Review Commission designated from time to time by the Chairperson of the Building Review Commission, shall make a final determination as to whether the application is complete within 10 days after receipt thereof from the code official. The code official shall forward any application determined to be complete to the Building Review Commission unless the code official shall determine to issue a demolition permit pursuant to Section 110.5. If the code official, in consultation with a member of the Building Review Commission designated from time to time by the Chairperson of the Building Review Commission, determines that an application is not complete or otherwise fails to comply with this Section 110, the code official shall notify the applicant.

110.8.1 Demolition Escrow Requirements.

(a) Establishment of Demolition Escrow. In addition to payment of all fees required pursuant to Section 112.3.1, every application filed for a demolition permit shall be subject to the demolition escrow provisions set forth in this Section.

(b) Responsibility for Payment. The owner of the property that is the subject of the application and, if different, the applicant, shall be jointly and severally liable for the establishment and payment of the demolition escrow amount of \$7,000.00 at the time of filing the application. By signing the application, the owner and applicant shall be deemed to have agreed to pay, and to have consented to, the demolition escrow amount. The Village shall have no obligation to process or act on any application where the demolition escrow amount has not been paid.

(c) Demolition Escrow Amount. The demolition escrow amount to be paid by the owner or applicant shall be to reimburse the Village for its actual out-of-pocket expenses: (i) in an amount not to exceed \$2,000.00 for its review of a demolition application prior to a determination of special importance pursuant to 110.9.3; and (ii) in an amount not to exceed \$5,000.00 for the review of demolition alternatives by consultants hired by the

Village pursuant to Section 110.11. These amounts may be amended from time to time by resolution of the board of trustees.

(d) Demolition Escrow Fee Payment and Establishment of Demolition Escrow.

(1) Initial Payment and Demolition Escrow. Every application shall be accompanied by the required demolition escrow amount to be deposited in the demolition escrow account established by the Village. No interest shall be payable on any funds retained in such demolition escrow account.

(2) Charges Against Demolition Escrow. From the date of filing of any application, the Village shall maintain an accurate record of the actual costs that may be reimbursed from the escrow amount in connection with processing the application. The Village Manager or his designee shall, from time to time, draw funds from the demolition escrow account established for the application to pay such actual costs and shall transfer the funds to the appropriate Village accounts. The Village Manager or his designee shall maintain an accurate record of all the drawings from the demolition escrow account.

(3) Final Settlement. As soon as reasonably feasible following final action on an application, the Village Manager or his designee shall cause a final accounting to be made of the demolition escrow amounts deposited in connection with the application and of the actual costs incurred and reimbursable to the Village in connection with the application. A copy of the accounting shall be provided to the owner and the applicant. Any remaining funds in the demolition escrow after payment of the total actual costs due pursuant to this Section shall be returned to, or applied to the demolition permit fee due at permit issuance from, the owner or applicant, as applicable.

(e) Condition of All Applications, Approvals, and Permits. No application filed pursuant to Section 110.8 of the Building Code shall be considered complete unless and until all fees and deposits due pursuant to this Section have been paid. Every approval granted and every permit issued for a demolition shall, whether or not expressly so conditioned, be deemed to be conditioned upon payment of demolition escrow fees as required by this Section.

(f) Tolling of Time Periods. Where the Building Code provides that the passage of time without decision or action shall be deemed an approval or a recommendation for approval, time

periods shall be tolled during any period of non-payment of the demolition escrow amounts due pursuant to this Section, but shall otherwise continue to run.

(g) Failure to Pay Demolition Escrow Fees. The failure to pay in full when due any demolition escrow amount required under this Section shall be grounds for refusing to process an application and for denying, stopping work under, or revoking any demolition permit.

110.9 Preliminary historic and architectural review.

110.9.1 Time and nature of review. Within 90 days after the later of: (i) the filing of a complete demolition application, or (ii) any filing of a change in or addition to the persons required to be disclosed under Sections 110.7(e) and 110.7.1 that is filed after the application is found complete and prior to a determination of special importance on the application, the Building Review Commission shall meet and determine whether the building and/or property that is the subject of the permit application is of special importance under the criteria set forth in Section 110.10. In connection with this review, the Building Review Commission may seek outside professional assistance in gathering factual information regarding the applicability of the criteria to the property. The cost of such assistance will be borne by the

applicant and shall be paid out of the demolition escrow established pursuant to Section 110.8.1, provided that such costs charged to the applicant shall not exceed the amount established pursuant to Section 110.8.1(c).

110.9.2 Notice of preliminary review. No less than 10 nor more than 30 days before the Building Review Commission meets to evaluate the application to determine if the building or the property is of special importance, the Building Review Commission shall issue a notice of preliminary review to the owner and the applicant and all other owners of record of all properties located within 500 feet of the subject property and to the occupants of all such properties. The notice shall state the address of the property, the proposed demolition schedule and the date, time and location for the Building Review Commission's meeting and the dates, times and location of the availability of the application for public inspection.

110.9.3 Building review commission determination and findings. If the Building Review Commission shall determine the demolition permit application does not affect a building or property of special importance, the Building Review Commission shall notify the code official that there are no architectural or historic reasons to delay the issuance of the demolition permit. If the Building Review Commission shall determine that the permit

application affects a building or property of special importance, it shall order a stay of issuance of a demolition permit for a period ending not later than 180 days, or such lesser period as the Building Review Commission shall deem appropriate, after the later of: (i) the meeting at which the Building Review Commission adopts such findings of fact pursuant to Section 110.9.4, or (ii) any filing of a change in or addition to the persons required to be disclosed under Sections 110.7(e) and 110.7.1 that is filed prior to the end of the stay period. The stay order shall be issued to the applicant and the owner, with a copy to the code official.

110.9.4 Record of findings. The determination of the Building Review Commission under Section 110.9.3 shall be supported by findings of fact based on the record. The findings of fact shall include statements and other evidence as to whether or not the building or property is of special importance.

110.10 Criteria for properties of special importance. The Building Review Commission shall determine that the building or property is of special importance if it meets any one or more of the following criteria:

- (a) The structure, building, object or site has significant character, interest or value as part of the historic, cultural or architectural characteristics of the Village, the State of Illinois or the United States;

(b) The structure, building, object or site is closely identified with a person or persons who significantly contributed to the culture or development of the Village, the State of Illinois or the United States;

(c) The structure, building, object or site is the result of the notable efforts of, or is a known example of work by, a master builder, designer, architect, architectural firm or artist whose individual accomplishment has influenced the development of the Village, the State of Illinois or the United States;

(d) The location and physical characteristics of the structure, building, object or site make it an established and important visual feature of the Village;

(e) The activities associated with the structure, building, object or site make it a current or former focal point of reference in the Village;

(f) The structure, building or object is of a type or is associated with a use once common but now rare, or is a particularly fine or unique example of a utilitarian structure and possesses a high level of integrity or architectural significance;

(g) The structure, building, object or site represents distinguishing characteristics of architecture inherently

valuable for the study of a time period, type of property, method of construction or use of indigenous materials;

(h) The structure, building, object or site embodies elements of design, detail, material or craftsmanship of exceptional quality;

(i) The structure, building, object or site exemplifies a particular architectural style in terms of detail, material, and workmanship;

(j) The structure, building, object or site is one of the relatively limited remaining examples of a particular architectural style;

(k) The structure, building, object or site is, or is part of, a contiguous grouping that has a sense of cohesiveness expressed through a similarity of style characteristics, time period, type of property, method of construction, or use of indigenous materials, and accents the architectural significance of an area;

(l) The structure, building, object or site is an exceptional example of an historic or vernacular style, or is one of the few such remaining properties in the Village;

(m) The structure, building, object or site has a strong association with the life or activities of a person, persons,

organization or group who significantly contributed to or participated in historic or cultural events; or

(n) The structure, building, object or site is associated with a notable historic event.

110.11 Determination of special importance. If the Building Review Commission shall determine that the proposed demolition will affect a building or property of special importance and issues a stay order pursuant to Section 110.9.3:

- (a) The Building Review Commission may require the applicant or owner to prepare and submit an analysis of the estimated cost to repair and rehabilitate the existing building to incorporate features similar to the proposed new construction.
- (b) The Building Review Commission may seek outside professional assistance, develop its own summary plan as to how to save the building, or perform or procure a detailed analysis of rehabilitation versus new construction alternatives. The cost of all such reviews, consultations or plans will be borne by the applicant, and shall be paid out of the demolition escrow established pursuant to Section 110.8.1, provided that such costs charged to the applicant shall not exceed the amount established pursuant to Section 110.8.1(c).

- (c) The Building Review Commission will call at least one meeting with the applicant or owner to discuss alternatives and offer suggestions and may request additional information from the applicant or owner as reasonably necessary to evaluate the historic and architectural significance of the property or evaluate alternatives to demolition.
- (d) The Building Review Commission will seek (through public hearings or otherwise) the opinions of the residents and property owners within 500 feet of the subject property.
- (e) The Building Review Commission may at any time request additional information or a conference with the applicant or owner as reasonably necessary to evaluate the historic and architectural significance of the property or evaluate alternatives to demolition.
- (f) In the event that the applicant or owner is unwilling or unable to meet on a timely basis as determined by the Building Review Commission or provide information requested by the Building Review Commission, the Building Review Commission may extend the stay period ordered pursuant to Section 110.9.3 for the duration of the delay until such meeting occurs or such information is provided or is determined to be unavailable. Any such order for

extension of the stay period shall be issued to the applicant and the owner, with a copy to the code official.

110.12 Delay of issuance of permit.

110.12.1 Delay for public convenience and safety. The code official may order that the issuance of a demolition permit be delayed if the proposed schedule for the demolition will interfere with previously scheduled works in the public rights-of-way in the immediate vicinity of the subject property, or if the code official determines that delay is necessary to prevent undue congestion and noise in the neighborhoods when the traffic or noise from the proposed demolition combines with traffic or noise from previously scheduled public works projects in the immediate neighborhood.

110.12.2 Emergency delay. The code official may delay the issuance of a demolition permit in the event of an emergency if the code official determines that the demolition work will delay or otherwise interfere with response to the emergency.

110.12.3 Administrative delay. The code official may delay the issuance of a demolition permit for up to 60 days if two or more building permits for primary structures have been approved for properties, for which work is continuing, within 500 feet of the subject property on either side of the rights-of-way abutting the subject property, or if the code official determines that a delay is

necessary to prevent undue congestion and noise in the neighborhood

110.12.4 Permits from other authorities. Prior to the issuance of any demolition permit, the owner or applicant shall provide the code official with proof that any permits required for the requested demolition from the county, state, or other regulating authorities have been approved.

110.12.5 Duration of delay. The delays authorized by this Section 110.12 shall begin no earlier than the date of the Building Review Commission's final determination or expiration of the stays ordered by the Building Review Commission. The delays authorized by this Section 110.12 shall be promptly terminated by the person imposing the delay when the conditions giving rise to the delay cease to exist.

110.13 Issuance of demolition permit. Except as provided in Section 110.12, a demolition permit shall be approved and issued in the following circumstances:

- (a) if the Building Review Commission determines that the subject building or property is not of special importance;
- (b) if the Building Review Commission determines that a delay to seek alternatives to demolition is not warranted; or

- (c) upon the expiration of the stay period and all extensions of the stay period, unless the applicant shall withdraw or amend the application for demolition permit.

110.14 Expiration of Permit. Unless the demolition work authorized by a demolition permit shall have commenced in accordance with such permit and this Section 110 prior to the expiration of such permit, a demolition permit issued pursuant to this Section 110 shall expire six months after its issuance.

SECTION 4. Ordinance No. 845, adopting the 1999 BOCA National Building Code, and Ordinance Nos. 864, 880, 885, and 916 shall be amended by adding a new Section 107.1.2 to read as follows:

107.1.2 Demolitions. No application for a building permit that contemplates demolition work for which a demolition permit is required pursuant to Section 110 of this Code shall be accepted by the code official unless and until a demolition permit shall have been issued by the code official for such demolition work.

SECTION 5. This Ordinance shall take effect and be in full force and effect after its passage, approval, and publication in pamphlet form as required by law and shall apply with prospective effect to all demolition permit applications filed after the effective date of this Ordinance excepting any application for demolition permit for which a substantially complete building

permit application contemplating such demolition was filed before the effective date of this Ordinance.

PASSED this 14th day of December, 2004.

AYES: Wilson, Miller, Schumacher, McGinnis, McCarthy and Nelson

NAYS: none

ABSTAIN: none

ABSENT: none

Village President

ATTEST:

Village Clerk

ORDINANCE NO. 929

**AN ORDINANCE AMENDING CHAPTER 2B
OF THE KENILWORTH VILLAGE CODE, 1959, AS AMENDED,
AND ORDINANCE NOS. 845, 864, 880, 885, AND 916
REGARDING THE DEMOLITION OF STRUCTURES**

Passed by the Board of Trustees this 14th day of December, 2004

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by authority of the President and Board of Trustees

VILLAGE OF KENILWORTH

Village Clerk