

LOCAL LAW #2 OF THE YEAR 2006
A LOCAL LAW AMENDING CHAPTER 22
OF THE CODE OF THE TOWN OF ROCHESTER
REGARDING THE HISTORIC PRESERVATION COMMISSION

DRAFT

Chapter 22

HISTORIC PRESERVATION COMMISSION

22-1. Purpose

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, educational and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the Town of Rochester has many significant historic, architectural, and cultural resources which constitute its heritage, this act is intended to:

- (a) protect and enhance the landmark and historic districts which represent distinctive elements of the Town of Rochester's historic, architectural, and cultural heritage;
- (b) foster civic pride in the accomplishments of the past;
- (c) protect and enhance the Town of Rochester's attractiveness to visitors and the support and stimulus to the economy thereby provided; and
- (d) ensure orderly, and efficient growth and development in harmony with the Town of Rochester's Comprehensive Plan.

22 – 2. Definitions

As used in this chapter, the following words shall have the meanings indicated:

ADDITION – The construction of a new improvement as part of an existing improvement, when such new improvement changes the exterior appearance.

ALTERATION – Any act or process which changes or modifies a landmark or an improvement parcel located within a historic district including but not limited to exterior changes to or modifications of a building, structure, architectural details or visual characteristics of materials and surface texture; grading or surface paving; construction of new buildings or structures; cutting or removal of trees and natural features; disturbance of archaeological sites or areas; installation or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps and landscape accessories that affect the exterior visual qualities of the property.

DEMOLITION – The razing of any improvement or the obliteration of any natural features.

ELIGIBLE PROPERTY – Any place, property, area, site, district or object within the Town of Rochester which the Commission determines meets the criteria for listing as a landmark as listed in the Town of Rochester – Historic Resources Reconnaissance Survey – prepared by Kyserike Restorations, Inc in 1993 and any that have been added by the Commission since 1993.

EXTERIOR ARCHITECTURAL FEATURES – The architectural style, design, general arrangement and components of all of the outer surfaces of any building or structure, including but not limited to the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to said building or structure.

HISTORIC DISTRICT – A definable group of Tax Map lots, the improvements on which when viewed collectively, represent a significant period(s) in the architectural and social history of the town and because of their unique character, can readily be viewed as an area or neighborhood distinct from surrounding portions of the municipality or have a unique character due to their architectural style. Except as otherwise stated, all references to “landmarks” in this chapter shall be deemed to include “historic districts” as well.

HISTORIC LANDMARK or LANDMARK – Any real property, including but not limited to a building, structure, ruins, foundation, route, trail, site, landscape or object, cave, cemetery, burial ground, camp or village area, or natural object(s) or configuration, geological formation or feature which is of particular historic, cultural, scenic or architectural significance to the Town of Rochester or in which the broad cultural, political, economic or social history of the nation, state or community is reflected or exemplified; is identified with historic personages or with important events in the main current of national, state or local history; shows evidence of habitation, activity or the cultural culture prehistoric society or Native American Indians; embodies a distinguishing characteristic or architectural type valuable as representative of a period, style or method of construction; represents a work of a builder, designer, artist or architect whose individual style significantly influenced the architectural history of the town; or is imbued with traditional or legendary lore and which has been designated as a landmark pursuant to the provisions of this chapter. Note: This should include those properties listed in the State or National Register of Historic Places. All landmarks or eligible landmarks shall be identified in the Comprehensive Plan. The designation of a landmark shall be deemed to include the Tax Map lot(s) on which it is located.

IMPROVEMENT – Any building, landscape, work of art or other object, structure or part thereof constructed or installed upon real property by human endeavor and constituting a physical betterment of real property or any part of such betterment and intended to be kept at the location of such construction or installation for a period of more than 60 days.

INVENTORIED PROPERTY – Any property listed in the Town of Rochester – Historic Resources Reconnaissance Survey – prepared by Kyserike Restorations, Inc. in 1993 and any that have been added by the Commission since 1993.

LANDSCAPE FEATURES – Natural systems and features, spatial organization, views and vistas, topography, vegetation, circulation, constructed water features, and small scale features.

ORDINARY REPAIRS AND MAINTENANCE – Replacement of any part of an improvement for which a permit issued by the building department is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage of such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

REPLACEMENT – Repairs that require a building permit.

22-3. Historic Preservation Commission

The Historic Preservation Commission for the Town of Rochester was adopted on 1-29-1987, herein after referred to as the Commission.

- (a) The Commission shall consist of not less than seven members and not more than than fifteen members to be appointed, to the extent available in the community, by the Town Board as follows: at least one shall be an architect experienced in working with historic buildings; at least one shall be an historian; at least one shall be a resident of an historic district; at least one shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either 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; and all members shall have a known interest in historic preservation and architectural development within the Town of Rochester.
- (b) Commission members shall serve for a term of three years, with the exception of the initial term of one of the members which shall be one year, one which shall be two years, and one shall be three years.
- (c) The Chairperson shall be appointed by the Town Board from among the members of the Commission.
- (d) The powers of the Commission shall include:
 - (i) adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
 - (ii) conduct of surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town of Rochester;
 - (iii) designation of identified structures as landmarks and historic districts;
 - (iv) promulgation of rules and regulations as necessary for the conduct of its business;
 - (v) retaining professional consultants and staff as necessary to carry out the duties of the Commission;
 - (vi) acceptance on behalf of the Town of Rochester of the donation of façade easements and development rights; and the making of recommendations to the Town of Rochester concerning the acquisition of façade easements or

- other interests in real property as necessary to carry out the purposes of this act;
 - (vii) increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs;
 - (viii) making recommendations to the Town of Rochester government concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the town;
 - (ix) recommending acquisition of a landmark structure by the town government where its preservation is essential to the purposes of this act and where private preservation is not feasible; and
 - (x) approval or disapproval of applications of appropriateness pursuant to this chapter.
- (e) The Commission shall meet monthly, but meetings maybe held at anytime on written request of any two Commission members or on the call of the Chairperson or the Supervisor.
 - (f) A quorum for the transaction of business shall consist of 2/3 of the Commission's membership with a minimum of five.
 - (g) Not less than a majority of the full membership may grant or deny a certificate of appropriateness.

22-4. Designation of Landmarks or Historic Districts

- (a) The Commission may designate an individual property as a landmark if it:
 - (i) possesses special character or historic or esthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or
 - (ii) is identified with historic personages; or
 - (iii) embodies the distinguishing characteristics of an architectural style; or
 - (iv) is the work of a designer whose work has significantly influenced an age;
 - (v) because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.
- (b) The Commission may designate a group of properties as an historic district if it:
 - (i) contains properties which meet one or more of the criteria for designation as a landmark; and
 - (ii) by reason of possessing such qualities, it constitutes a distinct section of the Town.
- (c) The boundaries of each historic district designated henceforth shall be specified in detail and filed, in writing, in the Town Clerk's office and in the Building Inspector's office for public inspection.
- (d) Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation, describing the property and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general

circulation at least 10 days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permits shall be issued by the building inspector until the Commission has made its decision.

- (e) The Commission shall hold a public hearing prior to designation of any landmark or historic district. The Commission, owners, and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.
- (f) The Commission shall make a decision in writing within 60 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 Town Building Inspector and with the Town Assessor. The Commission shall state the reasons for granting, modifying or denying a landmark designation.
- (g) The Commission shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the office of the Ulster County Clerk for recordation.

22-5. Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Landmarks, Eligible Property or Historic Districts

- (a) No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within an 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, or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission.
- (b) Any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision affecting a landmark or eligible property or within an historic district, or listed in the National Register of Historic Places or in the viewshed of any shall be referred to the Commission for its recommendations in order to facilitate the review process.

22-6. Criteria for Approval or Certificate of Appropriateness

- (a) In passing upon an application for a certificate of appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless the property is open to the public.
- (b) The Commission's decision shall be based on the following principles:
 - (i) properties which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible;
 - (ii) any alteration of existing properties shall be compatible with its historic character, as well as with the surrounding area; and
 - (iii) new construction shall be compatible with the historic character of its

- surroundings.
- (c) In applying the principle of compatibility, the Commission shall consider the following factors:
 - (i) the general design, character, and appropriateness to the property of the proposed alteration or new construction;
 - (ii) the scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - (iii) texture, materials, and color and their relation to similar features of other properties in the neighborhood;
 - (iv) visual compatibility with surrounding properties, including proportion of the property's front façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
 - (v) the importance of historic, architectural, or other features to the significance of the property.

22-7. Certificate of Appropriateness Application Procedure

- (a) Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such certificate with the Historic Preservation Commission. The application shall contain:
 - (i) name, address, and telephone number of the applicant;
 - (ii) location and photographs of property;
 - (iii) elevation drawings of proposed changes, if available;
 - (iv) perspective drawings, including relationship to adjacent properties, if available;
 - (v) samples of color or materials to be used;
 - (vi) 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; and
 - (vii) any other information which the Commission may deem necessary in order to visualize the proposed work.
- (b) No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Historic Preservation Commission. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Town of Rochester.
- (c) The Commission shall approve, deny, or approve the permit with modifications within 60 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided proponents of the application to present their views.
- (d) All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk and with the Town Building Inspector. The Commission's decision shall state the reasons for denying or modifying any application.
- (e) Certificates of appropriateness shall be valid for 12 months, after which time

- the owner must reapply if he still wishes to undertake work on the property.
- (f) Certificates of appropriateness are not transferable.

22-8. Demolition Hardship Criteria

An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- (a) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- (b) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- (c) efforts to find a purchaser interested in acquiring the property and preserving it have failed.

22- 9. Alteration Hardship Criteria

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

22-10. Hardship Application Procedure

- (a) After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists.
- (b) The Commission may hold a public hearing on the hardship application at which time an opportunity will be provided for proponents and opponents of the application to present their views.
- (c) The applicant shall consult in good faith with the Commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in the preservation of the property.
- (d) All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office and the Building Inspector's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Commission shall approve only such work as is necessary to alleviate the hardship.

22-11. Enforcement

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the Building

Inspector or a Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Historic Preservation Commission, the Building Inspector or the Code Enforcement Officer 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.

22-12. Maintenance and Repair Required

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark, or eligible property, or property within an historic district, or on the National Register of Historic Places which does not involve a change in design, material, color, or outward appearance. No owner or person with an interest in real property designated as a landmark, or eligible for landmark status, or included within an historic district, or on the National Register of Historic Places 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 Historic Preservation Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself. Examples of such deterioration include:

- (a) deterioration of exterior walls or other vertical supports;
- (b) deterioration of roofs or other horizontal members;;
- (c) deterioration of exterior chimneys;
- (d) deterioration of crumbling of exterior stucco or mortar;
- (e) ineffective waterproofing of exterior walls, roofs, or foundations, including broken Windows or doors; and
- (f) 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.

22 13. Violations

- (a) Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable to a fine of not less than \$50.00 nor more than \$250 for each day the violation continues.
- (b) Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this ordinance shall be required to restore the property and site to its appearance prior to the violation. Any action to enforce this subsection 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 of Rochester in pursuing compliance with this article.
- (c) This civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

22 14. Appeals

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within 60 days of the decision, file a written application with the Town of Rochester Zoning Board of Appeals for review of the decision. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria.