

*Town of New Paltz, NY
Friday, July 19, 2013*

Chapter 140. ZONING

Article XIV. Historic Preservation Commission

§ 140-118. Legislative intent.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the economic, cultural and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the Town of New Paltz has many significant historic, architectural and cultural resources which constitute its heritage, this article is intended to:

- A. Protect and enhance the landmarks and historic districts which present distinctive elements of the historic, architectural and cultural heritage of the Town;
- B. Focus attention on and foster civic pride in the historic resources of the Town;
- C. Protect and enhance the attractiveness of the Town to visitors and support and provide stimulus to the local economy; and
- D. Ensure the harmonious, orderly and efficient growth and development of the Town.

§ 140-119. Commission established.

There is hereby established a commission to be known as the "Historic Preservation Commission of the Town of New Paltz," hereinafter referred to as the "Commission."

§ 140-120. Membership; terms of office; officers; meetings; quorum.

- A. The Commission shall consist of five members who shall be appointed by the Town Board. Persons residing within the Town of New Paltz who shall have

demonstrated significant interest in and commitment to the field of historic preservation evidenced by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation, or other serious interest in the field shall be eligible for appointment as members of the Commission. The Town Historian shall be an ex officio member of the Commission.

- B. Commission members shall serve for a term of four years, with the exception of the initial term of one of the members which shall be one year, one which shall be two years, one which shall be three years, and two which shall be for four years.
- C. The Town Board shall designate a member of the Commission to act as Chairman thereof. The Commission shall elect from among its members a Vice Chairman who shall serve as Recording Secretary.
- D. The Commission shall meet at least bimonthly.
- E. A quorum for the transaction of business shall consist of three of the Commission's members, but not less than a majority of the full authorized membership may render a decision regarding landmark status or grant or deny a certificate of appropriateness.

§ 140-121. Powers and duties.

The powers and duties of the Commission shall include:

- A. Employment of staff and professional consultants as necessary to carry out the duties of the Commission;
- B. Promulgation of rules and regulations as necessary for the conduct of its business;
- C. Conduct of surveys of significant historical, architectural and cultural landmarks and historic districts within the Town;
- D. Proposal of identified structures or resources to be designated as landmarks and recommendations to the Town Board on the creation of historic districts;
- E. Acceptance on behalf of the Town of the donation of facade easements and development rights; the making of recommendations to the Town Board concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this article;

- F. Increasing public awareness of the historic, cultural and architectural preservation of development and participating in public education programs;
- G. Making recommendations to Town Board concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts with the Town;
- H. Making recommendations to the Planning Board regarding applications for site plan review or subdivisions of real property containing landmarks or within a historic district;
- I. Employment, where justified, of the use of special techniques or policies so as to improve the quality of the area or, where economic assistance is warranted, to provide such aids or other incentives so that privately owned properties may realize a reasonable economic return;
- J. Recommending acquisition of a landmark structure by the Town Board where its preservation is essential to the purposes of this article and where private preservation is not feasible;
- K. Approval or disapproval of applications for certificates of appropriateness pursuant to this article; and
- L. Making recommendations to the Town Board for the creation and establishment of historic districts.

§ 140-122. Designation of landmarks.

- A. The Commission may propose an individual property for designation as a landmark if it:
 - (1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation;
 - (2) Is identified with historic personages;
 - (3) Embodies the distinguishing characteristics of an architectural style;
 - (4) Is the work of a designer whose work has significantly influenced an age;
or
 - (5) Because of a unique location or singular physical characteristic,

represents an established and familiar visual feature of the neighborhood.

- B. Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation appearing on the most recent real property tax rolls of the Town, describing the property proposed and announcing a public hearing by the Commission to consider the designation to be held not less than 20 days after the date the notice is mailed to the owner. Simultaneously with the mailing of such notice, the Commission shall cause a copy of the same to be delivered to the Building Inspector and to the Assessor for their respective review and comment. Once the Commission has issued notice of a proposed designation, no building or demolition permits shall be issued by the Building Inspector nor shall any material change be made to the appearance of the property until the Commission has made its decision.
- C. The Commission shall hold a public hearing on the date set forth in the notice prior to designation of any landmark. The Commission, owner and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural or cultural importance of the proposed landmark or historic district. The Commission shall make a decision in writing within 62 days of closing of the public hearing and send a copy of its decision to the owner of the property and file a copy with the Town Clerk, with the Building Inspector and with the Town Assessor. The Commission decision shall state the reasons for granting, modifying or denying a landmark designation.
- (1) The public hearing required pursuant to the provisions of this section shall be noticed in accordance with Article XVI, Public Hearings, of Chapter **140**, Zoning, of the Code of the Town of New Paltz.
- [Added 5-24-2007 by L.L. No. 2-2007]**
- D. The Commission shall prepare and present to the Ulster County Clerk for recording a notice of each property designated as a landmark and describing the decision of the Commission with regard to such property.

§ 140-123. Certificate of appropriateness.

- A. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a building designated as a landmark or any property within a historic district, nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving, major landscape feature or

design or other exterior elements which affect the appearance and cohesiveness of a historic district, without first obtaining a certificate or appropriateness from the Commission.

- B. The Town Building Inspector shall be responsible for administering and maintaining records of the applications for a certificate of appropriateness, whether or not they are accompanied by an application for a building permit. The Building Inspector shall have the same enforcement capability with respect to a certificate of appropriateness that the Inspector may exercise with respect to a building permit.
- C. No fees shall be collected for a certificate of appropriateness application.
- D. Any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision affecting a landmarked property or any property within a historic zoning district under this chapter or a structure or premises listed in the National Register of Historic Places shall be referred to the Commission for its recommendations in order to facilitate the review process and for a certificate of appropriateness, if necessary.

§ 140-124. Criteria for approval of certificate of appropriateness.

- A. In passing upon an application for a certificate of appropriateness, the Commission shall not consider changes to interior spaces.
- B. The Commission's decision shall be based upon the following principles:
 - (1) Historic properties shall be retained with their historic features altered as little as possible.
 - (2) Any alteration of existing property shall be compatible with its historic character, and with the historic character of surrounding properties, if any. Changes that may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.

- (3) New construction shall be compatible with the historic character of its surroundings.

C. In determining compatibility, the Commission shall consider the following factors:

- (1) The general design, character and appropriateness to the property of the proposed alteration or new construction;
- (2) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
- (3) Texture, materials and color and their relation to similar features of other properties in the neighborhood;
- (4) Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on the streets, including setback; and
- (5) The importance of historic, architectural or other features to the significance of the property.

§ 140-125. Application procedure for certificate of appropriateness.

A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such certificate with the Building Inspector. The application shall state, where appropriate:

- (1) Name, address and telephone number of the applicant;
- (2) Location and photographs of property;
- (3) Detailed description of proposed changes;
- (4) Perspective and elevation drawings, including relationship to adjacent properties;
- (5) Samples of color and/or materials to be used;
- (6) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the

sign's location on the property; or

(7) Any other information which the Commission may deem necessary in order to visualize the proposed work.

B. No building permit, demolition permit or sign permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Commission. The certificate of appropriateness required by this article shall be in addition to and not in lieu of any permits that may be required by any other laws or regulations of the Town. The Building Inspector shall refer any application for a certificate of appropriateness on property within a historic zoning district or a landmark property to the Commission within 10 working days of receipt by the Building Inspector or by such other deadline established by the Commission.

C. The Commission shall approve, approve with modifications, or deny the certificate of appropriateness within 62 days from receipt of the completed application. The Commission shall hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.

(1) The public hearing required pursuant to the provisions of this subsection shall be noticed in accordance with Article XVI, Public Hearings, of Chapter **140**, Zoning, of the Code of the Town of New Paltz. **[Added 5-24-2007 by L.L. No. 2-2007]**

D. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by certified mail, return receipt requested, and a copy filed with the Town Clerk and the Town Building Inspector for public inspection. The address used for such notification shall be the address of the applicant as shown on his application for the building permit. The Commission decision shall state the reasons for granting, modifying or denying any application.

§ 140-126. Compliance with State Environmental Quality Review Act.

The Historic Preservation Commission shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

§ 140-127. Enforcement.

All work performed pursuant to a certificate or appropriateness issued under this article shall conform to any requirements included therein. It shall be the

duty of the Building Inspector to inspect any such work to assure compliance. In the event work is performed that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission, the Building Inspector shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

§ 140-128. Maintenance and repair required.

- A. Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark, a property under consideration for landmark designation, or a property within a historical district which does not involve a change in design, material, color or outward appearance.
- B. No owner or occupant of real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Commission, produce a detrimental effect upon the character of a landmark or a historic district as a whole or the life and character of the property itself. Examples of such deterioration include:
- (1) Deterioration of exterior wall or other vertical supports.
 - (2) Deterioration of roofs or other horizontal members.
 - (3) Deterioration of exterior chimneys.
 - (4) Deterioration or crumbling of exterior stucco or mortar.
 - (5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
 - (6) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.
- C. The Building Inspector shall conduct an annual survey of all buildings designated as landmarks to determine that they are not in a state of disrepair and that no alterations have been made in the features described in § **140-123** of this article without the owner having first obtained a certification of appropriateness.

§ 140-129. Appeals regarding landmark designation.

- A. Any person whose application for a certificate of appropriateness has been denied by the Commission may apply for relief on the ground of hardship, within 30 days of the filing of the decision in the office of the Building Inspector, by making a written application to the Building Inspector for review of the decision by the Town Zoning Board of Appeals.
- B. The Zoning Board of Appeals shall review the decision of the Commission at a public hearing noticed in accordance with Article XVI, Public Hearings, of this chapter, such public hearing to be held within 30 days after the application for review is filed with the Building Inspector, at which time an opportunity to comment on the application shall be afforded to all interested parties and to any member of the public. The Zoning Board of Appeals shall decide the application within 62 days after the public hearing, or any adjournments or extensions thereof. The concurring vote of a majority of the Zoning Board of Appeals shall be necessary to reverse or modify a decision of the Commission. **[Amended 5-24-2007 by L.L. No. 2-2007]**
- C. In order to prove hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:
- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - (2) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
 - (3) The requested use, if approved, would not alter the criteria for the designation of landmarks as described in § **140-122A** of this article; and
 - (4) The alleged hardship has not been self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of relief.

§ 140-130. Judicial review.

- A. Any person aggrieved by a decision of the Commission regarding landmark designations or a decision of the Zoning Board of Appeals regarding certificates of appropriateness may apply to the Supreme Court for relief by a proceeding under Article 78 of the Civil Practice Law and Rules. The proceeding must be commenced within 30 days after the filing of the

decision appealed from in the office of the Town Clerk.

- B. Costs shall not be allowed against the Town Board or the Zoning Board of Appeals unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- C. If upon the hearing at the Supreme Court it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

§ 140-131. Penalties for offenses.

- A. Failure to comply with any of the provisions of this article shall be deemed a violation, and the violator shall be liable for a fine of not less than \$50 nor more than \$250.
- B. Any person who constructs, alters, demolishes or permits a property designated as a landmark to fall into a serious state of disrepair in violation of this article shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this article shall be brought by the Town Attorney, who shall be entitled to recover, in addition to the fine, all costs and expenses incurred by the Town in pursuing compliance with this article.
- C. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.