

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2011-8**

**AN ORDINANCE IMPLEMENTING THE HISTORIC PRESERVATION ELEMENT OF THE
MASTER PLAN AND AMENDING THE CODE OF THE
BOROUGH OF PENNINGTON**

WHEREAS, Borough Council of the Borough of Pennington seeks to implement the Historic Preservation element of the Borough Master Plan and provide guidance to property owners in achieving preservation of historic resources and to advance the public purposes of historic preservation;

WHEREAS, pursuant to the Municipal Land Use Law, Borough Council establishes by this ordinance an Historic Preservation Commission in the Borough, to perform duties and responsibilities authorized by law;

WHEREAS, further in conformity with the Municipal Land Use Law, Borough Council establishes as an historic district in the Borough the Pennington Crossroads Historic District outlined in the annexed Pennington Historic District Map;

WHEREAS, Borough Council determines that the preservation of the historic resources of the Borough will preserve the quality of our neighborhoods, foster economic development, manage growth, maintain property values, foster community pride and otherwise serve the best interests of the Borough of Pennington;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, as follows:

1. Purpose and objectives:

The purpose of this article is to implement the Historic Preservation Element of the Master Plan, to provide guidance to property owners in achieving preservation of historic resources and to advance the following public purposes:

- A. To preserve and protect historic, cultural, archaeological, and aesthetic resources for the general welfare of the public;
- B. To identify, designate, and guide historic districts and historic sites to preserve their historic, architectural, cultural, archaeological, and aesthetic significance;
- C. To preserve and enhance the environmental quality of neighborhoods;
- D. To foster economic development, manage growth and promote and maintain property values;
- E. To foster community pride in the beauty and accomplishments of the Borough's past.
- F. Encourage and support historically appropriate alteration and improvements.

2. Definitions:

As used in this article, the following terms shall have the meanings indicated:

ADDITION — An extension or increase in building size, floor area or height.

ALTERATION — Any work done on a designated structure or in a district which changes its exterior appearance, excepting paint color

CERTIFICATE OF APPROPRIATENESS— A document issued by the Historic Preservation Commission demonstrating its review of any alteration, addition to or demolition of a designated historic site, or to a property within a historic district. Such review is based upon the application and representations of the applicant and the approved plans presented for the preservation, restoration, rehabilitation or alteration of an existing property, or the demolition, addition, removal, repair or remodeling of any feature on an existing building within the historic district, or for any new construction within the historic district.

CONTRIBUTING - Building, site, structure or object that adds to the historic architectural qualities, historic associations or archaeological values for which the property or district is significant because it was present during the period of significance or possesses historic integrity or yields important information about a significant period.

DEMOLITION - The partial or total razing, dismantling or destruction of any historic site or any improvement within a historic district.

HISTORIC DISTRICT — One or more historic sites and certain intervening or surrounding property significantly affecting or affected by the quality and character of historic site or sites, as specifically designated herein.

HISTORIC RESOURCE — Any historic district, site, building, structure, or object included in, or eligible for inclusion in, the Local Listing (of Historic Places); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

HISTORIC SITE — Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing which has been designated in the Master Plan as being of historic, archaeological, cultural, scenic or architectural significance at the national, state or local level, as specifically designated herein or any property which is located in a historic district. The designation of a historic site or landmark shall be deemed to include the Tax Map lot on which it is located as well as the right-of-way contiguous thereto.

HISTORIC STRUCTURE — Any structure situated on property included in the Historic Designation List of the Borough of Pennington as adopted herein as it may be amended.

IMPROVEMENT — Any structure or any part thereof installed upon real property by human endeavor and intended to be kept at the location of such construction or installation.

IN-KIND – Replacement elements which match type and texture of original or existing elements.

INTEGRITY — The ability of a property or element to convey its historic significance; the retention of those essential characteristics and features that enable a property to effectively convey its significance.

INVENTORY — A list of historic properties determined to meet criteria of significance specified herein.

MINOR WORK APPLICATION — Any application for a Certificate of Appropriateness which:

- A. Does not involve demolition, relocation or removal of a historic site;
- B. Does not involve an addition to a property in a historic district or new construction in a historic district;
- C. Is a request for approval of doors, windows, , exterior sheathing or other work visible from the street which will comply with the adopted design guidelines for the improvement proposed where a specific guideline applies and which will not substantially affect the characteristics of the historic site or the historic district.
- D. Is a request for a field change for a Certificate of Appropriateness which has already been issued and which meets the criteria of Subsection C of this definition, above.

NATIONAL REGISTER CRITERIA — The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

NONCONTRIBUTING BUILDINGS — Building, site, structure or object that does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because it was not present during the period of significance; due to alterations, disturbances, additions or other changes it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or it does not independently meet the National Register criteria.

ORDINARY MAINTENANCE — Repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly as practicable to its condition prior to the occurrence of such deterioration, wear, or damage using the same materials and workmanship and having the same appearance.

PRESERVATION — The act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

PROTECTION — The act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.

RECONSTRUCTION — The act or process of reproducing by new construction the exact form and detail of a vanished or non-surviving building, structure or object, or any part thereof, as it appeared at a specific period of time when documentary and physical evidence is available to permit accurate reconstruction.

REHABILITATION — The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

REPAIR — Any work done on an improvement that is not an addition and does not change the exterior appearance of any improvement; provided, however, that any such repairs must be done with materials and workmanship of the same quality.

RESTORATION — The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

STRUCTURE — 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.

SURVEY — A process of identifying and gathering data on a community's historic resources. It includes a field survey which is the physical search for and recording of historic resources on the ground, preliminary planning and background research before the field survey begins, organization and presentation of survey data as the survey proceeds, and the development of inventories.

3. Historic Preservation Commission:

There is hereby established the Historic Preservation Commission.

A. Responsibilities.

The Historic Preservation Commission shall have the following duties and responsibilities:

- (1) To identify, record and maintain a survey of all buildings, sites, objects, improvements and districts of historical significance within the Borough
- (2) To recommend to the Borough Council the designation of buildings, structures, sites, objects or improvements as historic landmarks, and to recommend the designation of historic districts
- (3) To monitor and recommend to the Borough Council any buildings, structures, sites, objects or districts for inclusion in the New Jersey or National Register of Historic Places.
- (4) To make recommendations to the planning board on the historic preservation plan element of the master plan and on the implications for preservation of historic landmarks and historic districts of any other master plan elements. The commission may provide information to the Planning Board indicating the location and significance of historic landmarks and historic districts, and identify the standards used to assess worthiness for historic landmark or historic district designation.
- (5) To advise the Planning Board on applications for development pursuant to N.J.S.A. 40:55D-110.
- (6) To provide written reports pursuant to N.J.S.A. 40:55D-111 on the application of the Zoning Ordinance provisions concerning historic preservation.
- (7) To review and render determinations regarding applications for Certificates of Appropriateness as set forth in this article.
- (8) To monitor and recommend to the Borough Council the submission of any grants related to historic preservation.
- (9) To carry out such other advisory, educational and informational functions as will promote historic preservation in the Borough.

B. Membership; Appointment.

- (1) The Commission shall consist of seven regular members and two alternate members who shall be appointed by the Mayor with the advice and consent of the Borough Council. The Mayor shall appoint, and the Borough Council shall approve, the full membership within 60 days from the effective date of this article. Members shall serve without compensation. At the time of appointment, members shall be designated by the following classes:

- a. Class A: A person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and
 - b. Class B: A person who is knowledgeable, or with a demonstrated interest in, local history and who may reside outside the municipality; and
 - c. Class C: Four residents of the Borough. At least one Class C member shall be a homeowner within the Historic District.
 - d. Class D: A person who owns a business or commercial property located in the borough.
- (2) Alternate members shall meet the qualifications of Class C members. At the time of appointment, alternate members shall be designated as "Alternate No. 1" and "Alternate No. 2."

C. Terms.

- (1) The terms for the members of the Historic Preservation Commission first appointed by Borough Council shall be as follows:
- a. One member appointed for a one-year term.
 - b. Two members appointed for a two-year term.
 - c. Two members appointed for a three-year term.
 - d. Two members appointed for four-year terms.
 - e. Thereafter, the term of each regular member shall be for four years.
- (2) All terms shall begin on January 1 of the year in which the appointment is made.
- (3) Notwithstanding any other provision herein, the term of any member common to the Historic Preservation Commission and the Planning Board shall be for the term of membership on the Planning Board.
- (4) A vacancy occurring otherwise than by expiration of term shall be filled within 60 days for the unexpired term only.

D. Alternates.

The alternate members may participate in all commission discussions during proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No 1 shall vote.

Alternate members shall serve for terms of two years; provided, however, that the initial terms of the two such alternate members shall be one and two years, respectively.

E. Council liaison.

A member of the Borough Council shall be designated as a liaison between the historic preservation commission and the Borough Council. The role of such liaison person shall be informational only and such person shall possess no voting rights with regard to any action taken by the commission

F. Officers.

Annually, the Commission shall elect a Chair and Vice Chair from its members and select a recording secretary who may or may not be a member of the Commission or a municipal employee.

G. Record Keeping and Procedures.

- (1) In order to make available to the public information useful to the preservation and protection of historic districts and sites and to provide the basis for consistency of policy, Commission shall maintain complete files and records. The Commission's files shall include but are not limited to data used in the classification of buildings, places and structures, minutes of Commission meetings, applications for certificates of appropriateness along with collateral data, decisions and appeals associated therewith and information, materials and references submitted to the public related to historic

preservation. A record of Commission proceedings shall be kept and made available, but a formal verbatim record shall not be required.

- (2) The Commission Secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, findings, determinations, decisions and applications. All meetings shall be noticed and conducted in accordance with the Open Public Meetings Act. Copies of all minutes shall be maintained in the office of the Commission and shall be delivered promptly to the Borough Clerk.
- (3) Copies of records shall be made available to municipal bodies, agencies, and officials for their use. When the Planning Board refers an application to the Historic Preservation Commission, then the referring Board shall receive a copy of the Commission's report.
- (4) The Construction office shall maintain and display an up-to-date map showing the historic district, as well as a current listing of historic sites.

H. Conflict of Interest.

No member of the Commission shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Unless a member resides or owns property within 100 feet of property which is the subject of an application, mere ownership or residence in a designated historic district and/or ownership of a designated historic site or a non-designated site shall not be deemed a personal or financial interest.

I. Removal.

A member of the Commission may, after a public hearing, if requested, be removed by the governing body for cause.

J. Meetings; quorum.

- (1) The Historic Preservation Commission shall establish and post in Borough Hall a regular schedule of a minimum of one meeting per month. Regular meetings shall be held as scheduled unless canceled for lack of applications to process. Additional special meetings may be called by the Chair or Vice Chair, or on the request of any two of its members, when the regular meetings are inadequate to meet the needs of its business, to handle emergencies or to meet time constraints imposed by law.
- (2) The Historic Preservation Commission shall hold public hearings to review all applications for permits, referrals of development applications and other business which comes before the Commission.
- (3) The presence of five members, which may include alternate members filling the vacancies of regular members, shall constitute a quorum. Liaison person(s) are not entitled to vote and shall not be counted towards achieving a quorum. A majority vote of those present and voting shall prevail, and shall be sufficient to grant or deny a Certificate of Appropriateness. Not less than a majority of the appointed membership shall be required to grant or change an historic landmark or historic district designation or to grant approval for demolition.

4. Designation of historic sites and districts:

A. Survey.

The Commission shall maintain a comprehensive survey of the Borough of Pennington to identify historic districts and landmarks which are worthy of protection and preservation.

B. Criteria for designation.

The criteria for evaluating and designating historic districts and sites shall be guided by the National Register Criteria. The Commission or any person may recommend designation of historic landmarks or historic districts that are in accordance with the National Register Criteria or that possess one or more of the following attributes:

- (1) Character, interest, or value as part of the development, heritage or cultural characteristics of the Borough, State or nation;
- (2) Association with events that have made a significant contribution to the broad patterns of our history; or

- (3) Association with the lives of persons significant in our past; or
- (4) Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or
- (5) Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the Borough, state or nation; or
- (6) Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or
- (7) Unique location or singular physical characteristics that make a district or landmark an established or familiar visual feature; or
- (8) Significant concentration of historic resources which share elements of historic architecture or history.

C. Procedures for designation.

- (1) Interested parties shall contact the Commission regarding consideration of a proposed historic site or district. The Commission may also initiate the designation of a historic site or district. The Commission will schedule a hearing to review the proposed historic site or district.
- (2) The formal historic district nomination shall include a building-by-building inventory of all properties within the district; color and/or black-and-white photographs of all properties within the district; a property map of the district showing boundaries; and a physical description and statement of significance which address the criteria for designation set forth herein. The formal historic site nomination shall include a color and/or black-and-white photograph, a tax map of the property and a physical description and statement of significance which address the criteria for designation set forth herein.
- (3) Upon review and approval of the proposed site or historic district by the Historic Preservation Commission, and after hearing the comments of the public, if any, the Commission shall forward the proposed site or district nomination to the Planning Board for consideration. Notification shall be by public notice in the official paper and by prominent posting in the municipal building at least 30 days prior to the Planning Board hearing. The interested parties or the Commission shall submit to the Planning Board a complete list of involved properties.
- (4) Upon review and approval of the proposed site or district by the Planning Board, the site or district nomination will be sent to the Borough Council for adoption to amend and supplement this chapter.
- (5) All other requirements of the Municipal Land Use Law regarding adoption of development regulations shall be followed.

D. Designation of districts.

There is hereby established the Pennington Crossroads Historic District. The designated historic district is outlined on the Pennington Historic District Map incorporated herein.

5. Certificate of Appropriateness:

A. When required.

- A Certificate of Appropriateness issued by the Commission shall be required before a permit is issued, or before work can commence, for any of the following activities within a historic district(s) or on any designated historic landmark
- (1) Demolition of any contributing designated building, structure, or site, not including accessory structures.
 - (2) Change in the exterior appearance that is visible from the street of any building, structure, site, object or improvement by addition, reconstruction, alteration or replacement, including the following, except for the activities described in section B below.

- (3) Relocation of a principal structure or site.
- (4) Any addition to or new construction of a principal structure that is visible from the street.

B. When not required.

In no instance shall the following be considered subject to review:

- (1) Changes to the interior of a structure
- (2) Exterior painting of a structure.
- (3) Ordinary maintenance as defined in this article.
- (4) When ordinary maintenance is not feasible, replacement is permitted according to this criteria:
 - (a) Complete in-kind replacement of existing doors or windows. Non-original materials are permitted.
 - (b) Repair of existing windows and doors involving no change in their design, scale or appearance. In-kind replacement of existing storm windows and replacement of storm doors with new doors which show the same view or more of the entry door.
 - (c) Complete replacement of existing material with in-kind material.
 - (d) Replacement of roofing material with any replacement roofing material.
 - (e) Structural repairs which do not alter the exterior appearance of the building.
 - (f) Complete replacement of existing roof structures such as cupolas, dormers and chimneys, or the repair of same which does not alter their exterior appearance. Non-original materials are permitted.
 - (g) Complete replacement of existing clapboards, shingles, or other siding involving no change in design, scale or appearance of the structure. Non-original materials are permitted.
 - (h) Maintenance and repair of existing clapboards, shingles or other siding involving no change in design, scale or appearance of the structure.
- (5) Changes or additions to landscape or hardscape, including signs, outdoor displays, fences and hedges, street furniture, awnings, driveways, sidewalks and paving materials.
- (6) Any rear yard additions or alterations that will not project beyond the existing sidewalls of the principal structure.
- (7) Exterior lighting not attached to principal structure or not visible from street
- (8) Work related to any accessory structure in a rear yard, as defined by the Pennington Borough zoning ordinance.
- (9) Installation or replacement of solar panels, satellite dish antennas, air-conditioning or HVAC equipment.
- (10) Alterations to structures constructed after 1945.
- (11) **Development applications, see below.**

C. Minor Work Applications.

The Chair of the Historic Preservation Commission, or other designated member(s) of the commission acting on the Chair's behalf, may review applications for minor work as defined in this Article, without holding a public hearing. If the Chair finds the application appropriate, he or she may act in place of the full Commission and issue a certificate for minor work to the Construction Official, who may then issue a building permit. If the Chair does not find the application appropriate or doubts its appropriateness, the application shall be scheduled for a public hearing before the full Board.

D. Procedures.

- (1) The construction office shall forward a copy of all permit applications dealing with historic landmarks or historic districts to the commission prior to issuance of the requested permit.
- (2) All applicants shall complete an application form. Application forms shall be made available in the Borough construction office. Complete applications shall be filed with the construction office.
- (3) Each application may be accompanied by sketches, drawings, photographs, descriptions, the property survey, if available, and other information to show the proposed alterations, additions, changes or new construction. Applications for demolition shall include current and archival photographs, if available, of the interior and exterior of the building and drawings to document the condition of the building. The Commission may require the subsequent submission of such additional materials related to building condition as it reasonably requires to make an informed decision.
- (4) The Commission shall reach a decision on an application and submit its report to the construction official within 45 days of referral by the construction official. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant and the Commission.

6. Development Applications:

- (1) When a development application is submitted for approval of a subdivision, site plan, conditional use, variance or change of use, the Planning Board shall make available to the Historic Preservation Commission an informational copy of the application. Recommendation by the Historic Preservation Commission to the Planning Board on an application for development shall be considered advisory only.
- (2) Approval by the Planning Board shall not relieve the applicant of the requirement of obtaining a certificate of appropriateness for those aspects of the project not covered by the development application.

7. Optional Informational Meetings:

Persons considering action that requires a Certificate of Appropriateness are encouraged, but not required, to attend an informal informational meeting with the Commission prior to submitting a formal application for a Certificate of Appropriateness or for a determination of non-necessity. The Commission shall hold such informational meetings as part of any regularly scheduled meeting of the Commission. The purpose of an informational meeting is to review the design issues and standards of appropriateness and the procedures for obtaining a Certificate of Appropriateness or a determination of non-necessity.

8. Application Review:

- A. The commission shall hold a public hearing on all applications for Certificates of Appropriateness. No public hearing shall be required in order for the commission to render a determination of non-necessity as defined in this ordinance
- B. Prior to holding a public hearing on an application for a Certificate of Appropriateness, the commission shall, in addition to complying with the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., notify the applicant in writing at least 10 days prior to the hearing by personal service or certified mail setting forth the time, date and place of the hearing.
- C. An applicant for a Certificate of Appropriateness shall not be required to appear or to be represented at the hearing in order for the commission to consider the application for a Certificate of Appropriateness, and the commission may take action in the absence of the applicant.
- D. At the hearing, the Commission shall allow all persons the opportunity to be heard concerning the issuance of a Certificate of Appropriateness for the proposed work.
- E. After conducting the public hearing, the commission shall render a determination on the application. All determinations shall be in writing with an explanation of the reasons for the decision, and shall be delivered promptly to the construction official. The commission

shall grant a Certificate of Appropriateness to the applicant if it finds the application appropriate to the historic landmark or historic district and in conformity with the standards and criteria set forth in this article. The commission may issue a Certificate of Appropriateness subject to certain condition(s), which shall be set forth in detail in the commission's written decision. The commission shall deny the issuance of a Certificate of Appropriateness if it finds the application inappropriate to the historic landmark or historic district and/or not in conformity with the said standards and criteria. The commission's denial of a Certificate of Appropriateness shall be deemed to prohibit the applicant from undertaking the work applied for, and shall preclude the issuance of any required permit for the said work by the construction official. Upon receipt of the commission's written determination, the construction official shall notify the applicant of said determination in writing within five days thereof.

- F. Failure of the commission to render its written determination to the construction official within the 45 day period referenced above shall be deemed to constitute a determination in favor of the issuance of a Certificate of Appropriateness for the proposed work and without conditions. In the event that the applicant has consented to an extension of time to consider the application, the construction official shall be notified of said extension and no Certificate of Appropriateness or permit shall be issued for the proposed work until a determination has been rendered by the commission during the extension period.
- G. The owner shall post the Certificate of Appropriateness on a conspicuous spot on the exterior of the designated property visible to the public during the entire process of work.
- H. When a Certificate of Appropriateness has been issued, the construction official or his appointee shall, from time to time, inspect the work approved by such certificate and shall regularly report to the commission the results of such inspections, listing all work inspected and reporting any work not in accordance with such certificate.
- I. A Certificate of Appropriateness shall be valid for a period of two years from date of issue unless reasonable extensions are requested by the applicant or the commission.
- J. The performance of unauthorized activities shall be deemed to be a violation of this chapter and may subject the responsible parties to sanctions imposed hereunder

9. Emergency procedures:

- A. When an historic landmark or contributing historic district resource requires immediate repair to preserve its continued habitability and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with applicable construction codes immediately upon approval of the construction official, who shall certify that a bona fide emergency of the type referenced herein exists, without first obtaining a Certificate of Appropriateness from the commission. Under such circumstances, the repairs performed shall be only such as are necessary to preserve the continued habitability of the building or structure and/or the health and safety of its occupants or others. Where feasible, temporary measures to prevent further damage shall be used, provided these measures are reversible without damage to the building or structure.
- B. Simultaneously with the commencement of the emergency work, the property owner shall make a request for a Certificate of Appropriateness from the commission memorializing the approval for said emergency work. This request shall be made through the construction official pursuant to the procedures set forth in this article.
- C. It should be noted that the procedures outlined in this section should be strictly limited to those circumstances which, in the opinion of the construction official, rise to the level of a bona fide emergency of the type referenced above. No work in addition to the emergency repairs shall be performed until an appropriate request for approval has been granted by the construction official and historic preservation commission pursuant to the procedures set forth in this article.

10. Criteria for review of applications:

- A. The goal of the review process is to preserve the integrity of designated historic sites and districts and to insure the compatibility of any changes or improvements made to them. Such changes may be done in a manner that references the historic architecture or they may be completed in a more contemporary idiom as long as they relate to the physical

context of the original building in terms of scale, proportion, rhythm, massing and materials.

- B. In interpreting and applying the standards and criteria set forth herein, the Commission shall be guided by the principles contained in the most current version of the Secretary of Interior Standards for Rehabilitation and the Secretary of the Interior Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings. (hereinafter referred to as “the Standards”)
- C. In reviewing an application for a Certificate of Appropriateness, the Commission shall consider the setting, design, arrangement, texture, details, scale, shape, materials and finish, and consider the relationship of those characteristics to the historic, architectural, cultural, archeological, and aesthetic significance of the historic site or district as well as:
- (1) The impact of the proposed change on the historic and architectural significance of the historic site or district.
 - (2) The historic site’s importance to the municipality and the extent to which its historic, cultural, or architectural significance would be adversely affected to the detriment of the public interest.
 - (3) The designation of a property within a district as “contributing” or ‘non-contributing”.
 - (4) The extent to which the proposed action would adversely affect the public’s view of a historic site within an historic district from a public street.
- D. Visual Compatibility Factors: In regard to an application for new construction, alterations, additions or replacements affecting a historic site or an improvement within a historic district, the following visual compatibility factors shall be considered in relation to its setting and context:
- (1) Height.
 - (2) Massing.
 - (3) Proportion of the width and height of the building’s facades.
 - (4) Proportion of openings within the building.
 - (5) Rhythm of spacing of buildings on streets.
 - (6) Rhythm of solids to voids on facades fronting on public places.
 - (7) Relationship of materials and texture.
- E. Additions to Designated Buildings or Contributing Structures within the District: Additions are not historical in themselves, and do not possess original or historic materials or design. Accordingly, they are subject to the following criteria:
- (1) Additions at the sides and rear of historic structures are encouraged so as not to obscure the historic structure. New construction on the front of historic structures is generally inconsistent with the objectives of this Article..
 - (2) The character of the addition is not required to duplicate the architectural style of the historic structure. Where visible from the street, the addition should complement, rather than dominate, the existing structure.
- F. New Construction and Additions to Non-contributing Structures within the District: New construction and additions to non-contributing structures do not have existing historic character and are not attached to historic structures. Accordingly, they are subject to the following criteria:
- (1) New construction and additions to non-contributing buildings need not match the architectural style or general materials of their surroundings or the non-contributing building to which the building will be attached.
 - (2) New construction and additions to non-contributing buildings shall be consistent with their general context, per “visual compatibility” factors, above.

- (3) Height, and street setback shall match the prevailing conditions of the nearest three buildings in each direction.

11. Demolitions and relocations:

A. Certificate of Appropriateness required:

In regard to an application to demolish or relocate an historic landmark or a contributing historic district resource, the following matters shall be considered:

- (1) Its current and potential use for those purposes currently permitted by the zoning ordinance or for the use proposed.
- (2) The probable impact of its removal upon the ambiance of the historic landmark or historic district.
- (3) The structural soundness and integrity of the building, structure, site, object or improvement and the economic feasibility of restoring or rehabilitating same so as to comply with the requirements of the applicable construction codes.
- (4) The compelling reasons for not retaining the building, structure, site, object or improvement at Its present location, the proximity of the proposed new location and its accessibility to residents of the municipality, and the probability of significant damage to the building, structure, site, object or improvement as a result of the relocation.
- (5) The compatibility, nature and character of the current and the proposed surrounding areas as they relate to the intent and purposes of this article and whether the proposed new location is visually compatible in accordance with the standards set forth herein.

B. Procedure where initial application for demolition or relocation is disapproved:

- (1) Sale for fair market value. If the Commission disapproves an initial application to demolish or relocate a historic structure, the owner shall for a period of six months from the date of said disapproval make bona fide and diligent efforts to sell the structure and lot to any person, organization, governmental agency or political subdivision that provides reasonable assurance that it is willing to preserve said structure. In order to maximize the opportunity to preserve the structure, the owner shall provide notice of the proposed demolition or relocation in accordance with the provisions set forth below.
- (2) Notice of demolition or relocation posted and published. Notice of the proposed demolition or relocation shall be posted on the subject property for a period of at least 30 days in such a manner as to be clearly readable from the street and shall be published in the Borough's official newspaper at least once a week for a minimum of four consecutive weeks .
- (3) Grant of certificate of approval. Provided that the Commission is satisfied that the requirements of Subsection B(1) above have been met, it shall issue a certificate of approval.
- (4) Opportunity to salvage or recycle part of structure prior to demolition. With respect to demolitions only, in the event the owner does not intend to recycle or salvage parts of the structure, the owner for 30 days should at his or her discretion afford interested parties and groups the opportunity to remove parts or architectural features from said structure prior to its demolition. The Commission should at its discretion and without liability maintain a list of interested parties and groups, and the owner shall provide notice by certified mail to such groups advising of said opportunity to salvage.
- (5) For the purposes of satisfying the requirements of this Subsection, the applicant shall not be obligated to accept less than the structure's fair market value as a historic structure. To determine fair market value, the property owner may present an appraisal prepared by a New Jersey State licensed real estate appraiser or documentation of a recent sale price for the property.

C. Approval after change of Circumstances:

The Commission may at any time during such notice period, if a significant change in circumstances occurs, grant a certificate of approval to demolish, in which event, a permit shall be issued within 10 days thereafter.

12. Appeals:

- A. Appeals from determinations of the construction official pursuant to the historic preservation commission's decision may be made by the applicant to the Planning Board, according to N.J.S.A. 40:55D-70a. Nothing herein shall be deemed to limit the right of judicial review of the action after an appeal is concluded by the Planning Board. The appellant shall pay all costs for copies of any transcript(s) required for appeal. If, in the case of an appeal made pursuant to this paragraph, the Planning Board determines there is an error in any order, requirement, decision or refusal made by the construction official pursuant to a determination rendered by the historic preservation commission, the Planning Board shall, in writing, include the reasons for its determination in the findings of its decision thereon.

13. Administration, enforcement, violations and penalties:

- A. It shall be the duty of any municipal official reviewing a permit application involving real property or improvements thereon to determine whether such application involves an activity that requires a Certificate of Appropriateness from the Commission. The municipal official may request assistance from the Commission in determining whether a certificate of appropriateness is required. If a certificate of appropriateness is required, the municipal official shall inform the applicant and the Commission.
- B. Upon learning of any violation of the provisions of this chapter, the Borough Zoning Officer shall issue a notice of violation to the owner of the property on which the violation is occurring. Said notice shall describe the violation in detail and shall provide the owner 10 calendar days to abate the violation by submitting an application to the Commission for review and approval of the proposed work.
- C. The Zoning Officer shall personally serve the notice upon the owner of the lot on which the violation is occurring. If the owner cannot be served personally within the municipality, a copy of the notice shall be posted on the site and a copy sent by regular and certified mail, return receipt requested, to the owner at the last known address as it appears on the municipal tax rolls.
- D. Each day that the violation continues beyond the ten-day period set forth above shall constitute a separate offense.
- E. Violators shall be subject to the penalties set forth in this Code as said section may from time to time be amended or re-numbered. In addition, the Borough may institute any appropriate action or proceeding pursuant to this Code to enjoin or otherwise prevent the violation from continuing.

14. Power to grant exceptions:

If the literal enforcement of one or more provisions of this chapter is impracticable or will exact undue hardship to the applicant, the Commission shall be empowered to grant such exceptions as may be reasonable within the general purpose and intent of this chapter.

15. Other Requirements unaffected:

The requirements of this chapter shall be considered to be in addition to and in no case shall they be interpreted as a substitute for any other approval, permit or other action otherwise required.

16. Review of Historic Preservation Ordinance:

Following a period of three consecutive years after adoption of this ordinance, the Borough Council shall review the procedural and substantive outcomes of this ordinance with particular attention to the decisions of the Historic Preservation Commission affecting exterior alterations. To assist in this review, the Commission shall prepare annual reports on the disposition of all requests and applications which come before it. Annual reports shall be submitted to the Council by January 31 of the subsequent year.

17. This ordinance shall be effective upon passage and publication as provided by law.

Introduced: April 4, 2011

Advertised: April 14, 2011

Public Hearing: May 2, 2011

Adoption: May 2, 2011

Final Publication: May 12, 2011

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor