

**TOWNSHIP OF MILLBURN
ORDINANCE NO. 2470-16**

**ORDINANCE TO AMEND AND SUPPLEMENT ARTICLE 8 OF
THE “MILLBURN DEVELOPMENT REGULATIONS AND
ZONING ORDINANCE” OF THE REVISED GENERAL
ORDINANCES OF THE TOWNSHIP OF MILLBURN**

HISTORIC PRESERVATION ORDINANCE

(2016)

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GENERAL ORDINANCES OF THE TOWNSHIP OF MILLBURN**

Statement of Purpose: The purpose of this Ordinance is to revise the provisions of Article 8 of the Township’s Development and Zoning Ordinance entitled “Historic Preservation” so as to update its provisions and improve the administration of applications.

WHEREAS, the Township of Millburn desires to implement significant modifications to Article 8 of the Millburn Development Regulations and Zoning Ordinance entitled Historic Preservation in order to substantially revise and simplify the provisions thereof and to expedite the administration of the application process.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLBURN IN THE COUNTY OF ESSEX AND STATE OF NEW JERSEY AS FOLLOWS:

Section 1

Article 8 of the Millburn Development Regulations and Zoning Ordinance is hereby amended and revised to read as follows:

ARTICLE 8 – HISTORIC PRESERVATION

801 TITLE, PURPOSE AND INTENT

Article 8 has been enacted pursuant to authority granted under Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., including, but not limited to, N.J.S.A. 40:55D-65(i) and 107 to 112. This article shall be known by and may be referred to by the short title of the "Historic Preservation Ordinance of the Township of Millburn." This article is specifically intended to effectuate and accomplish the protection, enhancement and perpetuation of historic buildings, structures, sites, objects, improvements and districts within the Township of Millburn, to implement the historic preservation element of the township’s master plan and to advance the following public purposes:

- A. To safeguard the heritage of the Township of Millburn by preserving resources which reflect elements of its archaeological, cultural, social, economic, architectural, and historical heritage;
- B. To encourage the continued use of historic landmarks and historic districts and to facilitate their appropriate use or reuse;
- C. To maintain and develop an appropriate and harmonious setting for the historically significant structures, sites, and districts located within the Township;
- D. To identify, designate, and regulate historic landmarks and historic districts in order to preserve their historical significance;
- E. To foster civic pride in the history and architecture of Millburn Township;
- F. To promote appreciation of historic landmarks and historic districts for the education, pleasure and welfare of the local population;
- G. To encourage beautification and private reinvestment in historic landmarks and historic districts, and surrounding properties and landscapes;
- H. To encourage and manage appropriate alterations of historic sites and improvements within historic districts, and to prevent new construction which is not in keeping with the character of historic districts;
- I. To discourage the unnecessary total or partial demolition, removal, or destruction of historical resources; and
- J. To recognize the importance of historic landmarks and historic districts by assisting property owners and tenants to maintain their properties in keeping with the requirements and standards of this article.

802 DEFINITIONS

In addition to the definitions set forth in Article 3 of this Ordinance, the following definitions apply in Article 8.

Addition shall mean an extension or increase in the size, floor area or height of any building, structure, site, object or improvement added at some time after the completion of the original.

Administrative Officer shall mean the construction official of the township.

Alteration shall mean any change in the exterior features of any building, structure, site, object or improvement.

Application shall mean a request to the Commission made pursuant to this article for the purposes of obtaining a Certificate of Appropriateness or other action by the Commission hereunder specified.

Application for Development shall mean an application to the planning board or the zoning board of adjustment of the Township of Millburn for approval of a major or minor subdivision plat or site plan, planned development, conditional use or zoning variance, or an application for the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, or for any use or change in the use of any building or other structure, or of any parcel of land, for which permission may be required pursuant to the Municipal Land Use Law.

Building shall mean any man-made structure created principally to shelter any form of human activity as well as its functionally related appurtenances such as a house and a barn.

Certificate of Appropriateness (or CA) shall mean that document issued by the Commission which is required before any work may be commenced on any historic landmark or any building, structure, site, object or improvement located within an historic district.

Commission shall mean the Historic Preservation Commission established pursuant to the provisions of this article.

Construction Official shall mean the officer in charge of granting building or construction permits in the township.

Contributing shall mean any buildings, structures, sites, objects or improvements which are integral components of a historic district either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant.

Demolition shall mean the partial or total razing, dismantling or destruction, whether entirely or in significant part, of any building, structure, site, object or improvement. Demolition includes the removal of a building, structure, site, object or improvement from its location or the removal or destruction of its facade or surface.

Designated historic landmark or historic district shall mean an individual building, structure, site, object, landscape, park, viewshed, improvement or district which has been determined to have historical significance pursuant to the provisions of this article.

Emergency repairs shall mean immediate repairs to preserve the continued habitability and/or the health and safety of occupants or others, performed in accordance with Township codes without first obtaining a Certificate of Appropriateness. A consultation with the Commission or its staff is still required.

Exemption shall mean when a property owner, designer or contractor (a) requests permission to make repairs or alter building components, for reasons sufficiently emergent that they cannot wait for the next available meeting, or (b) requests permission to make ordinary maintenance and repairs, construction field changes or install materials which are replacements for materials and features already present, and are sufficiently similar or “in-kind”, being “like for like”, to obviate the need for a CA hearing.

Facade shall mean the face or front of a structure or any vertical surface thereof adjacent to a public way.

Harmonizing shall mean any buildings, structures, sites, objects or improvements in a historic district which date from a later period but possess some architectural importance and/or visually contribute to the cohesiveness of the district’s streetscapes.

Historic shall mean having historical, cultural, architectural, archaeological, economic, social or other significance as defined by the provisions of this article.

Historical shall mean of, relating to, or having the character of history.

Historic district shall mean a significant concentration, linkage or continuity of buildings, structures, sites, objects or improvements united historically by plan or physical development which qualifies for designation under section 804 of this article including those which were formerly known as the Designated Historic Districts pursuant to Ordinances 10-87, 8-89 and 10-89 and are depicted and described in the Appendix to this Ordinance as Schedules B, C and D.

Historic district resources shall mean those resources classified as either key, contributing or noncontributing, which are defined as follows:

- a. *Key* shall mean any buildings, structures, sites, objects or improvements which, due to their significance, would individually qualify for historic landmark status;
- b. *Contributing* shall mean any buildings, structures, sites, objects or improvements on the site which are integral components either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant including those which were formerly known as Designated Historic Sites pursuant to Section 804 in Ordinances 10-87, 8-89 and 10-89; and
- c. *Noncontributing* shall mean any building, structure, site, object or improvement on the site which do not have significant historical value because they neither date from a time period nor represent an architectural type, period or method which is historically significant.

Historic landmark shall mean any building, structure, site, object or improvement which qualifies for designation under section 804 of this article.

Historic site shall mean any building, structure, site, landscape, object or improvement determined to be of historical, archeological, cultural, scenic or architectural significance in accordance with the provisions of this article.

Improvement shall mean a building or other structure, or any work constituting a manmade alteration of, or addition to, any building, structure, site or object.

In-kind shall mean construction or construction materials that match construction or construction materials being replaced on a designated structure or object, thereby maintaining historic composition, design, color, texture and other visual qualities.

Integrity shall mean the authenticity of a building, structure, site, object, improvement or district evidenced by the survival of the physical characteristics that existed during its historic or prehistoric period.

Interested party shall mean any person whose right to use, acquire or enjoy property is affected by any action taken under this article, or whose rights to use, acquire or enjoy property under this article or under any other law of this State or of the United States have been denied, violated or infringed by an action or a failure to act under this article.

Intrusions shall mean any buildings, structures, sites, objects or improvements in a historic district which date from a later period and do not visually contribute to the cohesiveness of the district's streetscapes.

Inventory shall mean a list of historic properties determined to meet criteria of significance specified herein.

Key-Contributing shall mean any buildings, structures, sites, objects or improvements in a historic district which, due to their extraordinary significance, would individually qualify for historic landmark status.

Landscape shall mean the visual character of the land, including but not limited to architecture, building setbacks and height, fences, hedgerows, plantings, lawns trees as well as man-made features including, but not limited to, sculptures, patterned walks, fountains, reflecting pools and vistas.

Lot shall mean any designated parcel, tract, or area of land established by a plat or otherwise, as permitted by law and to be used, developed, or built upon as a unit.

Master plan shall mean the master plan of the Township of Millburn, as amended from time to time, compiled pursuant to the Municipal Land Use Law.

Minor Application shall mean an Application for a Certificate of Appropriateness (including documents in Section 805.5.) which:

- a) Does not involve demolition, relocation or removal of an historic landmark or a key or contributing resource in an historic district;
- b) Does not involve an addition to an historic landmark or a property in an historic district or new construction in an historic district;
- c) Is a request for approval of windows, doors, roofing, fences, signs, awnings, porches, railings, steps, materials, finishes, exterior lighting, solar panels, communication devices, sidewalks, paving, or streetscape work and any other work subject to public view which will not substantially affect the architectural characteristics of the historic landmark or the historic district; or
- d) Is a request for a construction field change for a Certificate of Appropriateness which has already been issued and which meets the criteria of paragraph c. above.

Minor Work Review Committee (“MWRC”) shall mean the members of the Commission appointed by the chair at the annual organizational meeting, or from time to time as needed. The MWRC shall consist of the Chair and two other members and shall be responsible for reviewing minor applications and applicant exemption requests with the assistance of the Zoning Official and the HPC Consultant.

Municipal Land Use Law shall mean the Municipal Land Use Law of the State of New Jersey, P.L. 1975, c. 291 (N.J.S.A. 40:55D-1, et seq.), as amended from time to time.

National Register Criteria shall mean the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places, as set forth in 36 C.F.R. 60.4, et seq.

Non-contributing shall mean any buildings, structures, sites, objects or improvements in a historic district which do not have significant historical value because they neither date from a period of significance nor represent an architectural type, period or method which is historically significant, or due to alterations, disturbances, additions, or other changes, no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period.

Object shall be used as a term to distinguish from buildings and structures those constructions or features that are primarily artistic in nature or are relatively small in scale and simply constructed. Examples include, but are not limited to, fountains, sculptures, statuary and similar items. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment.

Ordinary maintenance and repair shall mean the repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly as practicable to its condition prior to the occurrence of such deterioration, wear, or damage with in-kind material and quality workmanship.

Owner shall mean the owner of record as shown on the current tax list of the township tax collector; the mortgage holder of record, if any, as shown in the mortgage records of the township; and any purchaser under a land contract.

Permit shall mean any required approval issued by the construction official pursuant to applicable building or construction codes for exterior work to be performed on any historic landmark or on any building, structure, object or site located within a historic district, which exterior work will be subject to public view. Said permit shall include but not be limited to a building permit, a demolition permit or a permit to move, convert, relocate or remodel or to change the use or occupancy of any landmark or any building, structure, object or site located within an historic district. "Permit" shall also include all exterior work to be performed on windows, doors, roofing, fences, signs, awnings, porches, railings, steps, lighting and sidewalks and any other work subject to public view which would alter the exterior appearance of historic landmarks or properties located within a historic district or their sites.

Person shall mean any individual, natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, firms, companies, corporations, entities or unincorporated groups; or any officers, agents, employees, servants, factors or any kind of personal representatives of any thereof in any capacity, acting either for himself or for any other person, under either personal appointment or pursuant to law.

Preservation shall mean the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic landmark. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

Protection shall mean the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.

Reconstruction shall mean the act or process of reproducing, by means of new construction, the form, features and detailing of a non-surviving building, structure, site, object, improvement or landscape for the purpose of replicating its appearance at a specific period of time and in its historic location when documentary and physical evidence is available.

Rehabilitation shall mean the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historic values.

Replacement shall mean the act or process of replicating any exterior architectural feature that is used to substitute for an existing deteriorated or extensively damaged architectural feature.

Restoration shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time. It may sometimes mean the removal of later work or the replacement of missing earlier work.

Secretary of the Interior's Standards shall mean the publication issued by the U.S. Department of the Interior, National Park Service, entitled: "The Secretary of the Interior's Standards for the Treatment of Historic Properties," 36 C.F.R. 68, revised and supplemented from time to time.

Site shall mean the location of a significant event, a prehistoric or historic occupation or activity, a building or structure, or a burial ground or cemetery, whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure.

Staff means the Historic Preservation Consultant, the Zoning Officer and such other consultants or officials as may from time to time be retained and/or employed to provide application review services to the Commission.

Streetscape shall mean the visual character of the street including, but not limited to, the architecture, building setbacks and height, fences, storefronts, signs, lighting, parking areas, materials, sidewalks, curbing and landscaping.

Structure shall be used as a term to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter, such as a bridge, a walkway, driveway and sometimes referred to as a type of improvement, meaning a combination of materials that becomes a part of, is placed upon, or is affixed to real estate.

Survey shall mean the inventory of buildings, structures, sites, objects, improvements and districts located within the Township of Millburn which is conducted by the Commission for the ascertainment of their historical significance pursuant to the provisions of this article.

Survey data shall mean the raw data produced by the survey; that is, all the information gathered on each property and area investigated.

View, vista or viewshed shall mean the view by the public of a building, structure, site, object, improvement or landscape from any point on a street, road or walkway which is used as a public thoroughfare, either vehicular and/or pedestrian.

803 HISTORIC PRESERVATION COMMISSION

803.1 Establishment.

The duly established Commission created pursuant to Ordinances 10-87, 8-89 and 10-89 codified as Article 8 of the Township of Millburn Development Regulations and Zoning Ordinance is hereby re-established confirmed and continued. The members shall serve without compensation.

803.2 Responsibilities.

The Historic Preservation Commission shall have the following duties and responsibilities:

- A. To identify, record and maintain a survey of all buildings, structures, sites, objects, improvements and districts of historical significance within the township.
- B. To recommend to the planning board and township committee the designation of buildings, structures, sites, objects or improvements as local historic landmarks, and to recommend the designation of local historic districts.
- C. To monitor and recommend to the planning board and township committee any buildings, structures, sites, objects, improvements or districts for inclusion in the New Jersey or National Register of Historic Places.
- D. To make recommendations to the planning board and township committee on the historic preservation element of the master plan and on the implications for preservation of historic landmarks and historic districts of any other master plan elements. The Commission may provide information to the planning board indicating the location and significance of historic landmarks and historic districts, and identify the standards used to assess worthiness for historic landmark or historic district designation.
- E. To make recommendations to the planning board and township committee on the historic preservation implications of any proposed or adopted zoning or development ordinance(s) or proposed or adopted element(s) of the Township's Master Plan.
- F. To draft and recommend to the planning board and township committee ordinances or amendments to existing ordinances that would resolve any conflicts which may exist between the design standards of this article and the building or zoning regulations of the township.
- G. To advise and assist township officers, employees, boards and other bodies, including those at the county, state and federal levels, on all matters which have potential impact on the historic buildings, structures, objects, sites or districts in the township or on the physical character and ambience of any portion of the township .
- H. To advise the planning board and zoning board of adjustment on applications for development pursuant to N.J.S.A. 40:55D-110.
- I. To review and render determinations regarding applications for Certificates of Appropriateness as set forth in this article.
- J. To advise the planning board and township committee on the relative merits of proposals involving the use of public funds to restore, preserve and protect historic buildings, structures, objects and sites; to securing state, federal and/or other grants or assistance in support of such projects; and to monitor such projects once underway.
- K. To cooperate with local, county, state or national historical societies, governmental bodies and organizations to maximize the contributions of the Commission in accordance with the intent and purposes of historic preservation.

- L. To make information available to residents of historic buildings or districts concerning guidelines for rehabilitation and design criteria for new construction established under this article.
- M. To seek any benefits which may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including but not limited to the benefits which flow to communities under the certified local government program with regard to training, grant funding and technical assistance; and, in furtherance thereof, to take any steps necessary to assist the Township of Millburn in the preparation and submission of any documents needed for certification of the township as a certified local government under the National Historic Preservation Act.
- N. To monitor and recommend to the township committee the submission of any grants related to historic preservation.
- O. To increase public awareness of the value of historic, architectural and cultural preservation by developing and participating in public information programs.
- P. To carry out such other advisory, educational and informational functions as will promote historic preservation in the township.

803.3 Membership; Appointment.

The Commission consists of seven regular members and two alternate members, who shall be appointed by the Mayor with the advice and consent of the Township Committee. All Commission members must have a demonstrated interest, competence or knowledge in historic preservation. If available in the community, members of the HPC shall be professionals that meet the Secretary of the Interior’s Professional Qualification Standards in the fields of architecture, history, architectural history, prehistoric archaeology, and/or historic archaeology. In making appointments to the Commission, the Mayor, with the advice and consent of the Township Committee, shall endeavor to seat at least one Commissioner from each of the two historic districts.

At the time of appointment, members shall be designated by the following classes:

- A. Class A - A person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and,
- B. Class B - A person who is knowledgeable in, or who has demonstrated an interest in, local history and who may reside outside the municipality; and,
- C. Class C - Citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the planning board or zoning board of adjustment. Class C members should still have a demonstrated interest in history, historic preservation, construction or a related field.

Of the seven regular members, at least one member shall be appointed from each class. No more than three members shall be comprised of Classes A and B.

Alternate members shall meet the qualifications of Class C members. At the time of appointment, alternate members shall be designated as “Alternate No. 1” and “Alternate No. 2”.

803.4 Terms.

- A. The members currently serving as of the date of adoption of this ordinance shall continue in office for the duration of the term in office applicable to each at the time of their appointment.
- B. The term of a regular member shall be four years; the term of an alternate member shall be two years.
- C. Notwithstanding any other provision contained in this article, the term of any member who is also a member of the Planning Board or Board of Adjustment shall be coterminous with membership on such Board.
- D. A vacancy occurring otherwise than by expiration of term shall be filled within 60 days for the unexpired term only.

803.5 Role of Alternates.

The alternate members may participate in all Commission discussions during proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

803.6 Officers.

Annually, the Commission shall elect a chair and vice-chair from its members and select a recording secretary who may or may not be a member of the Commission or a municipal employee. See current HPC Bylaws for further information.

803.7 Budget.

The township committee shall make provision in its budget and appropriate funds for the expenses of the Historic Preservation Commission. The Commission may employ, contract for and fix the compensation of experts and other staff and services as it shall deem necessary. The Commission shall obtain its legal counsel from the Township Attorney at the rate of compensation determined by the township committee, unless the township committee by appropriation provides for separate legal counsel for the Commission. The Commission shall obtain the services of an Historic Preservation Consultant and such other experts and other staff as it deems necessary. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by township committee for the Commission’s use.

803.8 Finances.

The township committee shall establish by ordinance reasonable fees necessary to cover the expenses of administration and professional services to aid the Commission in its review of applications and development reviews. These fees are in addition to any other required under any portion of this or any other applicable township ordinance.

803.9 Rules of Commission.

- A. The Commission shall adopt written Bylaws, Guidelines and rules for the transaction of its business, for the consideration of applications for certificates of appropriateness and for the designation of historic landmarks and historic districts. Such rules shall not be inconsistent with the provisions of this article and shall include but not be limited to rules pertaining to all notices and hearings required herein.
- B. In order to make available to the public information useful to the preservation and protection of historic landmarks and historic districts and to provide the basis for consistency of policy, the Commission secretary shall maintain complete files and records. The Commission's files shall include but are not limited to data used in the classification of buildings, structures, sites, objects, improvements and districts, minutes of Commission meetings, applications for certificates of appropriateness along with collateral data, decisions and appeals associated therewith and information, materials and references submitted to the public related to historic preservation. A record of Commission proceedings shall be kept and made available but a formal verbatim record shall not be required.
- C. The Commission secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, reports, findings, determinations, decisions and applications, which shall be public documents. All meetings shall be noticed and conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. Copies of all minutes shall be maintained in the Municipal Building and shall be delivered to the township clerk.
- D. Copies of records shall be made available to municipal bodies, agencies, and officials for their use. Records will also be available to the public in accordance with the Open Public Records Act (OPRA) and all requests will be handled administratively by the Commission secretary.
- E. When the planning board or the zoning board of adjustment refers an application to the Historic Preservation Commission, then the referring Board shall receive a copy of the Commission's report.
- F. The building and engineering offices shall maintain and display an up-to-date map showing the boundaries of all areas designated as historic districts, as well as the locations of all historic landmarks.
- G. No member of the Commission shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest.
- H. The Commission shall prepare an annual report. Copies will be delivered to the township clerk and the New Jersey HPO. The annual report will also be available to the public upon request.

803.10 Removal.

A member of the Commission may, after a public hearing, if requested, be removed by the township committee for cause including, but not limited to, failure to attend Commission Meetings and/or violation of the Local Government Ethics Law.

803.11 Meetings; Quorum.

- A. The Historic Preservation Commission shall establish and post in the Millburn Town Hall a regular schedule of meetings, which shall include a minimum of one meeting per month. Regular meetings shall be held as scheduled unless canceled for lack of a quorum, lack of applications to process or for other good reason(s), which shall be noted in the minutes. Additional special meetings may be called by the chair or vice-chair, or on the request of any two of its members, when the regular meetings are inadequate to meet the needs of its business, to handle emergencies or to meet time constraints imposed by law.
- B. The Historic Preservation Commission shall hold public hearings to review all applications for certificates of appropriateness, referrals of development applications and other business which comes before the Commission.
- C. The presence of four members, which may include alternate members filling the vacancies of regular members, shall constitute a quorum. A majority vote of those present and voting shall prevail, and shall be sufficient to grant or deny a Certificate of Appropriateness. Not less than a majority of the appointed membership shall be required to grant or change an historic landmark or historic district designation or to grant approval for demolition.

804 DESIGNATION OF HISTORIC LANDMARKS AND HISTORIC DISTRICTS

804.1 Survey.

The Commission shall maintain and expand, when appropriate, a comprehensive survey of the Township of Millburn to identify historic landmarks and historic districts that are worthy of protection and preservation.

804.2 Criteria for Designation.

The criteria for evaluating and designating historic landmarks and historic districts shall be guided by the National Register Criteria as currently published and amended from time to time. The Commission or any person may recommend designation of historic landmarks or historic districts that are in accordance with the National Register Criteria or that possess one or more of the following attributes:

- A. Character, interest, or value as part of the development, heritage or cultural characteristics of the township, State or Nation; or
- B. Association with events that have made a significant contribution to the broad patterns of our history; or
- C. Association with the lives of persons significant in our past; or

- D. Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or
- E. Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the township, State or Nation; or
- F. Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or
- G. Unique location or singular physical characteristics that make a district or landmark an established or familiar visual feature; or
- H. Ability or potential ability to yield information important in prehistory or history.

804.3 Procedures for Designation.

Proposals to designate a property as historic pursuant to this article may be made by the township committee, the Commission, or the planning board, in accordance with the following procedures:

- A. *Nomination report for historic landmark.* A nomination to propose an historic landmark shall include the following information which addresses the criteria for designation as set forth herein:
 - (1) A photograph of the proposed landmark; and
 - (2) A copy of the municipal tax map showing the property on which the proposed landmark is located; and
 - (3) A physical description of the proposed landmark; and
 - (4) A statement of significance.
- B. *Nomination report for historic district.* A nomination to propose an historic district shall include the following information which addresses the criteria for designation as set forth herein:
 - (1) A building-by-building inventory of all properties within the district identifying key, contributing, harmonizing, non-contributing, or intrusions; and
 - (2) A photograph of each property and building within the district; and
 - (3) A copy of the municipal tax map of the district showing boundaries; and
 - (4) A physical description of the proposed district; and
 - (5) A statement of significance.

- C. *Schedule a hearing.* Following receipt of a nomination to propose an historic landmark or historic district, the Commission shall schedule a public hearing on the proposed designation.
- D. *Notification requirements.* At least 20 days prior to the public hearing, the Commission shall, by personal service or certified mail, perform the following:
- (1) Notify the owner(s) of record of a property that has been proposed for historic landmark designation, or the owner(s) of record all properties located within a district that has been proposed for historic district designation, that the property or district, as applicable, is being considered for such designation and the reasons therefor;
 - (2) Advise the owner(s) of record of the significance and consequences of such designation, and of the rights of the owner(s) of record to contest such designation under the provisions of this article;
 - (3) Notify the owner(s) of record of the date, time and location of the hearing concerning the proposed designation of the property or district; and
 - (4) Serve any further notices as may be required under the provisions of the Municipal Land Use Law.
- E. *Public notice of hearing.* At least 20 days prior to the public hearing, the Commission shall also cause public notice of the hearing to be published in the official newspaper of the township.
- F. *Public report.* At least 20 days prior to the public hearing, a copy of the nomination report shall also be made available for public inspection in the municipal offices of the township.
- G. *Public hearing.* At the public hearing scheduled in accordance with this article, the Commission shall review the nomination report and accompanying documents. Interested persons shall be given the opportunity to be heard and to comment on the proposed nomination for designation.
- H. *Commission report.* If the proposed nomination is approved by the Commission, then the Commission shall forward a report to the township committee, which shall contain a statement of the Commission's recommendations and the reasons therefor with regard to proposed designations considered at the hearing, including a list and map of properties approved for designation.
- I. *Referral to planning board.* The township committee shall refer the report to the planning board, which in turn shall report to the township committee as soon as possible, but within 60 days. Failure of the planning board to transmit its report within the sixty-day period provided herein shall relieve the township committee of its obligations relating to the referral of such a report to the planning board. The township committee action on historic landmark or historic district designations shall be otherwise subject to those

procedures and statutes which apply to a change of a zoning designation and the adoption, revision or amendment of any development regulation.

- J. *Final designation.* As soon as possible after its receipt of the report of the planning board or the expiration of the period allowed for planning board comment on designations pursuant to 804.3I of this section, the township committee shall act upon the proposed designation list and map and may approve, reject or modify by ordinance the designation recommendations made by the planning board. In the event that the township committee votes to reject or modify any planning board recommendations for a proposed designation, the township committee shall record in its minutes the reasons for not following such recommendation. All action taken by the township committee on proposed designations shall become effective upon a favorable vote of a majority of its full authorized membership, except, in cases in which a protest has been filed in accordance with 804.3H of this section. A proposed designation shall then require a favorable majority vote of a majority of the full authorized membership of the township committee.

- K. *Public notice of designation.* Notice of designation shall be made public by publication in the official newspaper of the township and by distribution to all municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to the owner(s) of record.

- L. *Incorporation of designated landmarks into Township records.* Upon adoption of an article by the township committee designating an historic landmark or an historic district, the said designation shall supplement, rather than supersede, the existing zoning district in which the affected historic landmark or historic district is located. At that time, the designation list and map shall be incorporated into the master plan and zoning ordinance of the township as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Designated properties shall also be noted as such on the records for those properties as maintained by the engineering and zoning offices, as well as the offices of the construction official, the township tax assessor and the township clerk. In addition to the requirement for notation in the foregoing Township records upon the designation of a landmark or historic district by the Township Committee as above in this Paragraph L set forth, within 90 days of the adoption of this Ordinance, there shall be entered upon the property records in the offices of the Tax Assessor, the Construction Code Official, the Township Engineer, the Zoning Officer and the Township Clerk a notation which identifies each property located within or historic district as constituted on the date of adoption hereof.

Each tax/assessment search requested for a property located within an historic district shall note thereon the subject property is so located. Similarly, all forms maintained and issued by the Construction Code Official, Township Engineer, Zoning Officer and Township Clerk responsive to requests for information, permits, and like documents, shall contain a notation which identifies, as applicable, the presence of a property within an historic district as constituted on the date of the adoption hereof and as new landmarks as historic district designations occur hereafter.

M. *Amendments.* Amendments to historic landmark or historic district designations may be made in the same manner as they were adopted in accordance with the provisions of this article.

804.4 Historic Landmarks Designated.

The following historic landmarks as delineated and described in the Township Master Plan are hereby designated historic landmarks for the purposes of this Article: None

804.5 Historic Districts Designated.

The following historic districts as previously and by this ordinance created, re-established and as delineated and described in the Township Master Plan are hereby designated historic districts for the purposes of this Article:

- A. The “Short Hills Park Historic District” is designated as an historic district and shall consist of those properties, or parts thereof, listed in Ordinance No. 10-89.
- B. The “Wyoming Historic District” is designated as an historic district and shall consist of those properties, or parts thereof, listed in Ordinance No. 10-89.

Those lots, and all structures thereon, located within the above designated historic districts on which are located structures identified in the *Historic Structures Survey, Township of Millburn* (Millburn-Short Hills Historical Society and David Gibson Associates. 1979; funding assistance from the National Park Service, through the Office of NJ Heritage) as being of outstanding, notable, or other historic or architectural importance, are hereby reclassified for the purposes of this ordinance as contributing or noncontributing, respectively. See definitions in Section 802 above. See Appendix A for all properties listed by block and lot. Lots and all structures thereon which are classified as key shall be listed subsequently in accordance with the provisions of this Ordinance.

804.6 Underlying Zoning District Regulations.

All properties within the Historic Landmark and Historic District Overlay Zones shall remain subject to all underlying zoning district regulations.

805 CERTIFICATE OF APPROPRIATENESS.

805.1 When Required.

A Certificate of Appropriateness (or "CA") issued by the Commission shall be required before any work is commenced on any historic landmark or within any historic district, whether or not a construction permit is required for such work, including but not limited to the following activities listed below. Work associated with a development application requiring ultimate approval by the Planning Board or the Zoning Board of Adjustment is not exempt from this requirement.

- A. Changing the exterior appearance of any building, structure, site, object or improvement by addition, reconstruction, alteration or replacement, including, but not limited to, the

addition or alteration of windows, doors, roofing, fences, signs, awnings, porches, railings, steps, materials, finishes, exterior lighting, solar panels, communication devices, sidewalks, paving, or streetscape work except for the activities described in subsection 805.2 below.

- B. Demolition of any building, structure, site, object or improvement.
- C. Relocation of a principal or accessory building, structure, site, object or improvement.
- D. Any addition to or new construction of a principal or accessory building, structure, site, object or improvement.

805.2 When Not Required.

- A. A Certificate of Appropriateness shall not be required before a permit is issued by the administrative officer for changes to the interior of a structure.
- B. A Certificate of Appropriateness shall not be required for exterior repainting or interior painting of existing structures. If an exterior material, finish or surface is to be painted which was not previously painted, a Certificate of Appropriateness will be required.
- C. A Certificate of Appropriateness shall not be required if, in the opinion of the Minor Work Review Committee or the Historic Preservation Consultant, the work contemplated constitutes "ordinary maintenance and repair" as defined by this article. In such cases, and if a permit is required for the proposed work, the Commission shall promptly notify the administrative officer that a Certificate of Appropriateness is not required as a prerequisite to the issuance of the permit.
- D. A Certificate of Appropriateness shall not be required for structural repairs which do not alter the exterior appearance.
- E. A Certificate of Appropriateness shall not be required for any changes, additions or alterations not visible from a public right-of-way other than relocation or demolition.

805.3 Procedures.

- A. Except for the circumstances described in subsection 805.2, no work shall be performed on any historic landmark or on any building, structure, site, object or improvement located within an historic district until either a Certificate of Appropriateness has been issued by the Commission for such work or until a determination has been made by the Commission, the Minor Work Review Committee, or Commission Staff that no Certificate of Appropriateness is necessary pursuant to subsection 805.2 above.
- B. Applications shall be made on forms available in the office of the construction official in the Millburn Town Hall. Completed applications shall be delivered or mailed to the administrative officer. All such applications shall include payment of a filing fee and an escrow fee in the amounts established, and amended from time to time, by ordinance. There shall be no fee for conceptual reviews under subsection 805.4. The fee for an application to the Historic Preservation Commission shall be \$200.00. In addition to the

application fee, an escrow deposit in the amount of \$750.00 shall be paid as authorized in Section 410.7 and shall be administered in accordance with the requirements of Section 410.9 of this Ordinance. In the event an application is approved, the applicant may be required to pay an escrow charge in accordance with Section 410.8 for inspection during construction.

- C. Upon receipt of an application for a Certificate of Appropriateness, Commission staff will review and notify the applicant in writing that the application is deemed complete and may proceed with legal and noticing requirements. If complete, the Commission shall schedule a hearing within a 45 day period for the purpose of reviewing said complete application and shall advise the applicant(s), in writing, of the time, date and place of said hearing. If incomplete, the Commission shall return the application with a written description of the requirements not met pursuant to this ordinance and the HPC Checklist. For applications, fifteen (15) copies of the complete application must be submitted to the administrative officer. For minor applications, five (5) copies of the complete application must be submitted to the administrative officer.
- D. A complete application for a Certificate of Appropriateness shall include the items enumerated in the HPC Checklist (Appendix H):

805.4 Conceptual Review and Informational Meetings.

- A. Persons proposing or considering an action that requires a Certificate of Appropriateness may present a proposal for informal concept review and comment by the Commission and shall first hold an informal informational meeting with the Commission staff to review any design proposals or related issues.
- B. Persons proposing to make application to the Commission in connection with any action that requires a Certificate of Appropriateness are encouraged to first hold an informal informational meeting with Commission staff to review any design proposals or related issues before making application.
- C. The Commission staff shall hold meetings pursuant to 805.4A or 805.4B within 20 days of such request. Neither the applicant nor the Commission shall be bound by any such review. Informal concept or informational review shall not relieve the necessity for Commission review for a Certificate of Appropriateness pursuant to this Ordinance.

805.5 Minor Work Application Review.

Minor Work applications, as defined in this ordinance, may be reviewed and approved by the Minor Work Review Committee without holding a public hearing. A minor work application shall require submittal of information consisting of the standard application cover pages and, where applicable, a drawing in sufficient detail to accurately depict the work proposed and adequate to provide the information required for issuance of a permit by the Construction Code Official. If the Minor Work Review Committee finds the application appropriate, the Committee may act in place of the full Commission without the necessity of a public hearing and is authorized to issue a Certificate of Appropriateness to the construction official for said minor work. The construction official shall then authorize the applicant to proceed and issue any required permit associated therewith. If the Minor Work Review Committee does not find the

application appropriate, the application shall be scheduled for a public hearing before the full Commission/upon filing of a full application meeting the submittal requirements of the HPC Checklist.

805.6 Application Review.

- A. The Commission shall hold a public hearing on all applications for certificates of appropriateness following the referral of a complete application to the Commission by the administrative officer. The applicant shall have the burden of proof and obligation to establish entitlement to a Certificate of Appropriateness by satisfaction of the applicable standards and criteria in accordance with this ordinance, upon the failure of which, the Commission shall be entitled to deny the application. The Commission shall issue a Certificate of Appropriateness within a 45 day period that begins when applications are deemed complete by designated Commission staff and distributed to Commissioners in the monthly packet. No public hearing shall be required in order for the MWRC to render a Minor Application determination of exemption pursuant to subsection 805.2.
- B. Prior to holding a public hearing on a complete application for a Certificate of Appropriateness, the Commission or its staff shall, in addition to complying with the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., notify the applicant in writing at least 10 days prior to the hearing setting forth the time, date and place of the hearing. Applicant shall provide written notice to those entitled to notice in accordance with N.J.S.A. 40:55D-12.
- C. At the hearing, the Commission shall allow all persons the opportunity to be heard concerning the issuance of a Certificate of Appropriateness for the proposed work.
- D. After conducting the public hearing, the Commission shall return to the administrative officer within 30 days, its written determination on the application, which may be stated in resolution form. The Commission shall grant or deny a Certificate of Appropriateness to the applicant based on the standards and criteria set forth in section 807 of this article. The Commission may issue a Certificate of Appropriateness subject to certain condition(s), which shall be set forth in detail in the Commission's written decision. The Commission's denial of a Certificate of Appropriateness shall be deemed to prohibit the applicant from undertaking the work applied for, and shall preclude the issuance of any required permit for the said work by the administrative officer. Upon receipt of the Commission's written determination, the administrative officer shall notify the applicant of said determination in writing within five business days thereof. The granting or denial of an historic preservation permit may be appealed to the Board of Adjustment in the same manner as an appeal is taken pursuant to N.J.S.A. 40:55D-70(a). Nothing herein shall be deemed to limit the right of judicial review of the Board of Adjustment action after an appeal is concluded.
- E. Failure of the Commission to render its written determination to the administrative officer within the 45 day period shall be deemed to constitute a determination in favor of the issuance of a Certificate of Appropriateness for the proposed work and without conditions.

- F. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant and the Commission. The request for an extension of time by the applicant must be made in writing prior to a regularly scheduled public hearing or verbally requested during a public meeting and recorded in the minutes. In circumstances where the Commission determines that the applicant has failed or declined to provide the Commission with information reasonably required by it in order to make an informed decision, the Commission shall have the right to adjourn the proceedings until such time as the requested information is supplied to it. If the requested information is not received by the Commission within 60 days, it shall have the right to dismiss the application without prejudice for lack of prosecution.
- G. When a Certificate of Appropriateness has been issued, the administrative officer or his appointee shall, from time to time, inspect the work approved by such certificate and shall regularly report to the Commission the results of such inspections, listing all work inspected and reporting any work not in accordance with such certificate.
- H. A Certificate of Appropriateness shall be valid for a period of two years from date of issue unless reasonable extensions are requested by the applicant or the Commission.
- I. Appeals from determinations of the administrative officer pursuant to the Historic Preservation Commission's decisions may be made by the applicant to the zoning board of adjustment, according to N.J.S.A. 40:55D-70a.
- J. The performance of unauthorized activities and/or the performance of any work not in accordance with a previously issued Certificate of Appropriateness, shall be deemed to be a violation of this chapter and may subject the responsible parties to sanctions imposed hereunder. The Construction Code Official or Municipal Prosecutor, as applicable, shall prosecute any such violation in the Municipal Court and the Commission shall also have the right to file an action in the Superior Court of New Jersey for appropriate legal and/or equitable relief, subject to the prior approval of the Township Committee.

805.7 Emergency Repair Procedures.

- A. When an historic landmark or a historic district resource requires immediate repair to preserve its continued habitability and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with applicable construction codes immediately upon approval of the construction official, who shall certify that a bona fide emergency of the type referenced herein exists, without first obtaining a Certificate of Appropriateness from the Commission. Under such circumstances, the repairs performed shall be only such as are necessary to preserve the continued habitability of the building or structure and/or the health and safety of its occupants or others. Where feasible, temporary measures to prevent further damage shall be employed, provided these measures are reversible without causing damage to the building or structure.
- B. Simultaneously with the commencement of the emergency work, the property owner shall make a request for a Certificate of Appropriateness from the Commission

memorializing the approval for said emergency work. This request shall be made through the administrative officer pursuant to the procedures set forth in subsection 805.6 above.

- D. It should be noted that the procedures outlined in this section should be strictly limited to those circumstances which, in the opinion of the Construction Code Official, rise to the level of a bona fide emergency of the type referenced above. No work in addition to the emergency repairs shall be performed until an appropriate request for approval has been granted by the administrative officer and Historic Preservation Commission pursuant to the procedures set forth in subsection 805.6 above.

805.8 Obtaining Certificates of Appropriateness for Government Actions.

- A. The Township of Millburn, when it plans to undertake any work on any municipally owned historic landmark or on any municipally owned property in an historic district, shall submit such plans to the Historic Preservation Commission and shall receive an advisory report with recommendations on the appropriateness of those plans before undertaking the work.
- B. In those circumstances where the township cannot require compliance, as in certain cases involving the county, State and Federal governments, the township strongly urges the voluntary cooperation of such agencies in seeking a Certificate of Appropriateness and hereby authorizes the Commission to consider such requests and applications. This does not relieve the property owner from complying with applicable State and Federal regulations regarding historic preservation.

806 REFERRAL OF DEVELOPMENT APPLICATIONS INVOLVING HISTORIC LANDMARKS OR HISTORIC DISTRICTS

- A. Pursuant to N.J.S.A. 40:55D-110, the planning board and zoning board of adjustment of the Township of Millburn shall refer to the Historic Preservation Commission every application for development submitted to either board for development involving historic landmarks or properties located within historic districts identified in the township's historic preservation element of the master plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer an application as required shall not invalidate any hearing or proceeding. The Historic Preservation Commission may provide its advice on said application, through oral testimony at the hearing, and/or through written report(s) that the Commission may have provided to the board concerning the proposed application.
- B. On all matters referred to the Historic Preservation Commission which require approval by the township's planning board or zoning board of adjustment, the decision of the Commission shall be advisory only. In reviewing applications for development, the Commission may comment and make recommendations on any of the zoning and land use considerations which are relevant to the application. The planning board or zoning board of adjustment, as applicable, shall consider the testimony and/or written report(s) presented and may disapprove or change any of the recommendations made by the Commission by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendations.

- C. Yard Variances. Due to the fact that structures in historic districts may have been built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by approving variances to normal yard requirements. Where it is deemed that such variance will not adversely affect neighboring properties, the appropriate board may grant such variance to standard requirements if so recommended by the Historic Preservation Commission.
- D. An approval by the planning board or zoning board of adjustment, as the case may be, does not relieve the applicant of the requirement of obtaining a Certificate of Appropriateness from the Commission (see section 805) for those historic aspects of the work not addressed as part of the application for development.

807 STANDARDS AND CRITERIA.

- A. The purpose of this section is to provide uniform standards and criteria for the regulation of historic landmarks and historic districts for use by the Historic Preservation Commission. All projects requiring a Certificate of Appropriateness and all applications for development on historic landmarks or in historic districts shall, in interpreting and applying the standards and criteria set forth herein, be guided by the principles contained in the most current versions of the Secretary of the Interior's Standards for Rehabilitation (as contained within the Secretary of the Interior's Standards for the Treatment of Historic Properties), by the Secretary of the Interior's Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, and by the Millburn Township Design Guidelines for Historic Districts and Sites, incorporated herein by reference, as the same may be applicable and appropriate, and as amended and revised from time to time. In utilizing the Secretary of Interior's Standards, the Commission shall be guided by the provisions thereof including, but not limited to, the following:
 - (1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - (3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
 - (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and,

- where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
 - (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
 - (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.
 - (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

These standards are adopted as the Commission's design criteria and guidelines pursuant to N.J.S.A. 40:55D-65.1.

- B. In reviewing applications for certificates of appropriateness, the Historic Preservation Commission shall consider the siting, arrangement, exterior design, design quality, bulk, arrangement, density, texture, details, style, scale, setbacks, stepbacks, shape, height, massing, lot coverage, rhythm, directional emphasis, proportions, building elements, materials, finishes and relationships to the streetscape and/or landscape views of the proposed work and the relationship of those characteristics to the historical significance of the historic landmark or historic district.
- C. In reviewing applications for certificates of appropriateness and notwithstanding any other provisions of this ordinance, the Historic Preservation Commission shall not consider 1) use, zoning requirements for setbacks, density, height limitations or lot coverage as these matters fall within the purview of the planning board and zoning board of adjustment, and 2) the removal of trees as these matters fall within the purview of the Township Forester in accordance with the standards and requirements of Chapter XI of the Millburn township code entitled "Tree Preservation". Nothing herein shall prevent the Commission from making a recommendation to the Township Forester with respect to tree removal by the incorporation of any such recommendation in a Resolution adopted pursuant to an application determined by it.
- D. In recognition of the lesser importance of applications for a Certificate of Appropriateness related to non-contributing structures/sites, only the criteria set forth in Section 807(D) (4) shall be applied by the Commission.

Criteria for Review. In its review of historic landmarks or properties located with historic districts, the Commission shall give consideration to certain criteria, including but not limited to the following:

- (1) The historical value of the landscape or streetscape.

- (2) The historical value of a building, structure, site, object, improvement or district and its relationship to property of the surrounding area.
- (3) The general compatibility of the proposed use to the historical value of the surrounding historic district. In regard to an application for new construction, alterations, additions or replacements affecting a historic site or an improvement within a historic district, and in addition to the criteria set forth in Section 807 (B), the following factors shall be considered in relation to its setting and context, including:
 - (a) Height.
 - (b) Massing.
 - (c) Proportion of the width and height of the building's facades.
 - (d) Proportion of openings within the building.
 - (e) Rhythm of spacing of buildings on streets.
 - (f) Rhythm of solids to voids on facades fronting on public places.
 - (g) Relationship of materials and texture.
 - (h) Construction in a range of design and style options which are consistent with neighboring buildings in the historic district.
- (4) The general compatibility of the exterior design, arrangement, texture and materials proposed to be used with the historical value of the surrounding area. In carrying out its design review under these guidelines, the following criteria shall be utilized:
 - (a) All exterior elevations, including the roof, must be maintained and new construction must be compatible with existing structures, districts and surrounding areas.
 - (b) In-kind or similarly compatible building materials must be utilized.

808 DEMOLITIONS AND RELOCATIONS.

808.1 Criteria.

In regard to an application to demolish or relocate an historic landmark or an historic district resource, the following matters shall be considered:

- A. Its current and potential use for those purposes currently permitted by the zoning ordinance or for the use proposed.

- B. The probable impact of its removal upon the ambiance of the historic landmark or historic district.
- C. The structural soundness and integrity of the building, structure, site, object or improvement and the economic feasibility of restoring or rehabilitating same so as to comply with the requirements of the applicable construction codes.
- D. The compelling reasons for not retaining the building, structure, site, object or improvement at its present location, the proximity of the proposed new location and its accessibility to residents of the municipality, and the probability of significant damage to the building, structure, site, object or improvement as a result of the relocation.
- E. The compatibility, nature and character of the current and the proposed surrounding areas as they relate to the intent and purposes of this article and whether the proposed new location is visually compatible in accordance with the standards set forth herein.

808.2 Procedure.

A. *Where Demolition Disapproved.* In the event that the Historic Preservation Commission disapproves an application for a Certificate of Appropriateness to demolish an historic landmark or a building, structure, site, object or improvement located in an historic district, the owner shall, nevertheless, as a matter of right, be entitled to raze or demolish same provided that all of the following requirements have been fully met:

(1) Appeal to Zoning Board of Adjustment. The owner has applied for the necessary Certificate of Appropriateness and has received notice of the Commission's denial of same from the administrative officer and has appealed to the zoning board of adjustment, which has affirmed such denial.

(2) Sale for Fair Market Value. Following affirmance of the Commission's determination by the Board of Adjustment, an owner who desires to further pursue demolition approval has for a period of at least 180 days (the "offer period"), and at a price reasonably related to its fair market value, made a bona fide offer to sell such building, structure, site, object or improvement and the land pertaining thereto to any person, entity, organization, government or political subdivision thereof which gives reasonable assurance that it is willing to preserve the building, structure, site, object or improvement and the land pertaining thereto.

(3) Demolition Notice Posted and Publication.

a. Notice of any proposed demolition shall be posted on the exterior premises of the building, structure, site, object or improvement throughout the Notice Period in a location such that it is clearly readable. In addition, the applicant shall cause to be published in the official newspaper of the township a notice setting forth the following:

(1) The applicant's intent to demolish, including a description of the subject property (by block and lot as well as by physical location) and

a description of the building, structure, site, object or improvement to be demolished; and

- (2) The applicant's proposed use of the property following demolition; and
- (3) The anticipated time frame(s) associated with the demolition; and
- (4) A statement indicating that the applicant shall consider any and all bona fide offers to sell the property to any person who wishes to preserve the building, structure, site, object or improvement; and
- (5) The applicant's name and address, along with a telephone number where the applicant may be reached during normal business hours by any interested person who wishes to discuss the proposed demolition and/or to make an offer to purchase the property as set forth above.

b. The notice shall be published as follows:

- (1) At least once within the first ten days of the Notice Period; and
- (2) At least once within the period of time that is not less than ten nor more than 15 days prior to the expiration of the Notice Period; and
- (3) At least once each 20 days between the above first and last notifications.

c. At the conclusion of the Notice Period, if the applicant still wishes to demolish the subject building, structure, site, object or improvement, it shall, prior to performing the demolition, perform the following:

- (1) Advise the Commission in writing of its intention to proceed with the demolition; and
- (2) Certify in writing to its compliance with the provisions of the 180-day offer period; and
- (3) Provide the Commission with a copy of the notice that appeared in the official newspaper of the township and a listing of all dates on which the said notice appeared in the newspaper; and
- (4) Advise the Commission in writing as to whether any interested persons submitted an offer or offers to purchase the property, whether during the 180-day "offer period" or following the newspaper noticing referenced above, and set forth the terms and conditions relating to said offer(s) and the results of any negotiations pertaining thereto; and

- (5) File copies of the affidavits of publication relating to the newspaper noticing with the Commission.
- (4) Notice Period. The period of time during which notice must be given in the manner hereinbefore set forth shall be known as the "Notice Period" which shall commence on the tenth day following the date of the notice of denial of the appeal from the zoning board of adjustment and such Notice Period shall run for a period of time of 180 days.
- B. *Assignment.* No assignment of the rights granted by a Certificate of Appropriateness to demolish shall be permitted.
- C. *Expiration of Approval.*
 - (1) In cases where demolition is permitted, the Certificate of Appropriateness shall be valid for one year from the date of Historic Preservation Commission approval of the application. The one year period shall not be extended.
 - (2) At the time of issuance of the Certificate of Appropriateness to demolish, the administrative officer shall designate the period of time (within the one year approval period) within which demolition must be completed.
- D. *Approval after Change of Circumstances.* The Commission may at any time during such Notice Period, if a significant change in circumstances occurs, approve a Certificate of Appropriateness to demolish, in which event, a permit from the administrative officer shall be issued within ten days thereafter.

809 VIOLATIONS: PENALTIES AND INJUNCTIVE RELIEF.

It shall be the duty of all municipal officials reviewing all permit applications involving real property or improvements thereon to determine whether such application involves any activity which should also be the subject of an application for a Certificate of Appropriateness, and, if it should be, to inform the administrative officer, the applicant, and the Historic Preservation Commission of the same.

809.1 Violations.

- A. If any person shall undertake any construction activity on an historic landmark or property located within an historic district without first having obtained a Certificate of Appropriateness as provided in this article, or where such construction activity is not in compliance with a Certificate of Appropriateness previously issued, such person shall be deemed to be in violation of this article. Notwithstanding the foregoing, it shall not be a violation of this Ordinance in circumstances where the Construction Official has issued a construction permit, but has not advised the recipient of the construction permit to have first made application to the Commission.
- B. After learning of the violation, the administrative officer shall personally serve a notice describing the violation in detail upon the owner of the lot whereon the violation is occurring.

- C. If the owner cannot be personally served within the municipality with said notice, a copy thereof shall be posted on the site in question and a copy shall be sent by certified mail, return receipt requested, to the owner at his or her last known address as it appears on the municipal tax rolls.
- D. Within ten days of receipt of the notice of violation, the violator shall be required to file an application for a Certificate of Appropriateness in the same manner as prescribed pursuant to section 806 of this article, and the notice shall advise the violator of such.
- E. Upon receipt of the violator's application, the Commission shall conduct a review of the said application and hold a public hearing in the same manner as prescribed for regular applications pursuant to section 805 of this article.
- F. Upon the violator's filing of an application for a Certificate of Appropriateness, the imposition of all enforcement action on behalf of the township shall be stayed until such time as:
 - (1) The Commission has rendered a decision on the violator's application and the administrative officer has served notice thereof upon the applicant; and
 - (2) The violation is still deemed to be in existence; and
 - (3) No further appeal of the decision of the Commission and administrative officer relating to the said application is pending before the zoning board of adjustment or any court; and
 - (4) All appeal periods relating to the said application have expired.
- G. If the Commission grants a Certificate of Appropriateness to the violator for the unauthorized work, then the violator shall no longer be deemed to be in violation of this article. If the Commission grants a Certificate of Appropriateness to the violator subject to certain conditions, then the violator shall be deemed to have cured the violation only upon its timely satisfaction of the said conditions in accordance with the requirements of the Commission. If the Commission denies a Certificate of Appropriateness to the violator for the unauthorized work, then the violation shall still exist and the violator shall be subject to appropriate enforcement action as prescribed by this article.
- H. In the event that the violator fails to file a timely application for a Certificate of Appropriateness after having been served with a notice of violation as set forth above, or in the event that there is no longer any stay of enforcement activity in effect as set forth above and the violation is still deemed to be in existence, then the administrative officer shall cause to be issued a summons and complaint, returnable in the Millburn Municipal Court, charging violation of this article. Each separate day that the violation exists shall be deemed to be a new and separate violation of this article.

- I. If a violation involves ongoing unauthorized construction or demolition work, the administrative officer shall immediately issue a stop construction order in accordance with the Uniform Construction Code, N.J.S.A. 52:27D-119 et seq.

809.2 Penalties.

Any person who commits a violation of this article shall, in the discretion of the municipal court judge, be subject to penalties as follows:

- (1) For each day up to 10 days: a fine of up to one thousand dollars (\$1,000.00) ;
- (2) For each day between 11 and 25 days: a fine of up to one thousand two hundred (\$1,200.00) dollars per violation or in the maximum amount then in effect pursuant to state statute; and
- (3) For each day beyond 25 days: imprisonment for a period not to exceed 90 days, a fine pursuant to Section 809.2(2) above, or both, and/or be required to immediately correct, abate and/or restore the premises or property to its previous condition.

809.3 Injunctive Relief.

In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the administrative officer shall cause to be instituted any appropriate action or proceeding to prevent such unlawful activity, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or site or to prevent any illegal act, conduct, business or use in or about such premises as follows:

- A. If any person shall undertake any activity requiring a permit, report or Certificate of Appropriateness of the Commission without first having obtained approval, he or she shall be required to immediately stop the activity, apply for approval and be required to immediately correct, abate and/or restore the premises or property to its previous condition pending such approval. If the work is denied, he or she shall immediately restore the building, structure, object or site to its condition prior to any such activity. The administrative officer is hereby authorized to seek injunctive relief regarding a stop action or restoration in the Superior Court not less than 10 days after the delivery of notice pursuant to subsection B hereof.
- B. In the event of the threat of imminent action or demolition for which the necessary approvals have not been granted and which action would permanently and adversely change a landmark or any building, structure, object or site located within a landmark district, the administrative officer is empowered to apply to the Superior Court of New Jersey for injunctive relief as is necessary to prevent such actions.

810 PREVENTIVE MAINTENANCE; NOTICE OF VIOLATIONS.

- A. *Priority.* Recognizing the need for preventive maintenance to ensure the continued useful life of historic buildings, structures, objects and sites, the Township Committee hereby declares that code enforcement for such designated properties is a high municipal priority.

- B. *Notice of violation.* In the event that any historic landmark or any building, structure, object or site located within a historic district deteriorates to the point that, in the best estimate of the administrative officer, the cost of correcting the outstanding code violations equals more than 25% of the cost of replacing the entire building, structure, object or site on which the violation occurs, the administrative officer shall serve personally or by certified mail, return receipt requested, a notice on the owner of the property listing the violations, the estimate for their abatement and the replacement cost of the improvements and stating that, if the owner does not take all necessary remedial action within 60 days or such extensions as the administrative officer shall grant for good cause, the Township of Millburn's designated official may, at the expiration of said 60 days, enter upon the property and abate such violations and cause the cost thereof to become a lien on the property.
- C. *Hearing.* Upon receipt of such notice, the owner may, within 20 days after such receipt, notify the administrative officer of his or her intentions to have a hearing as to the allegations and estimates set forth in the notice. Such hearing shall be conducted by the Commission and shall, so far as possible, be a formal adversary proceeding in which the administrative officer shall establish the matters alleged in the notice by a preponderance of the evidence. If a hearing is requested, the administrative officer will, within 10 days following the hearing, serve on the owner an opinion, in writing, setting forth his or her conclusions and the reasons therefor.
- D. *Action without a hearing.* If the owner does not request a hearing, the findings of the administrative officer set forth in the notice issued in 809.3 shall be binding, and the administrative officer may take such necessary action as granted by the provisions of this article.
- E. *Right of abatement.* If the owner does not comply with the findings of the administrative officer, the administrative officer may enter onto the premises and, by use of municipal labor or outside contractors, or both, perform such work as is necessary to abate all violations.
- F. *Costs.* The administrative officer shall then certify to the Township Committee the cost of such work performed, plus all administrative, clerical, architectural, engineering and legal costs and overhead attributable thereto, and shall present the same to the Township Committee.
- G. *Lien.* The Township Committee may by resolution vote to cause the sum so certified to become a lien upon the property, payable with the next quarter's property taxes and, if not then paid, bearing interest at the same rate as delinquent taxes, and/or become subject to tax foreclosure in accordance with the state statutes governing the same.

Section 2

- A. If any section or provision hereof shall be adjudged invalid, such determination shall not affect the other provisions hereof, which shall remain in full force and effect.

- B. All ordinances and all provisions thereof inconsistent or conflicting with the provisions of this Article are hereby repealed to the extent of such conflict or inconsistency provided not otherwise required by law.
- C. Pursuant to the provisions of N.J.S.A. 40:55D-15, notice of this ordinance has been given by personal service or certified mail, to the Municipal Clerk of all adjoining municipalities and by personal service or certified mail to the Essex County Planning board at least ten (10) days prior to the date of final hearing.
- D. Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed to the extent of any such inconsistencies.
- E. The Township Clerk shall file this Ordinance with the Essex County Planning Board, and shall give notice of adoption to all adjoining municipalities as required by law.
- F. This ordinance shall take effect after final passage and publication and as provided by law upon notice by personal service or certified mail to the Municipal Clerk of all adjoining municipalities and filing with the Essex County Planning Board, which will be done within thirty (30) days following the adoption of this ordinance.

ATTEST:

TOWNSHIP OF MILLBURN

By: _____
Christine A. Gatti, Township Clerk

By: _____
W. Theodore Bourke, Mayor

Introduced:
Published: Public Hearing/Adopted:
Published:

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee of said Township at a regular meeting held on the ____ day of _____, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Township this ____ day of _____, 2016.

Christine A. Gatti, Township Clerk