

## ORDINANCE NO. 505

### Chapter 230. Zoning

#### Article VI Administration and Enforcement

#### § 230-45. Historic review certificate required in historic districts.

[Amended 10-10-2006 by Ord. No. 439]

A. *Historic review certificate.* For any property located in the Historic Residence or Historic Commerce Districts, and for any buildings in the City of New Castle listed on the National Register of Historic Places, an historic review certificate shall be obtained from the Historic Area Commission prior to the issuance of a building permit or certificate of occupancy as required by this chapter and prior to the construction, erection, creation, modification, alteration, addition to, demolition, reconstruction or conversion of any building, structure, premises, signage, or use of a property.

[Amended 4-10-2012 by Ord. No. 486]

*(Comments: Recommendation based on HARC. Comprehensive Plan Update will need to address HARC recommendation to change Historic Residence District boundaries consistent with Landmark Historic District. Decision on including properties eligible for listing on National Register postponed until system for identification can be developed sometime after new guidelines in place.)*

B. *Historic compliance.* Prior to issuance of a certificate of occupancy for any project subject to the requirements of an historic review certificate, a completed project shall be reviewed and inspected by the Code Official. Said review and inspection shall be made to ensure compliance with all conditions of the original historic review certificate.

C. *Violations.* Any person or entity that undertakes to construct, erect, create, modify, alter, make addition to, demolish, reconstruct or convert any building, structure, premises, signage, or use of a property located in the Historic Residence or Historic Commerce Districts, or any buildings in the City of New Castle listed on the National Register of Historic Places, without having first secured a valid historic review certificate shall be in violation of this section. Any person or entity that fails to apply for an historic review certificate within ten (10) calendar days of being cited by the Building Official or Code Official for the violation of this section shall be subject to a fine of \$100.00 per day for each calendar day that such violation continues or until an historic review certificate is in fact issued by the Historic Area Commission or until the subject property is restored to its prior condition. Any fines imposed pursuant to this section shall represent a lien on the subject real estate and shall be collectable by debt action or monition action, in like manner as delinquent real estate taxes owed to the City of New Castle. If a judgment be rendered in favor of the City in any such action, there shall be an allowance for reasonable attorney's fees and all costs and expenses of litigation entered as a part of such judgment.

*(Comments: Inspections to be done by building official. Adds enforcement penalties.)*

## Article VII. Historic Area Commission

### § 230-49. Intent.

The intent of this section is to safeguard the heritage of the City by protecting and preserving buildings and sites within an area which represents elements of New Castle's cultural, social, political and architectural history and to promote the educational, cultural and economic value to the public by maintaining said area as a landmark of the City's history and architecture.

### § 230-50. Creation of Historic Area Commission.

A. *Creation.* An Historic Area Commission is hereby created. The Commission shall consist of the following six members:

(1) An architect licensed in the State of Delaware and having interest and knowledge in the protection, preservation and restoration of the historic character of the City, appointed by City Council. The architect shall be a non-voting member who shall serve in an advisory capacity only.

(2) Two City residents having municipal voting privileges and appointed by City Council.

(3) Two City residents having municipal voting privileges, appointed by the Mayor.

(4) A Planning Commission member, appointed by City Council.

(5) At least three voting members shall be residents of and have legal or equitable title to property in the Historic District.

B. *Terms.* The terms of office for members shall be for three years. The five (5) incumbent members of the Historic Area Commission at the time of the adoption of this ordinance shall continue to serve the balance of their respective terms. The sixth (6<sup>th</sup>) member of the Historic Area Commission shall be appointed by City Council within ninety (90) days of the adoption of this ordinance. No member of the Historic Area Commission may serve more than two consecutive terms. Members may, after a public hearing, be removed by City Council for inefficiency, neglect of duty, malfeasance in office or other good cause.

C. *Quorum.* Three voting members shall constitute a quorum to do business.

D. *Conflicts of Interest.* In the event that any member of the Commission has a direct or indirect personal, family or business interest in any matter, applicant, property or activity under consideration by the Commission, that member shall declare said interest or the

potential for conflict of interest and shall disqualify himself/herself from participation in any discussion or decision relating to the matter.

*(Comments: Removal of references to “colonial period”, establishment of term limits and architect requirements based on HARC recommendations. Role of architect modified based on combination of HARC and HAC suggestions and public comments—non-voting member status keeps architect as member to provide expertise and supports Certified Local Government application but removes vote so only residents are entitled to vote. Assumes existing members fill out current terms but will need to add replacement for architect to maintain 5 voting members. Removes New Castle Historical Society appointment consistent with other approach for other Commissions. Add definition of quorum. Clarification of conflict of interest clause.)*

§ 230-51. Proceedings of Historic Area Commission.

A. *Procedures/Open Meetings.* The Historic Area Commission shall organize itself and may make and adopt procedural rules necessary in the conduct of its affairs and in keeping with the provisions of this chapter. The Chairman or, in his/her absence, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Commission shall keep minutes of its proceedings showing the vote of each member on each question and shall keep records of its examinations and other official actions, all of which shall be public record.

B. *Freedom of Information Act Compliance.* The Commission shall in all instances be required to comply with 29 *Del.C.* Chapter 100, as it may be amended from time to time. [Added 10-6-1981 by Ord. No. 246]

C. *Neighborhood Notification.* At least ~~ten (10)~~ **fifteen (15)** days prior to consideration of any matter submitted to the Historic Area Commission, the Building Official shall post the subject property with a public hearing notice in conformance with this section. Such posting of the subject property shall not be required in cases where the Building Official has administratively issued an historic review certificate pursuant to subsection D below for matters that are fully compliant with City Council approved historic review guidelines.

- (1) Location: The posted notice shall be placed in a conspicuous location on the subject property such as the front door or a front window, clearly visible to the public from the adjacent sidewalk or street right of way. No person entering upon the subject property for purposes of reading the posted notice shall be deemed guilty of a trespass.
- (2) Size: The posted notice shall be no smaller than 8.5” by 11” with a yellow background and black lettering.
- (3) Information: The posted notice shall include the words “PUBLIC NOTICE”, a brief description of the proposed project, and shall state that a copy of the

application and any supporting plans are available at the City Building Office for public review. In addition, the date, time, location and hearing commission shall be clearly visible. The applicant shall not remove the posted notice prior to the scheduled hearing and shall be required to clean, replace or repost any posted notice that has been removed or defaced to the extent that the information to be conveyed is no longer legible.

- (4) Proof of Posting: At the hearing before the Historic Area Commission, the Building Official shall provide verbal or written proof of posting the notice required by this section which proof shall be duly noted in the minutes of the hearing.

D. *Historic Review Guidelines*. The Historic Area Commission may, subject to approval by City Council, adopt historic review guidelines to assist in applying architectural design criteria in furtherance of the stated intent of this Article VII. New guidelines or changes to existing guidelines may be proposed by the Architect, City Council, a special purpose committee established by City Council or the Commission itself. However, the adoption or modification of Commission guidelines shall be subject to approval by City Council.

E. *Administrative Issuance of Certificates*. The Building Official shall have the authority to issue historic review certificates on behalf of the Historic Area Commission, without the Commission's independent review, for any application that proposes construction, reconstruction, modification, alteration, or signage that is fully consistent and in compliance with historic review guidelines approved by City Council.

F. *Appeals*. The Board of Adjustment shall have jurisdiction to hear appeals by any person aggrieved or by any officer or bureau of the governing body of the City affected by any decision of the Commission in the manner provided for in §230-55 A of this Chapter. Such appeal shall be taken within 20 days of the date of the Commission's decision.

*(Comments: Add neighborhood notification requirements, and method for adoption of new guidelines. Add administrative option.)*

## § 230-52. Powers and duties of Historic Area Commission.

### A. *Function*.

(1) It shall be the function of the Historic Area Commission to review and act upon any request for an historic review certificate as required by this chapter. The Commission may require plans, elevations, architectural drawings, photographs, product specifications and other information to aid in rendering a decision. A copy of any application for a building permit or a certificate of occupancy that necessitates the issuance of an historic review certificate shall be made available to the Commission by the Building Official.

[Amended 4-10-2012 by Ord. No. 486]

(2) In deciding upon applications for historic review certificates, the Commission shall keep in mind the main purposes of this section and shall consider, among other things, the historical and architectural value and significance, the general design, arrangement, texture, material and color of the building, site or structure and appurtenant fixtures in question, the relation of such features to similar features and buildings in the immediate surroundings and the position of such building, structure or site in relation to the street or public way and to other buildings, structures and sites. Using the above guides, yard and lot requirements shall be individually established by the Commission as provided for by the Schedule of District Regulations of this chapter.<sup>[1]</sup>

[1] *Editor's Note: The Schedule of District Regulations is included at the end of this chapter.*

*B. Approval by the Commission.* Upon approval of an application, the Historic Area Commission shall transmit a written report to the Building Official stating the conditions upon which approval was granted and cause an historic review certificate to be issued. Final action shall be taken within sixty (60) days after filing of the request; if not, the application shall be deemed to be approved, except when mutual agreement between the Commission and the applicant has been made for an extension of the time limit. Historic Review Certificates will expire if the proposed construction, alteration, demolition, renovation or other work is not completed within five (5) years from the date of issuance.

*C. Disapproval by the Commission.* Upon disapproval of any application, the Historic Area Commission shall forward a written statement containing the reasons therefor to the applicant. (Recommendations of changes necessary to make approval of an application possible, if approval indeed is possible also, may also be forwarded to the applicant.) Notice of such disapproval and a copy of the written statement shall be transmitted to the Building Official.

*D. Recommendation for Conceptual Approval.* Applicants may request a pre-application consultation that results in a Recommendation for Conceptual Approval if the Historic Area Commission finds the proposed concept is appropriate, with detailed layout, materials and assemblies to be reviewed and approved at a later date. A Recommendation for Conceptual Approval is advisory in nature and shall not inure any rights in the applicant. No one shall undertake any construction, alteration, demolition, renovation or other work based solely upon a Recommendation for Conceptual Approval.

*E. Appeals.* Appeals from any decision made under this Article VII may be made by any person aggrieved or by any officer or agent of the City to the Board of Adjustment in accordance with 230-55. For the purposes of this chapter, a decision is defined as a vote by the Historic Area Commission to approve or disapprove a historic review certificate or an administrative decision by the Building Official under Section 230-51 E.

*F. Review criteria for placing individual structures in a historic district.* The Historic Area Commission may, following notice and public hearing, recommend that an

individual structure or property be placed in an existing, contiguous historic district or be placed in a historic district specifically created for the property or structure upon consideration of the following criteria and factors:

(1) Significant value as part of the historical, cultural, artistic, social, ethnic or other heritage of the nation, state or community.

(2) Association with an important person or event in national, state, or local history.

(3) Representative of the distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, craftsmanship, method of construction or use of indigenous material;

(4) Notable work of a master builder, designer, architect, or artist whose individual genius has influenced an era;

(5) The desire of the owner to have the property designated;

(6) Increased potential of economic or community development.

G. *Review criteria for amendments or creation of new historic districts.* The Historic Area Commission may recommend amendments to an existing historic district, recommend elimination of an existing historic district or recommend the creation of a new historic district upon considering the following criteria:

(1) Any criteria listed section 230-52 F.

(2) Distinctive character of homogeneity of architectural design or dates of construction throughout the area.

(3) Identifiable by clear and distinctive boundaries.

(4) Repetition of distinguishing architectural or land use characteristics throughout the area.

H. *Designation of historic districts or landmarks.* The City Council from time-to-time may designate or amend certain areas in the City as city historic districts or landmarks and may define and amend their boundaries. Such areas shall be submitted as proposed city historic districts, landmarks or amendments by the Architect, a City Councilperson, a special-purpose Committee established by the City Council or the Historic Area Commission subject to approval by City Council. Prior to designating or amending any areas in the City as city historic districts or landmarks, the City Council shall: (1) refer the matter to the Planning Commission for its review and recommendation; and (2) adopt any necessary changes to the City of New Castle's Comprehensive Plan.

