

Chapter 109: HISTORIC PRESERVATION

[HISTORY: Adopted by the Town Board of the Town of Hurley 12-27-2007 by L.L. No. 7-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 97.

Zoning — See Ch. 210.

§ 109-1. Legislative intent.

Pursuant to Article 5, § 96-a, and Article 5-K, New York General Municipal Law; Article 4, Parks, Recreation and Historical Preservation Law; and the National Historic Preservation Act of 1966, it is hereby declared as a matter of public policy the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the cultural, economic and general welfare of the public. The Town has many significant and interesting historic resources that constitute its heritage. These include architectural and cultural properties, archeological sites, cemeteries as well as important land transportation routes and the remains of early industrial, commercial, agricultural, recreational and artistic sites. Inasmuch as the identity of a people is founded on its past, this chapter is intended to:

- A. Protect, enhance and promote the landmarks and historic districts which represent distinctive, informative and educational elements of the historic, architectural, archaeological and cultural heritage of the Town;
- B. Focus and stimulate attention on and foster civic pride in the historic accomplishments and resources of the Town;
- C. Protect and enhance the attractiveness of the Town to the residents and visitors, thus supporting and providing stimulus to the economic economy; and
- D. Ensure the harmonious, orderly and efficient growth and development of the Town.

§ 109-2. Commission established.

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

§ 109-3. 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 who 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 five 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, one for four years and one for five years.
- C. The Town Board shall designate a member of the Commission to act as Chairperson thereof. The Commission shall elect from among the members a Vice Chairperson. Both officers shall serve for a term of two years.
- D. The Commission shall meet at least every two months, but meetings may be held at any time on the written request of any two of the Commission members, or on the call of the Chairperson or the Town Supervisor.
- 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.

§ 109-4. Powers and duties.

The powers and duties of the Commission shall include:

- A. Adoption of criteria for the identification of significant historic architectural, archaeological and cultural landmarks and for the delineation of historic districts.
- B. Conduct surveys of significant historical, architectural, archeological and cultural landmarks and historic districts within the Town.
- C. Designation of individual landmarks and creation of historic districts; such designations to be subject to disapproval or modification by the Town Board within 45 days of enactment of the designation and filed as approved if no action is taken in this time.
- D. Increase public awareness of the Town's historic and archeological preservation by developing, publishing and distributing educational and promotional information and participating in public education programs.
- E. Promulgation of rules and regulations as necessary for the conduct of its business.
- F. Making recommendations to the Town Board concerning the use of state, federal or private funds to provide information on and promote the preservation of landmarks and historic districts within the Town.
- G. Making recommendations to the Town Planning Board regarding appropriate zoning laws protecting historic, architectural, archeological and cultural landmarks and advising the Planning Board regarding applications for site plan review or subdivision of real property containing landmarks or within an historic district.
- H. Making recommendations to the Town Board concerning acceptance of donations or the acquisition of facade easements or other interest in real property as necessary to carry out the purposes of this chapter.
- I. Recommending the acquisition of a landmark property by the Town Board where its preservation is essential to the purposes of this chapter and where private preservation is not feasible.
- J. Employment, with Town Board approval, of staff and professional consultants as necessary to carry out the duties of the Commission.

§ 109-5. Designation of landmarks and historic districts.

- A. The Commission may designate an individual property as a landmark if it:
 - (1) Possesses special character or historic or aesthetic interest or value as a part of the archeological, cultural, political, economic or social history of the locality, region, state or nation; and/or
 - (2) Is identified with historic personages; and/or
 - (3) Embodies the distinguishing characteristics of an architectural style, and/or
 - (4) Is the work of a designer whose work has significantly influenced an age; and/or
 - (5) Because of a unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood; and/or
 - (6) Is listed on the State and/or National Registers of Historic Places, or which is the subject of a pending application for listing.
- B. Historic districts.
 - (1) The Commission may designate a group of properties as an historic district if it:
 - (a) Contains properties which meet one or more of the criteria for designation as an individual landmark; and
 - (b) By reason of possessing such qualities, constitutes a cohesive area of the Town.
 - (2) The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed in the Town Clerk's office for public inspection.
- C. Requests for the designation of an individual landmark or historic district may be initiated by any person or organization on forms provided by the Town Clerk. The Commission will act on these requests in a timely manner.

- D. Notice of the proposed designation shall be sent by registered mail to the owner(s) of the property, or properties, proposed for designation appearing on the most recent real property tax rolls of the Town. This notice shall describe the property proposed and announce a public hearing by the commission to consider the designation. Timely notice of this public hearing shall be published in local papers of record. Simultaneously with the mailing of such notice to the owner(s), 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, the building inspector shall issue no building or demolition permits nor shall any material change be made to the appearance of the property until the Commission has made its decision. Notice of this restriction shall be worded in these transmittals to the Building Inspector and Assessor.
- E. The Commission shall hold its duly advertised public hearing on the date set forth in the notice prior to designation of any landmark. Testimony or documentary evidence at the hearing held by the Commission, owner(s) and any interested parties shall become a part of the record regarding the archeological, 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 the public hearing and send by registered mail a copy of its decision to the owner(s) of the property or properties and also deliver copies to be filed with the Town Clerk, with the Building Inspector and the Town Assessor. The Commission's decision shall state the reasons for granting, modifying or denying a landmark designation.
- F. The Commission shall prepare and forward to the Ulster County Clerk, for recording, a notice of each property so designated as a landmark or as a part of an historic district.
- G. The Commission shall have the power to remove a landmark designation from a property or site, using the foregoing steps in Subsections D through F, if the reasons and conditions for granting the original designation no longer exist.

§ 109-6. Designation of historic and scenic transportation routes.

Nothing in this chapter shall preclude the Commission's designation of Town roads, Town-owned rail beds or abandoned roads in the Town which meet the criteria set forth in § 109-5. Once designated, the Town Board shall solicit the Commission's advice on the proper care, landscaping and construction, which shall be incorporated into standards used by the Highway Department.

§ 109-7. 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 exterior light fixtures, signs, sidewalks, fences, steps, paving, major landscape features or design, or other exterior elements, including exterior lighting, which affect the appearance and cohesiveness of either the landmark or of the historic district, without first obtaining a certificate of appropriateness from the Commission.
- B. No person shall permit the excavation of land designated as a landmark for the deliberate retrieval of historic artifacts of any kind without first being issued a certificate of appropriateness. The Commission shall have the right to contact the appropriate federal and state agencies pertaining to the request before issuing a certificate of appropriateness.
- C. The Town Building Inspector shall be responsible for administrating 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 exercises with respect to a building permit.
- D. No fees shall be collected for a certificate of appropriateness application.
- E. Before acting on any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision, the Building Inspector shall first consult a current list of all properties designated as individual landmarks or as contained within historic districts to determine if the property falls under this chapter. Requests affecting a landmark property or any property within a historic district under this chapter or a structure or premises listed in the National Register of Historic Places shall be referred promptly by the Building Inspector to the Commission for its recommendations in order to facilitate the review process and a certificate of appropriateness, if necessary.

§ 109-8. Criteria for approval of certificate of appropriateness.

- A. This chapter does not regulate or apply to interior spaces. A certificate of appropriateness is not required for interior alterations. For a property designated as a landmark or which is located in an historic district, the applicant and the Commission may consult together on alterations proposed to interiors open to the public on a regular basis to the end that the antique and aesthetic value may be maintained.
- B. The Commission's decisions on all applications for certificates of appropriateness for building exteriors shall be based upon the following principles:
 - (1) Historic properties shall be maintained with their exterior 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 the landmark and 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 the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - (3) Texture, materials, form, massing, size, rhythm, spacing, structural elements, proportion, illumination and color and their relation to similar features of other landmark properties of the same type and age; and
 - (4) The importance of historic, architectural or other significance of the property.

§ 109-9. Application procedures 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 certification with the Building Inspector. The application shall state, where appropriate:
 - (1) Name, address and telephone number of the applicant;
 - (2) Street location and photograph of the property;
 - (3) Detailed descriptions 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 and/or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials used, methods of illumination and a plan showing the sign's location on the property; and
 - (7) Any other information which the Commission may deem necessary in order to visualize the proposed work.
- B. No building permit, demolition permit or other required permit shall be issued by the Building Inspector for such work on a landmark property or a property within an historic district until a certificate of appropriateness has first been issued by the Commission. The certificate of appropriateness required by this chapter shall be in addition to and not in lieu of any permits the Town may require or any other laws or regulations. The Building Inspector shall refer such permit application for a landmark property or a property within an historic district to the Commission within 10 working days of receipt or by such other deadline established by the Commission.

- C. The Commission shall approve, approve with modifications, or deny a certificate of appropriateness on such a permit within 77 days from the receipt of the complete application. During this time, the applicant or applicant's representative may meet with the Commission to consider alternative designs if needed, advice on technologies, available restoration skills and possible financial assistance. The Commission may also 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.
- 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 also a copy shall be 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 the application for the building permit. The Commission's decision shall state the reasons for granting, modifying or denying any application.
- E. Certificates of appropriateness shall be valid for 12 months, after which time the owner may reapply if the work on the certificate has not commenced.
- F. All appeals of any of the decisions made by the Historic Preservation Commission shall be made in accordance with the procedures set forth in § 109-13 below.

§ 109-10. 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.

§ 109-11. Enforcement.

All work pursuant to certificate of appropriateness issued under this chapter 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 it is found that the work 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. Any nonconforming work shall be removed unless approved by the Commission.

§ 109-12. Maintenance and repair required.

- A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark, a property under consideration for a landmark designation, or a property within an historic 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 wall, roof or foundation, including broken windows or doors.
 - (6) Deterioration of any feature so as to create a hazardous condition that could lead to the claim that demolition is necessary for the public safety.
- C. The Commission shall conduct periodic surveys of 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 preceding sections of this chapter without the owner having first obtained a certificate of appropriateness. Assistance of the Building Inspector may be requested as required in such surveys.

- D. The Commission shall promptly report to the proper state and/or federal agencies all alterations to, or deterioration of, any property listed on and state and/or federal registers of historic landmarks, places, or archeological site so listed as required by these agencies.

§ 109-13. Appeals regarding hardship.

After receiving written notification from the Commission of a denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued until there is agreement between the applicant and the Commission. 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. If no agreement is reached within 30 days of the date of the denial, the applicant may proceed with an appeal. In the appeal process:

- A. Any person whose application for a certificate of appropriateness has been denied by the Commission may apply for relief on the grounds 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 denial at its next scheduled meeting after the application for review is filed with the Building Inspector at which an opportunity to comment on the application is afforded to all interested parties or any member of the public. The Zoning Board of Appeals shall decide the application within 62 days after the meeting, or any adjournments of extensions thereof. The concurring vote of the Zoning Board of Appeals shall be necessary to reverse or modify a decision of the Commission.
- C. Proof of hardship.
- (1) In order to prove hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:
- (a) The applicant cannot realize a reasonable return, regardless of whether that return represents the most profitable return possible;
 - (b) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
 - (c) The request, if approved, would still conform with the designation of landmarks as described in § 109-5 of this chapter; and
 - (d) 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.
- (2) In the case of a demolition or removal permit the applicant shall, in addition to Subsection C(1)(a) through (d) above:
- (a) Show that the property cannot be adapted for any other use which would result in a reasonable return without compromising its historic integrity, whether by the current owner or by a willing purchaser; and
 - (b) Show that documented effort over a period of 12 months has failed to find a purchaser willing to acquire and preserve the property's historic integrity.

§ 109-14. Judicial review.

- A. Any person aggrieved by a decision of the Commission regarding 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 proceedings must be commenced within 30 days after the filing of the decision with the Town Clerk.
- B. Costs shall not be allowed against the Town Board, the Zoning Board of Appeals, the Commission or their members, individually or collectively, unless it should appear to the Court that they acted with gross negligence or bad faith, or with malice in making their decision.
- C. If, upon proper 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 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.

§ 109-15. Penalties for offenses.

- A. Failure to comply with any of the provisions of this chapter shall be deemed a violation. Upon written notification by the Building Inspector, the violator shall be liable for a fine of not less than \$50 nor more than \$250 for each day the violation exists.
- B. Any person who constructs, alters, excavates, demolishes or permits a property designated as a landmark to fall into serious state of disrepair in violation of this chapter shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this chapter 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 chapter.
- C. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

§ 109-16. Definitions.

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

ALTERATION — Any act or process that changes one or more present exterior, or designated interior features of a landmark by change in color, texture, composition, location, or removal and/or replacement of any existing material not in kind.

ARCHITECTURALLY SIGNIFICANT STRUCTURE — An architecturally significant structure is one which represents a rare or early example of a design that has become a widely known style associated with a particular architectural period.

CONSTRUCTION — Any act of erecting an addition to an existing structure, or the erection of a principal or accessory structure on a lot or property.

CERTIFICATE OF APPROPRIATENESS — A permit issued by the Hurley Preservation Commission allowing exterior alteration, restoration, reconstruction, demolition, new construction, any material change or moving of a building designated as a landmark or any property within a historic district.

FACADE EASEMENT — A type of preservation easement derived from the charitable donation to an organization that is exempt from tax under Internal Revenue Code, Section 501(c)(3). A legal agreement designated to protect a significant historic, archaeological or cultural resource in which the current historical property owner is assured that the building's front facade will be maintained, protected and preserved forever by future owners.

FORM — The shape and structure of a building as distinguished from the material of which it is composed.

HISTORIC DISTRICT — Any area containing a significant concentration of structures, landscape features, sites or objects having historic, archaeological, cultural or aesthetic significance. Such designation shall remain for the property through all ownership transfers.

HISTORIC SITE — Any property, lot or parcel of land, or combination thereof, upon which a historic event occurred in the past, but no trace of this event exists now. Such sites will not be subject to this preservation law.

LANDMARK — A local designation of a plot, property or building that meets the requirements of this law and has been so designated by the Commission. Such a designation shall be in effect through all property transfers. Such a designation shall only be removed by the Commission as outlined in this law.

MAINTENANCE — The act of keeping a building in a state of repair.

MASSING — The architectural relationship between the various masses or volumes of a building, including proportion, profile, volume relationships and contour.

REPAIR — Replacement in kind or refurbishing of materials on a structure.

RHYTHM — The regular recurrence of similar features in a building.

SPACING — The distance between any two objects in a usually regularly arranged series.