

LOCAL LAW

NO. 1

2004

A LOCAL LAW TO AMEND THE VILLAGE CODE
OF THE VILLAGE OF KINDERHOOK
TO REPEAL CHAPTER 130 -22 OF THE CODE AND ADD
A NEW CHAPTER 75 TO BE ENTITLED
“LANDMARKS AND HISTORIC DISTRICTS
IN THE VILLAGE OF KINDERHOOK”

Be it enacted by the Board of Trustees of the Village of Kinderhook as follows:

1. That Chapter 130 -22 of the Village of Kinderhook Code be repealed and a new Chapter 75 be substituted as follows:

“LANDMARKS AND HISTORIC DISTRICTS
IN THE VILLAGE OF KINDERHOOK”

Chapter 75 - 1. PURPOSE

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts is 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 Village of Kinderhook has many significant historic, architectural, and cultural resources which constitute its heritage, this act is intended to:

- (A) protect and preserve the long term preservation of the landmarks and historic districts which represent distinctive elements of Kinderhook’s historic, architectural, and cultural heritage;
- (B) foster civic pride in the accomplishments of the past;
- (C) protect and enhance Kinderhook’s attractiveness to residents, businesses, and visitors, and thereby support and stimulate the economy; and
- (D) insure the harmonious, orderly, and efficient growth and development of the Village.

Chapter 75 - 2. DEFINITIONS

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings.

Alter shall mean the act or process of changing one or more of the exterior features of a building, structure, or object in either form, material, or texture, and shall include the words “add,” “construct,” “rebuild,” “reconstruct,” “restore,” “remove,” “demolish,” and “move.”

Building shall mean a construction of materials affixed to the land that is intended for the shelter of persons, animals, or chattel (such as a house, garage, barn, or shed) or for the conduct of business, commerce, education, and/or religious activities.

Design Guidelines shall mean a document adopted by the Historic Preservation Commission which will assist the commission and property owners in defining appropriate exterior architectural features for assessing the appropriateness of plans to alter, construct, demolish, and/or move landmarks, and/or buildings and/or structures in the historic district.

Feature shall mean any portion of the exterior of a building, structure or object including but not limited to the kind and texture of exterior materials; the architectural details and their general arrangement; and the type and style of windows, doors, lights, signs, and other exterior fixtures.

Historic shall mean fifty (50) years or older.

Historic district shall mean that area of contiguous lots with their buildings, structures, and objects that is designated by the Village Board of Trustees and identified as such on the Zoning Map of the Village of Kinderhook in Chapter 130 or such districts as may be designated in the future.

Landmark shall mean any individual property located outside of the historic district and designated by the Village Trustees as having historic, cultural, or archeological significance to the Village of Kinderhook.

Lot shall mean a defined parcel of land described in a deed or survey document which is considered as a unit, developed to a specific use, or occupied by buildings, structures, or objects united by a common interest, use or ownership, and the open spaces belonging to the same.

Object shall mean a material, historic thing of functional, aesthetic, cultural or historic value moveable yet related to the specific setting or environment such as a garden sculpture or commemorative marker.

Ordinary Repair and Maintenance shall mean the act or process of preserving the features of a building, a structure or an object by consolidation or by replacement (in part or in whole) in like kind, which does not change the form, material, or texture of the features.

Property shall mean a lot and all buildings, structures, and objects thereon.

Site shall mean the location of a significant event, a prehistoric or historic occupation or activity, or a building, structure, or object whether standing, ruined, or vanished where the location itself maintains historical or archeological significance regardless of the value of the existing building, structure or object.

Structure shall mean a construction of materials requiring location on the land, intended for purposes other than the shelter of persons, animals or chattel such as, but not limited to, a swimming pool, fence, wall, central air conditioning unit, sign, steps, and free standing light fixture.

Chapter 75 - 3. HISTORIC PRESERVATION COMMISSION

There is hereby created a commission to be known as the Village of Kinderhook Historic Preservation Commission.

- (A) The Commission shall consist of the five members appointed by the Village Board.
- (B) All members, to the extent available in the Village, shall have demonstrated a significant interest in historic preservation and architecture as evidenced by personal and/or professional involvement, or similar evidence of interest in local history or historic preservation organizations, employment in the field of historic preservation (such as architecture, building trades, or history), and/ or education and training in the field of architecture, history, archeology, historic preservation, or related fields. Members shall participate in education and training programs relevant to the responsibilities of the commission. When possible, at least three members shall be a resident and/or property owner in the historic district.
- (C) Members shall serve for a term of five (5) years except that initially one member shall serve a one (1) year term, one member shall serve a two (2) year term, one member shall serve a three (3) year term, and one member shall serve a four (4) year term. Thereafter, terms shall be staggered.
- (D) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission.
- (E) The Commission shall be authorized to:
 - (1) promulgate rules and regulations as necessary for the conduct of Commission business;
 - (2) adopt criteria consistent with local historic architecture and local laws and codes for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts.
 - (3) formulate design guidelines and consistent with current research on historic paint colors.
 - (4) conduct surveys of historic, architectural, and cultural landmarks and historic districts within the Village in order to establish an inventory of all properties and structures;
 - (5) employ staff and professional consultants as necessary to carry out the duties of the Commission;
 - (6) make recommendations to the Village Board for designation of structures or properties as landmarks and historic districts;

- (7) develop and participate in public education programs to increase public awareness of the value of historic, cultural and architectural preservation;
 - (8) provide advice and guidance to property owners and Village boards and committees concerning historic preservation issues;
 - (9) coordinate project review with Village Planning Board, Zoning Board of Appeals, and agencies;
 - (10) make recommendations to the Village Board concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the Village;
 - (11) recommend acquisition of a landmark structure by the Village Board when its preservation is essential to the purposes of this act and when private preservation is not feasible;
 - (12) review projects in compliance with SEQR regulations; and
 - (13) approve, approve with conditions, or disapprove applications for Certificates of Appropriateness pursuant to this act.
- (F) The Commission will normally meet monthly, but meetings may be held at any time upon the written request of any two of the Commission members or at the call of the Chairman or the Mayor. Public notice of all meetings shall be in accordance with Village Law and practice.
 - (G) 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 grant or deny a Certificate of Appropriateness.
 - (H) When vacancies are such that there are fewer than three members, the Trustees shall designate one or more members from the Planning Board to serve on the historic review commission until the Trustees appoint new members of the commission.

Chapter 75 - 4. DESIGNATION OF LANDMARKS OR HISTORIC DISTRICTS

The Trustees of the Village of Kinderhook shall designate landmarks and create or modify historic districts.

- (A) Upon recommendation of the Commission, the Village Board may designate an individual property 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; or
 - (2) is identified with historic personages; or
 - (3) embodies the distinguishing characteristics of an architectural style; or
 - (4) is the work of a designer whose work has significantly influenced an era; or
 - (5) because of a unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.
 - (6) embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - (7) has yielded or may be likely to yield, information important in prehistory or history.
- (B) Upon the recommendation of the Commission the Village Board may designate a group of properties as a historic district if:
 - (1) it contains properties which meet one or more of the criteria for designation of a landmark; and
 - (2) by reason of possessing such qualities, it constitutes a distinct section of the Village.
- (C) The boundaries of each historic district and/or landmark designated henceforth shall be described in writing and depicted on the official Village Map, and shall be filed in the Village Clerk's Office for public inspection.
- (D) The Village Clerk shall send by registered mail notice of a proposed landmark designation to the owner of the property proposed for landmark designation, describing the property proposed and announcing a public hearing by the Village Board to consider the designation. The Village Clerk shall send by registered mail notice of a proposed historic district designation to all property owners within the

proposed district announcing a public hearing by the Village Board to consider the district designation. Notice of the public hearing shall be published in accordance with Village Law and practice at least 15 days prior to the hearing date.

- (1) Once the Village Board has issued notice of a proposed designation, no building permit(s) for a proposed landmark or property in a proposed historic district shall be issued by the Code Enforcement Officer (CEO) until the Village Board has made its decision.
 - (2) A decision on the designation of a landmark or historic district shall be made within 42 days of the close of the public hearing.
- (E) The Village Board shall hold a public hearing prior to designation of any landmark or historic district. The Commission, property 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, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence provided the public shall have the opportunity to review and comment on such evidence at the public hearing.
- (F) The Village Board shall forward notice of each property designated as a landmark and of the boundaries of each designated historic district to the office of the Columbia County Clerk for recording.

Chapter 75 - 5. HISTORIC PRESERVATION DISTRICT AND MAP

The Historic Preservation District shall be the existing Historic Preservation Overlay District Boundary depicted on the Zoning Map in the Zoning Code of the Village of Kinderhook and any other districts or landmarks designated by the Trustees. District boundaries shall follow the lot lines of designated historic structures as surveyed and symbolically depicted on tax maps that form the perimeter of the district as shown on the Zoning Map.

The Historic Preservation Map shall show the location(s) and boundaries of landmarks and historic districts, and it shall be on file with the Village Clerk. Said map shall be adopted and declared a part of this chapter. The Historic Preservation District shall be considered henceforth separate from the zoning regulations and district map.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts shown on the Historic Preservation Map, the following rules shall apply:

- (A) Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways, public utility easements or watercourses, said boundaries shall be deemed to be automatically moved if a center line or right-of-way line of such street, highway, public utility easement or watercourse is moved a maximum of fifty (50) feet.
- (B) Where district boundaries are indicated as approximately following the village boundary line, lot lines, utility lines or projections thereof, said boundaries shall be coincident with such lines or projections thereof.
- (C) Where district boundaries are so indicated that they are approximately parallel to the village boundary line, lot lines, right-of-way lines or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Historic Preservation Map or as shall be determined by use of the scale shown on the Historic Preservation Map.
- (D) In all other cases, where not dimensioned, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon.

Chapter 75 - 6. CERTIFICATE OF APPROPRIATENESS FOR ALTERATION, DEMOLITION OR NEW CONSTRUCTION AFFECTING LANDMARKS OR HISTORIC DISTRICTS

No building permit shall be issued nor shall any person commence any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of any building or structure or any feature thereon on a landmark or property within a historic district that are visible from any public way, without first obtaining a Certificate of Appropriateness from the Historic Preservation Commission.

Chapter 75 - 7. CRITERIA FOR APPROVAL OF A CERTIFICATE OF APPROPRIATENESS

- (A) In acting upon an application for a Certificate of Appropriateness, the Historic Preservation Commission shall consider only changes to exterior features of buildings and structures.
- (B) The Commission's decision shall be based upon the following principles:¹
 - (1) Buildings and structures which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible.
 - (2) Any alteration of existing buildings and structures shall be compatible first with its own historic style and secondly compatible with the character of the surrounding district.
 - (3) New construction shall be compatible with existing architecture.
 - (4) Only construction or alterations that are compatible with the long term preservation of the historic buildings and structures shall be permitted.
- (C) In applying the principles of 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) form, texture, material, and their relation to the features of the buildings and structures and to similar features of other buildings and structures in the neighborhood;
 - (4) visual compatibility with surrounding properties, including proportion of the buildings' and structures' facades, proportion and arrangement of window and other openings within the facades, roof shape, and the placement of buildings and structures on lots in the neighborhood, including setback; and
 - (5) the historic and architectural significance of the property.

Chapter 75 - 8. CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURE

- (A) Prior to the issuance of a building permit and/or the commencement of any construction, alteration, demolition, or moving of any building or structure, the Code Enforcement Officer shall determine if a Certificate of Appropriateness is required.
If the Code Enforcement Officer determines that a Certificate of Appropriateness is required, the property owner shall file an application for a Certificate of Appropriateness with the Code Enforcement Officer. The Code Enforcement Officer shall forward the application to the chairman of the Historic Preservation Commission.
- (B) The Certificate of Appropriateness required by this act shall be in addition to and not in lieu of any building permit or approval that may be required by any other ordinance or local law of the Village of Kinderhook.
- (C) The application must be submitted to the chairman ten (10) days prior to a regularly scheduled meeting of the Commission.
The application shall contain:
 - (1) name, address and telephone number of the applicant and the owner;
 - (2) location and photographs of buildings and structures on the property;
 - (3) elevation and plan drawings of proposed changes, and site plan to show relationships to adjacent properties; and
 - (4) samples of materials to be used.

¹ These principles are consistent with the current edition of *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and *The Secretary of the Interior's Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*.

- (5) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions, a description of material to be used, method of illumination, and a plan showing the sign's location on the property.
 - (6) Any other information, such as drawings by a licensed architect and/or relevant perspective drawings, which the Commission or the property owner may deem necessary in order to visualize the proposed work.
 - (7) A fee as set from time to time by resolution of the Board of Trustees shall accompany the application.
 - (8) The Commission may waive any of the above required item(s) deemed not relevant to the work proposed.
- (D) A public hearing will be required when the proposed project requires coordinated review with the Planning Board or with Zoning Board of Appeals and/or includes an addition, new construction, alteration, relocation, demolition, or other actions or work determined by the Commission to warrant public comment.
- (1) When a public hearing is to be held, the applicant shall remit an additional fee as set from time to time by resolution of the Board of Trustees to cover the cost of the hearing notices.
 - (2) Written notice of the hearing shall be sent to the applicant and to property owners within 300 feet of the applicant's property; advertised in the newspaper ten (10) days in advance of the hearing; and posted on public boards in the Village.
 - (3) Opportunity will be provided for proponents and opponents of the application to present facts and their views.
 - (4) A decision on the application will be rendered within forty-five (45) days of the close of the public hearing. The hearing may be adjourned by the mutual consent of the applicant and the Commission, with continuation set for a date [within forty-five (45) days.
- (E) The Commission shall approve, approve with conditions, or disapprove applications for a Certificate of Appropriateness within forty-five (45) days of the closing of the review of the application unless the Commission requires a public hearing on the application.
- (F) All decisions of the Commission shall be in writing. One (1) copy shall be sent to the applicant by registered mail, one (1) copy shall be filed with the Village Clerk's Office for public inspection, and one (1) copy shall be forwarded to the Code Enforcement Officer. The Commission's decision shall state the reasons for approving, denying or approving with modification any application.

Chapter 75 - 9. HARDSHIP CRITERIA

- (A) An applicant whose Certificate of Appropriateness for a proposed new construction or 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 the following:
- (1) the property is incapable of yielding a reasonable return, regardless of whether that return represents the most profitable return possible; or
 - (2) the property is incapable of having a reasonable beneficial use.
- (B) 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 the following:
- (1) the property is incapable of yielding a reasonable return, regardless of whether that return represents the most profitable return possible;
 - (2) the property is incapable of having a reasonable beneficial permitted use and the property cannot be adapted for any other permitted use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - (3) efforts to find an individual or organization interested in acquiring the property (or part thereof) and preserving it have failed.

Chapter 75 - 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. The application to commence the hardship process must be submitted to the Commission within 60 days of the written notification from the Commission of the denial of the Certificate of Appropriateness. No building permit or demolition permit shall be issued unless the Commission grants relief based upon a finding that a hardship exists.
- (B) The Commission shall hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views. The public hearing shall be held within 40 days of filing of the hardship application with the Commission.
- (C) Public notice of the hearing by the Commission shall be given in accordance with Village Law and practice as follows:
 - (1) by publishing a notice of the application and the time and place of the public hearing in the official newspaper of the Village of Kinderhook not less than fifteen (15) days prior to the date of the hearing;
 - (2) by giving written notice of the hearing to the applicant and to property owners within 300 feet of the applicant's property; and
 - (3) by giving written notice of hearing to any required municipality, county, metropolitan, regional, state or federal agency in the manner prescribed by law.
- (D) 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 preservation of the property. If a hardship is proven, the Commission shall grant the minimum relief necessary to alleviate the hardship.
- (E) 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 Village Clerk's Office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

Chapter 75 - 11. ENFORCEMENT

All work performed pursuant to a Certificate of Appropriateness issued under this Local Law shall conform to any requirements included therein. It shall be the duty of the 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 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.

Chapter 75 - 12. MAINTENANCE AND REPAIR REQUIRED

- (A) Nothing in this local law shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a building or structure on a landmark property or property within a historic district which does not involve a change in form, material, or texture.
- (B) No owner or person with an interest in a property designated as a landmark or included within a historical district shall permit the buildings or structures on 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. The Commission shall by letter notify the Code Enforcement Officer of the determination.

Examples of such deterioration include:

- (1) deterioration of exterior walls or other vertical supports;
- (2) deterioration of roofs and gutters 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; and
- (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.

Chapter 75 - 13. VIOLATIONS

- (A) Failure to comply with any of the provisions of this Local Law shall be deemed a violation and the violator shall be liable to a fine of up to \$80.00 for each day the violation continues.
- (B) Any person who alters, constructs or permits a designated building or structure to fall into a state of serious disrepair or who demolishes a property in violation of this Local Law shall be required to restore the property to its condition prior to the violation. Any action to enforce this subsection shall be brought by the Village Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.
- (C) If the Code Enforcement Officer cites a property owner for failure to maintain or repair the buildings and structures on a landmark property or property in the historic district, the Commission may, but is not required to, assist the property owner in locating sources of financial and technical assistance in order to restore the property. The Village Board upon recommendation of the Commission shall define what is considered a reasonable time period for the completion of repairs.

Chapter 75 - 14. RELIEF FROM BOARD DECISIONS.

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within 15 days of the decision, file a written application with the Village Board for review of the decision. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria.