

**TOWNSHIP OF DOWNE**

**COUNTY OF CUMBERLAND AND STATE OF NEW JERSEY**

**ORDINANCE NO. 2020-5**

**AN ORDINANCE AMENDING ORDINANCE 2019-7 TITLED "HISTORIC PRESERVATION ORDINANCE"**

**BE IT ORDAINED** by the Township Committee of the Township of Downe, County of Cumberland and State of New Jersey that Ordinance 2019-7 is hereby deleted in its entirety and replaced as follows:

**ARTICLE I: TITLE, SCOPE AND PURPOSE**

**§ 3-1 Short title; authority**

- A. This chapter shall be known by and may be referred to by the short title of "The Historic Preservation Ordinance of Downe Township" and may be cited as such.
- B. Authority. This chapter is enacted pursuant to the authority granted by Chapter 291, Laws of 1975, commonly referred to and cited as the "Municipal Land Use Law" (N.J.S.A. 40:55D-1 et seq.), as amended; and, without limiting the foregoing, pursuant to the authority granted by Chapter 516, Section 21, Laws of 1985, commonly referred to and cited as "Historic Preservation Commission" N.J.S.A. 40:55D-107 to 112.

**§ 3-2 Establishment of a system for historic preservation in Downe Township**

- A. Framework. The Downe Township Committee hereby establishes an Historic Preservation Commission (HPC) to coordinate historic preservation within the Township through:
  - 1. designation and regulation of historic landmarks and historic districts within the Township;
  - 2. issuing of certificate of appropriateness for historic sites and structures; and
  - 3. taking other measures and regulations as referenced in this Chapter.
- B. It is the intention of Township Committee that the Historic Preservation Commission will work with and advise the Zoning Official as well as the Planning Board on the effect that certain permit applications, and development applications will have on designated historic landmarks and/or improvements within any historic district. The Historic Preservation Commission shall review all development activities involving any exterior of a historic landmark or an improvement within a historic district.
- C. It is not the intention of the Township Committee to require or prohibit any particular architectural style; rather, the purpose of HPC review is to honor the Township's history and maintain its importance and relevance for the present. To that end, new construction upon or near a landmark and within any historic district must not detract from the landmark or historic district.

**§ 3-3 Scope of Chapter.**

- A. Provisions.
  - 1. This chapter shall apply to all landmarks in a district and to any other historic resources which are designated in accordance with the procedures outlined in § 3-12: Designation of Historic Landmarks and Historic Districts.
  - 2. The provisions of this chapter shall be held to be minimum requirements. This chapter does not repeal, abrogate, annul or in any way to impair existing provisions of other articles, chapters, or

ordinances of the Township of Downe, except those specifically repealed by this chapter, or private restrictions placed upon property by deed, covenant or other agreements.

3. Where this chapter imposes a greater restriction than is imposed and required by other provisions of law or by other rules, regulations or resolutions, the provisions of this chapter shall control.
4. Where the provisions of any other laws, ordinances, rules, regulations, or resolutions require greater restrictions than are imposed by this chapter, the provisions of such other laws, rules, regulations or restrictions shall control.
5. Where the provisions of a covenant or easement require greater restrictions than are imposed by this chapter, the provisions of such covenant or easement shall control. The Township shall coordinate its efforts with any such covenant or easement to fully effectuate its historic preservation purposes.

### **§ 3-4 Intended Purposes**

- A. The intention of this chapter is:
  - a. Encourage the continued use of historic resources and facilitate their appropriate reuse.
  - b. Safeguard the heritage of the Township of Downe by preserving the resources within the Township which reflect elements of its cultural, social, economic and architectural history.
  - c. Maintain and develop an appropriate and harmonious setting for the architecturally significant buildings, structures and sites within the Township of Downe.
  - d. Stabilize and improve property values and discourage the unnecessary demolition of historic and architectural resources within the Township of Downe.
  - e. Foster civic beauty.
  - f. Promote appreciation of the historic and architectural resources for the education, pleasure and welfare of the citizens of the Township and its visitors.
  - g. Spur beautification and private reinvestment.
  - h. Recognize the importance of historic and architectural resources by urging property owners and tenants to maintain their properties.
  - i. Encourage the proper maintenance and preservation of historic and architectural settings and landscapes.
  - j. Encourage appropriate alterations of historic and architectural resources.
  - k. Enhance the visual and aesthetic character, diversity, continuity and interest of the Township.
  - l. Promote the conservation of historic and architectural resources and invite voluntary compliance.

## **ARTICLE II: WORD USE AND DEFINITIONS**

### **§ 3-5 Compliance with other definitions**

- A. Unless otherwise expressly stated, the terms in § 3-6 shall, for the purposes of this chapter, have the meaning as herein defined.
- B. Any word or term not noted below shall be used with a meaning as defined in Webster's Third New International Dictionary of the English Language, unabridged or its most recent edition thereof.
- C. Moreover, whenever a term is used in this chapter which is defined in N.J.S.A. 40:55D-1, et seq., such term is intended to have the meaning as defined in N.J.S.A. 40:55D-1, et seq., unless specified to the contrary in this chapter.
- D. Where improvements are governed by the New Jersey Residential Site Improvement Standards (RSIS), such terms shall have the same meaning as in N.J.A.C. Title 5, Chapter 21.

## **ARTICLE II: WORD USE AND DEFINITIONS**

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- H. Where improvements are governed by the New Jersey Residential Site Improvement Standards (RSIS), such terms shall have the same meaning as in N.J.A.C. Title 5, Chapter 21.

### **§ 3-6 Definitions**

As used in this chapter, the following terms shall mean and include:

**ADDITION** — An extension or increase in the size, floor area, lot coverage, or height of any individually designated historic building, structure, site, object, improvement, or landmark or building structure, site, object, improvement within an historic district.

**ADMINISTRATIVE OFFICER**— See HISTORIC ADMINISTRATIVE OFFICER

**AFFECTING A LANDMARK OR HISTORIC DISTRICT** — Any activity or proposed work, including demolition, shall be deemed to be "affecting a designated historic landmark" if it alters the exterior architectural appearance of a historic landmark or any improvement within an historic district

**ALTERATIONS** — Any:

- change in the exterior features;
- rearrangement in the structural parts or in the existing facilities;
- addition;
- moving any building, structure, object, or improvement or combination of them from one location or position to another;
- changes to the appearance of an exterior surface other than paint except for new paint applied to historically unpainted surfaces;

- changes or modifications to its historic features;
- and addition of a sign or the enlargement of any existing sign.

"Alterations" does not mean:

- painting or cleaning except new paint applied to historically unpainted surfaces;
- ordinary maintenance and repairs;
- or repairs on an existing property, site, building, structure, or improvement, after a sudden disaster (such as a storm, flood, or fire), for the limited purposes of protecting human life and human safety, and, to extent then possible, protecting the historic resource from further damage.

**APPLICATION** — A request to the Historic Preservation Commission made pursuant to this chapter for the purposes of obtaining a certificate of appropriateness or other action by the Historic Preservation Commission.

**CERTIFICATE OF APPROPRIATENESS** — The document issued by the Historic Administrative Officer, required prior to undertaking rehabilitation, restoration, renovation, alteration, repair or demolition within an historic district or on an individually designated historic structure and its accessory buildings or structures, pursuant to this Chapter.

**COMMISSION OR HPC** — HISTORIC PRESERVATION COMMISSION

**CONSTRUCTION/ZONING OFFICIAL** — The Township employee in charge of the granting of building, zoning or construction permits in Downe.

**CONTRIBUTING** — Any buildings, structures, sites, objects or Improvements that 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** — The partial or total razing, dismantling, "gutting," or destruction, whether entirely or in part, of any designated property, site, building, structure, object, or improvement, or the obliteration of any natural feature. Demolition includes the removal of a property, site, building, structure, object, or improvement from its location, or the removal, or destruction, of its facade, surface, or cultural, historical, archaeological, or architectural elements.

**DESIGNATED HISTORIC LANDMARK OR DISTRICT** — An individual building, structure, site, object, improvement or district which has been determined to have historical, architectural, archeological, cultural, engineering, aesthetic, or other significance pursuant to the provisions of § 3-12: Designation of Historic Landmarks and Districts and has been officially designated by Ordinance.

**EMERGENCY REPAIRS** — Immediate repairs to preserve the continued habitability and/or the health and safety of occupants or others, performed in accordance with building codes without first obtaining a Certificate of Appropriateness. A consultation with the Historic Preservation Commission or its staff is still required for any work performed after the site is secured for safety/health reasons.

**FAÇADE** — The face or front of a structure or any vertical surface thereof adjacent to a public way.

**HISTORIC ADMINISTRATIVE OFFICER** — A Township employee who is responsible for various administrative duties as set forth in this chapter.

**HISTORIC DISTRICT** — A geographic area with distinctly definable boundaries composed of several buildings or sites which:

- Have acquired a unity of character through the interrelationship of the component buildings and sites; and

- Have been designated as having historical, archeological, cultural, scenic, architectural or other significance pursuant to the provisions of this chapter.

HISTORIC DISTRICT RESOURCES — Those resources classified as either "key," "contributing" or "noncontributing", which are defined as follows:

KEY — Any buildings, structures, sites, objects or improvements which, due to their significance, would individually qualify for historic landmark status;

CONTRIBUTING — Buildings, structures, sites, objects or improvements 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; and

NONCONTRIBUTING — Any buildings, structures, sites, objects or improvements which do not add to the historic architectural qualities, historic associations, or archaeological values for which an historic district is significant because:

- They were not present during the period of significance; or
- They no longer possess historic integrity reflecting its character at that time or are incapable of yielding important information about the period due to alterations, disturbances, additions, or other changes; or
- They do not independently meet the National Register criteria.

HISTORIC LANDMARK(S) — Any building(s), structure, site, or object which:

- has a special character or special historical or aesthetic interest as part of the development, heritage, or cultural characteristics of the municipality, state, or nation, and
- which has been designated as a landmark pursuant to the provisions of this chapter (See N.J.S.A. 40:55D-112) and
- which have been determined to meet one or more of the following criteria:
  - A. Of particular historic significance to the Township by reflecting or exemplifying the broad cultural, political, economic, or social history of the nation, state or community; or
  - B. Associated with the historic personages important in national, state, or local history; or
  - C. The site of an historic event which had a significant effect on the development of the nation, state, or community; or
  - D. An embodiment of the distinctive characteristics of a type, period, or method of architecture or engineering; or
  - E. Representative of the work or works of a locally, regionally, or nationally important or recognized builder, designer, artist, or architect; or
  - F. Significant for containing elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
  - G. Able or likely to yield information important in prehistory or history.

HISTORIC COMMISSION ADMINISTRATIVE OFFICER — See HISTORIC ADMINISTRATIVE OFFICER

IMPROVEMENT — Any structure or any part thereof installed upon real property by human endeavor and intended to be kept at the location of installation for a period of time greater than 60 continuous days.

MAJOR WORK APPLICATION — An application for a Certificate of Appropriateness which does not meet the requirements for a Minor Work Application as defined below.

MASTER PLAN — The Master Plan of the Township of Downe, as amended from time to time, compiled pursuant to the Municipal Land Use Law.

MINOR WORK APPLICATION — Any application for a certificate of appropriateness which:

- A. Does not involve demolition, relocation or removal of a key or contributing resource in an historic district;
- B. Does not involve an addition to 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 field change for a certificate of appropriateness which has already been issued and which meets the criteria of Subsection A, B or C above.

**NATIONAL REGISTER CRITERIA** — The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places, as set forth in 36 CFR 60.4 et seq.

**NONCONTRIBUTING PROPERTY** — A building site, structure or object that does not add to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because:

- A. It was not present during the period of significance;
- B. Due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period;  
or
- C. It does not independently meet the New Jersey Register criteria set within N.J.A.C. 7:4-2.3.

**ORDINARY MAINTENANCE AND REPAIR** — The repair of any ordinary deterioration, wear, or damage to a structure or any part thereof, from its intended, normal, operation, or use, in order to return the same as nearly as practicable to its condition, operation, and appearance prior to the occurrence of such deterioration, wear, or damage with in-kind material and quality workmanship and having the same appearance. "Ordinary maintenance and repair" shall include routine maintenance or cyclical maintenance.

**OWNER** — Any person having a right, title, or interest in any property so as to be legally entitled, upon obtaining such permits and other authorizations as may be required pursuant to law, to perform construction, alteration, removal, demolition, or other work with respect to such property. "Owner" shall include a person or legal entity that has the actual or apparent authority from the owner to act on the owner's behalf.

**PERMIT** — Any required approval, including but not limited to a Certificate of Appropriateness, construction permit, demolition permit, or a zoning permit. "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.

**PROPORTION** — A system of comparative relationships with respect to size, shape, and amount, especially in relation to the whole. Systems of proportion govern the relationships between and among design aspects of property, site, building, building elements, improvements, objects, district, streetscape, and setting. Proportion applies at all scales. Generally, the goal of a proportional system is to produce a sense of order, coherence, and harmony between and among the parts, things, or elements.

**RECONSTRUCTION or RECONSTRUCT** — The act or process of depicting, or 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. (*The Secretary of Interior Standards for the Treatment of Historic Properties*)

REHABILITATION or REHABILITATE — The act or process of making possible an efficient compatible contemporary use for a property through repair, alterations, or additions, while preserving those portions or features of the property that convey its historical, cultural, archaeological, or architectural values. (*The Secretary of Interior Standards for the Treatment of Historic Properties*)

REPAIR — Any physical work done on an improvement that

- A. Is not an addition to the improvement; and does not change the appearance of the exterior surface of any improvement.
- B. Provides for facsimile replacement of material that has been destroyed by time, weather, insects or other conditions either in the original material or replacement material with the original appearance.

REPLACEMENT or REPLACE — The act or process of replicating any feature that is used to substitute for an existing and deteriorated or extensively damaged feature.

REMOVAL — To partially or completely cause a structure, building, improvement, or object, or portion thereof, to change to another location, position, station, or residence.

RESTORATION or RESTORE — The act or process of accurately recovering the form, details, features, and character of a property and its setting as it appeared at a particular period of time. It may sometimes mean the removal of features from other periods in its history and reconstruction or replacement of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code required work to make properties functional is appropriate within a restoration project. (*The Secretary of Interior Standards for the Treatment of Historic Properties*)

SECRETARY OF INTERIOR'S STANDARDS — The publication issued by the United States Department of the Interior, National Park Service, entitled: "The Secretary of the Interior's Standards for the Treatment of Historic Properties as the Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings," issued in 1995 and revised from time to time.

SITE (HISTORIC) — Any place, real property, or part, or combination of properties, whether public or private, with or without improvements, which is the location of a significant event or series of events, a prehistoric or historic occupation or activity, a trail, route, building, structure, or object, or any configuration, portion, or group of the foregoing, whether standing, ruined, or vanished, where the location itself possesses historical, cultural or archeological value regardless of the value of any existing building, structure, or object, above or below the property's surface.

SUDDEN DISASTER — Any incident, natural or man-made, or a series of incidents, that occurs without sufficient advance warning to take measures to protect or preserve a property, land, building, site, object, or improvements, which incident causes significant damage to a property, building, site, object, or improvements thereon. Sudden disaster shall include, without limiting the foregoing, fire, flood, or storm damage. Sudden disaster does not mean deterioration; wear over time due to ordinary use; or damage related to neglect, failure, or willful refusal, by a property owner or occupant, to perform ordinary maintenance and repairs and preservation in a timely or workman-like manner; or failure to take protective measures when there are advance warnings of impending disaster. The existence of a "sudden disaster" shall be determined by a Zoning Official and/or Historic Commission Administrative Officer in consultation with the Chair of the Historic Preservation Commission.

SURVEY — The process of identifying and gathering data on the Township's resources for the assessment of their historical, architectural, archaeological, aesthetic, cultural, engineering, social, or other significance.

## **ARTICLE III: HISTORIC PRESERVATION COMMISSION**

### **§ 3-7 Establishment and Members**

- A. Establishment. There is hereby established within Downe an Historic Preservation Commission, which shall be known as the Historic Preservation Advisory Commission, whose members shall serve without compensation. The Historic Preservation Commission (HPC) shall act as the Historic Preservation Commission pursuant to the Municipal Land Use Law N.J.S.A. 40:55D-107 et seq.
- B. Members. The Commission shall be comprised of five regular members and two alternates. One member shall be appointed from each of Classes A and B:
  - 1. Class A: A person who is knowledgeable in building design and construction or architectural history and may reside outside the Township; and
  - 2. Class B: A person who is knowledgeable in, or who has demonstrated an interest in, local history and who may reside outside the Township; and
  - 3. Class C: Citizens of the Township who shall hold no other local office, position or employment, except for membership on the Planning Board. Class C members should have, at a minimum, a demonstrated interest in history, historic preservation or a related field.
- C. Alternate members.
  - 1. Two alternate members shall also serve on the Commission. They must qualify as Class C members and shall be designated as "Alternate No. 1" or "Alternate No. 2" at the time of appointment.
  - 2. Alternate members may participate in all Commission discussions during proceedings but may not vote except in the absence or disqualification of a regular member. In the event that a choice must be made as to which alternate member is to vote, "Alternate No. 1" shall vote.
  - 3. A vote shall not be delayed in order that a regular member vote instead of an alternate member.

### **§ 3-8 Appointment of Commission Members; terms and vacancies**

- A. Appointments.
  - 1. The Mayor shall appoint all members of the Historic Preservation Commission and shall designate at the time of appointment the regular members by class and alternate members as "Alternate No. 1" and "Alternate No. 2".
  - 2. The Mayor, with the advice and consent of the Township Committee, shall appoint a full membership, including regular and alternate members, within 60 days from the effective date of this chapter.
- B. Terms.
  - 1. The terms of the members first appointed shall be so determined that, to the greatest practicable extent, the expiration of the terms shall be distributed, in case of regular members, evenly over the first four years after their appointment, and in the case of alternate members, evenly over the first two years after their appointment, provided that the initial term of no regular member shall exceed four years, and that the initial term of no alternate member shall exceed two years.
  - 2. Thereafter, the term of a regular member shall be four years; and the term of an alternate member shall be two years.
  - 3. All terms shall run from January 1 of the year in which the appointment was made.



- C. A vacancy occurring otherwise than by expiration of a term shall be filled within 60 days for the unexpired term only.
- D. No more than two members of the Historic Preservation Commission shall simultaneously serve as a member on the Planning Board. Notwithstanding any other provision herein, the term of any member of the Commission who is a member of the Planning Board shall not exceed such person's term of membership on the Planning Board.
- E. Any member of the Commission after public hearing, if he or she requests such public hearing, may be removed by the Mayor and Township Committee for cause.
- F. Quorum
  - 1. The presence of three members at a meeting shall constitute a quorum;
  - 2. A quorum may include alternate members filling vacancies of regular members due to absence or disqualifications.
  - 3. A majority vote of those present and voting shall prevail and shall be sufficient to grant or deny a Certificate of Appropriateness, except for a CA regarding a demolition permit.
    - a. A super majority of four of the five appointed membership shall be required to recommend a change or addition to a landmark or historic district or to grant a Certificate of Appropriateness regarding a demolition permit.

### **§ 3-9 Historic Preservation Commission Officers**

The Historic Preservation Commission shall annually elect a Chair and Vice-Chair from its members and select a Secretary, who may or may not be a member of the Historic Preservation Commission or a municipal employee. (See N.J.S.A. 40:55D-107c.) The terms of the elected officers shall run for a one-year period beginning in January of each year.

### **§ 3-10 Rules of the Commission**

- A. The Commission shall adopt written Bylaws/Guidelines 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.
- 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.
- D. 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.
- E. All action to grant, change or deny a Certificate of Appropriateness shall be by formal written resolution containing findings of fact and conclusions which may be adopted as a memorialization after the action has been taken.
- F. Within the limits of funds appropriated for the performance of its work, grants and gifts, the Commission may obtain the services of qualified persons to direct, advise and assist the Commission and may obtain the equipment, supplies and other material necessary to its effective operation.

- G. The Commission is empowered to seek advisory opinions and technical assistance from all Township employees on any matter within the Commission's jurisdiction.
- H. 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.

### **§ 3-11 Responsibilities of the Commission**

- A. Prepare surveys of specific districts and landmarks to determine if the landmark or district warrants designation as an "historic district" or "historic landmark" under this chapter, and, if so, prepare and adopt, pursuant to § 3-12 (Designation of Historic Landmarks and Historic Districts), a landmark designation list and map. The Commission shall be guided by the criteria used to determine whether the proposed landmark or historic district would be includable in the State or Federal Register of Historic Places or such other criteria identified in the surveying report. Within the limits of funds available from the Township or grants, the Commission may hire such experts as it deems necessary to assist in its work.
- B. 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. 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. Advise the owners of property included on such proposed landmark designation list and proposed landmarks or historic district map that such survey and study has been made and provide such owners with any reports or any written findings and conclusions of such study, along with any maps and provide such owners with a copy of this chapter as provided in § 3-12 (Designation of Historic Landmarks and Historic Districts).
- E. Advise the owners of property included in such proposed landmark designation list, or proposed landmark or historic district map, of the administrative steps to be undertaken pursuant to this chapter before such landmark or historic district may be finally designated as such by ordinance, emphasizing the means and methods for such owners to present their views at hearings or by petition as to such designation.
- F. Identify, record and maintain a survey of all buildings, structures, sites, objects, improvements and districts of historical significance within the Township.
- G. Make recommendations to the Planning Board on creating an historic preservation element of the Master Plan and on the implications for preservation of historic landmarks and historic districts on 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.
- H. 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 Downe Township Master Plan.
- I. Prepare an annual report. Copies will be delivered to the Township Clerk, the Township Committee, and the New Jersey Historic Preservation Office. The annual report will also be available to the public upon request.
- J. Advise the Planning Board on applications for development pursuant to N.J.S.A. 40:55D-110.
- K. Review and render determinations regarding applications for Certificates of Appropriateness as set forth in this chapter.

- L. Advise the 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.
- M. 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 in the preparation and submission of any documents needed for certification of Downe as a certified local government under the National Historic Preservation Act.
- N. Monitor and recommend to the Township Committee the submission of any grants related to historic preservation.
- O. Increase public awareness of the value of historic, architectural and cultural preservation by developing and participating in public information programs.
- P. Carry out such other advisory, educational and informational functions as will promote historic preservation in Downe Township.

### § 3-12 Designation of Historic Landmarks and Historic Districts

- A. The Commission shall conduct, maintain and expand, when appropriate, a comprehensive survey of the Township to identify historic landmarks and historic districts that are worthy of protection and preservation.
- B. 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:
  - has a special character or special historical or aesthetic interest as part of the development, heritage, or cultural characteristic of the municipality, state, or nation, and
  - which has been designated as a landmark pursuant to the provisions of this chapter (See N.J.S.A. 40:55D-112), and
  - which have been determined to meet one or more of the following criteria:
    - a. Of particular historic significance to the Township by reflecting or exemplifying the broad cultural, political, economic, or social history of the nation, state or community; or
    - b. Associated with the historic personages important in national, state or local history; or
    - c. The site of an historic event which had significant effect on the development of the nation, state, or community; or
    - d. An embodiment of the distinctive characteristics of a type, period, or method of architecture or engineering; or
    - e. Representative of the work or works of a locally, regionally, or nationally important or recognized builder, designer, artist, or architect; or
    - f. Significant for containing elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
    - g. Able or likely to yield information important in prehistory or history.

### § 3-13 Procedures for Designation

- A. Proposals to designate a property as historic pursuant to this article may be made by a homeowner, resident, the Township Committee, the Historic Commission, or the Planning Board, in accordance with the following procedures:
  1. 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:
    - a. A photograph of the proposed landmark; and
    - b. A copy of the municipal tax map showing the property on which the proposed landmark is located; and
    - c. A physical description of the proposed landmark; and
    - d. A statement of significance.
  2. Nomination report for a historic district. A nomination to propose an historic district shall include the following information which addresses the criteria for designation as set forth herein:
    - a. A building-by-building inventory of all properties within the district identifying key, contributing, harmonizing, non-contributing, or intrusions; and
    - b. A photograph of each property and building within the district; and

- c. A copy of the municipal tax map of the district showing boundaries; and
  - d. A physical description of the proposed district; and
  - e. A statement of significance.
- B. 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.
- C. 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.
- D. 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.
- E. 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 Township Hall.
- F. 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.
- G. Commission report. If the proposed nomination is approved by the Commission, then the Commission shall forward a report to the Planning Board, containing a statement of the Commission's recommendations and the reasons for the proposed designations considered at the hearing, including a list and map of properties approved for designation.
- H. The Planning Board shall consider the report and refer it to the Township Committee within 90 days.
- I. Final designation. As soon as possible after its receipt of the report from the Planning Board, the Township Committee shall act upon the proposed designation list and/or map.
1. It may approve, reject or modify by ordinance the designation recommendations made by the Planning Board.
  2. In the event that the Township Committee votes to reject or modify any Planning Board recommendations for a proposed designation, the Committee shall record in its minutes the reasons for not following such recommendation.
  3. 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 an official protest has been filed with the Township Clerk. A proposed designation shall then require a four members positive vote.
- J. Public notice of designation.
1. 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.
  2. A certificate or letter of designation shall be sent to the owner(s) of record.

- K. 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.
- L. Incorporation of designated landmarks into Township records.
  - 1. A Township designation of an historic landmark or an historic district, shall supplement, rather than supersede, the existing zoning district in which the affected historic landmark or historic district is located.
  - 2. Immediately after designation, the designation, list and/or map shall be incorporated into the Master Plan and this Chapter's Appendix C as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
  - 3. Designated properties shall also be noted as such on the records for those properties as maintained by the offices of the construction official, the tax assessor and the Township Clerk.
  - 4. Each tax/assessment search requested for a property located within an historic district shall note thereon the subject property is located in the specific Historic District.
- 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.

## **ARTICLE IV: CERTIFICATE OF APPROPRIATENESS**

### **§ 3-14 When Required**

- A. A Certificate of Appropriateness (or "CA") approved by the Historic 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:
  - 1. All changes in the exterior architectural appearance of any improvement within the historic district or of any historic landmark by addition, alteration or replacement;
  - 2. Any new construction on the exterior of an improvement in the historic district;
  - 3. Site plans or subdivisions affecting a historic landmark or an improvement within the historic district;
  - 4. Zoning variances affecting a historic landmark or an improvement within the historic district;
  - 5. Demolition of any building, structure, site, object or improvement;
  - 6. Relocation of a principal or accessory building, structure, site, object or improvement;
  - 7. Any addition to or new construction of a principal or accessory building, structure, site, object or improvement.

- B. Work associated with a development application requiring ultimate approval by the Planning Board is not exempt from this requirement to apply for a Certificate of Appropriateness.
- C. Application involves any activity which should also be the subject of an application for a Certificate of Appropriateness and, if it should, to inform both the Secretary of the Historic Preservation Commission and the applicant.

### **§ 3-15 When Not Required**

- A. A Certificate of Appropriateness shall not be required before a permit is issued by the zoning/construction 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 Historic Administrative Officer, 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 zoning/construction official 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, except for relocation or demolition.
- F. Work may be performed when a historic landmark requires immediate emergency repair to preserve the continued habitability of the landmark and/or the health and safety of its occupants or others and/or in the case of a sudden disaster.
  - a. Such emergency repairs may be performed, in accordance with building codes, without the necessity of first obtaining the Commission's review.
  - b. Under such circumstances, the repairs performed shall only be such that are necessary to maintain the habitability of the structure.
  - c. A request for the Commission's review shall be made as soon as possible and no additional work shall be performed upon the structure until an appropriate request for approval is made and obtained in accordance with the procedures set forth in § 3-18 (Procedures for Commission Review of Work on Historic Sites, Landmarks and within Historic Districts) below.

### **§ 3-16 Informational Meetings**

- A. 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 the Commission Administrative Officer to review any design proposals or related issues before making application.
- B. 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.

### **§ 3-17 Procedures for Review of Site Plans, Subdivisions and Variance Applications**

- A. Pursuant to N.J.S.A. 40:55D-110, the Planning Board shall refer to the Historic Preservation Commission every application for development submitted to it that involves development involving

historic landmarks or involves properties located within historic districts identified in the Township Master Plan or in any Township adopted designation, as updated by regular surveys.

1. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner.
  2. Failure to refer an application as required shall not invalidate any hearing or proceeding.
  3. 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 provide to the Planning Board concerning the proposed application.
- B. On all matters referred to the Historic Preservation Commission which require approval by the Planning Board, the decision of the Commission shall be advisory only.
1. 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.
  2. The Planning Board, 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.
1. It is in the public interest to retain a neighborhood's historic appearance by approving variances to normal yard requirements.
  2. 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, does not relieve the applicant of the requirement of obtaining a Certificate of Appropriateness from the Commission for those historic aspects of the work not addressed as part of an application for development.

### **§ 3-18 Procedures for Commission Review of Work on Historic Sites, Landmarks and within Historic Districts**

- A. No work shall be performed on any historic landmark, historic landmark site or on any building, structure, object, site 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 that no Certificate of Appropriateness is necessary.
- B. All applicants shall complete and file an application form (see Appendix A), as adopted by the Commission, not less than 28 days before the Commission meeting at which the application is to be initially considered. A copy of that application shall simultaneously be submitted to the Township Clerk.
  1. The Historic Commission Administrative Officer may waive this time requirement if, in his judgment, the application is of an emergent nature.
  2. The Historic Commission Administrative Officer shall in all cases be responsible for receiving and processing the application form and assuring that it is accompanied by the necessary supporting documents.
  3. The Historic Commission Administrative Officer shall review the application form and documents and classify the application in accordance with the scope of work for which approval is being sought.



- C. If the action for which the Certificate of Appropriateness is requested will substantially affect those characteristics of the historic site or district listed on the site or district's landmark designation, the Historic Commission Administrative Officer shall classify the application as a major application and follow the process as set forth in § 3-20 (Major Application Review Procedures) below.
- D. If the action for which the Certificate of Appropriateness is requested will not substantially affect the building, structure or district, then the Historic Commission Administrative Officer shall classify the application as a minor application and be guided by the process as set forth in § 3-19 (Minor Work Application Review Process) below.

### **§ 3-19 Minor Work Application Review Process**

- A. Minor Work applications, as defined in this § 3-6, may be reviewed and approved by the Historic Preservation Commission without holding a public hearing.
- B. A minor work application shall require submittal of information consisting of:
  - 1. The application form (Appendix A to this chapter),
  - 2. A drawing/photo in sufficient detail to accurately depict the work proposed and adequate to provide the information required for issuance of a permit by the Township Construction Official/Zoning Officer.
- C. If the Historic Commission finds the application appropriate, it shall issue a Certificate of Appropriateness to the Construction Official/Zoning Officer for said minor work.
- D. If the Historic Commission does not find the application appropriate, the application shall be scheduled for a public hearing before the full Commission/upon filing of a full major application that meets the submittal requirements of § 3-20 (Major Application Review Procedures).

### **§ 3-20 Major Application Review Procedures**

- A. A major work application shall require submittal of information consisting of:
  - 1. The application form (appended to this chapter as Appendix A),
  - 2. The items in the Historic Preservation Commission checklist appended to this Chapter as Appendix B.
- B. Requirements for a Complete Major Application
  - 1. An application for a Certificate of Appropriateness shall be accompanied by appropriate sketches, drawings, photographs, descriptions or other information as required by the Historic Preservation Advisory Commission Major application checklist. The information should include:
    - a. existing or prior conditions proposed to be altered, and
    - b. projected future appearance of the structure or site after alterations, additions, changes or new construction are complete.
    - c. Wherever possible, the application shall include both historical and contemporary photographs of the exterior of the landmarked site or structure.
  - 2. An application for demolition shall include historical and contemporary photographs of the exterior and interior of the building or structure in question, if possible.
- C. The Historic Preservation Commission shall hold a public hearing and make a decision on the application for Certificates of Appropriateness within 45 calendars following the referral of a complete application to the Commission by the Historic Commission Administrative Officer.
  - 1. This time may be extended upon the mutual agreement of the Commission and the applicant.

2. Should final action on an application not take place within the prescribed or agreed-upon time frame, the application shall be deemed to have been approved.
  3. 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 Chapter.
- D. Form of recommendations issued for major applications that come before the Commission.
1. The Commission shall recommend either the approval, approval with conditions or denial of the application for a Certificate of Appropriateness.
  2. The Commission shall explain in writing the reasons for its recommendation.
    - a. The Commission shall provide information sufficient to instruct the Historic Commission Administrative Officer on how to guide the applicant in meeting the expectations of the Commission's recommendations.
    - b. The explanation shall focus the effect of the proposed undertaking on the landmark's historic and/or architectural significance as set forth in the criteria of this chapter.
- E. The Commission shall clearly set forth its decision with findings of fact and conclusions in reference to each application.
1. The Historic Preservation Commission may advise the applicant and make recommendations in regard to the appropriateness of the proposed action and may grant approval upon such conditions as it deems appropriate within the intent, purposes and standards of this chapter and as may be contained in the "The Secretary of the Interior's Standards for the Treatment of Historic Properties as the Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings."
  2. If an application is approved, the Historic Preservation Commission shall grant the issuance of a Certificate of Appropriateness and, through the Administrative Officer, provide the same to the applicant along with a certified copy of the resolution.
  3. In any instance where the Commission disapproves an application, the Commission, through the Historic Commission Administrative Officer, shall notify the applicant with a certified copy of the resolution of that determination. A summary of the Commission's action, with the full language of the resolution, shall be published in the official minutes of the Commission, and be made available on request.
  4. All decisions of the Historic Preservation Commission, whether approval, approval with conditions or denial, shall be published in the official newspaper of record as a summary of the Commission's action.

- F. A Certificate of Appropriateness shall be valid for a period of two calendar years from the date it is issued by the Commission's Administrative Officer.

### **§ 3-21 Standards and Criteria for Review**

- 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.
- B. 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 the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building*. These standards are adopted as the Commission's design criteria and guidelines pursuant to N.J.S.A. 40:55D-65.1.
- C. 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.
- D. 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.

1. In the case of a major application, where the Commission is persuaded by visual evidence, its own or the applicant's, that the proposed addition, removal or alteration is not sufficiently visible from any viewing-point normally accessible to the public to adversely impact the historic viewscape, the Commission may by majority vote of the full authorized membership grant a Certificate of Appropriateness on that basis.

#### E. Criteria for Review

1. The following criteria shall be given consideration when the Commission reviews historic sites/landmarks:
  - a. The historical value of the landscape or streetscape;
  - b. The historical value of a building, structure, site, object, improvement or district and its relationship to property of the surrounding area;
  - c. 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 § 3-21D above, the following factors shall be considered in relation to its setting and context, including:
    - i. Height.
    - ii. Massing.
    - iii. Proportion of the width and height of the building's facades.
    - iv. Proportion of openings within the building.
    - v. Rhythm of spacing of buildings on streets.
    - vi. Rhythm of solids to voids on facades fronting on public places.
    - vii. Relationship of materials and texture.
    - viii. Construction in a range of design and style options which are consistent with neighboring buildings in the historic district.
2. For non-contributing structures/sites, only the criteria below shall be considered by the Commission.
  - a. 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:
    - i. All exterior elevations, including the roof, must be maintained and new construction must be compatible with existing structures, districts and surrounding areas.
    - ii. In-kind or similarly compatible building materials must be utilized.

### § 3-22 Demolitions and Relocations

#### A. Criteria

1. 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 importance to the Township and the extent to which its historical or architectural value is such that its removal would be detrimental to the public interest.
  - b. Its historic, architectural and aesthetic significance

- c. Its status with regard to the New Jersey and National Registers of Historic Places; i.e., whether it is individually listed or eligible to be listed; whether it is a part of a registered or eligible historic district, and whether, within that district, it is a key, contributing or noncontributing building.
- d. Its current and potential use for those purposes currently permitted by the zoning ordinance or for the use proposed.
- e. If within an historic district, the probable impact of its removal upon the ambiance of the historic district.
- f. Whether the site contains any extant archaeological resources.
- g. Whether the historic landmark represents the last or best remaining example of its kind in the Township that possesses research potential or public education values.
- h. Whether the historic landmark can be preserved by protecting its location from disturbance.
- i. 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.
- j. 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.

### **§ 3-23 Effect of approval/denial of Certificate of Appropriateness**

- A. The work authorized by the Certificate of Appropriateness must be initiated within one year from the date that the certificate is granted.
  - 1. If a construction permit is required for such work, the Certificate of Appropriateness shall be valid for the life of the construction permit and any extensions thereof.
  - 2. For the purposes of this section, a Certificate of Appropriateness shall be deemed invalid if the work ceases for a period of six months after commencement of work. Reasonable extensions may be granted by the Historic District Commission based upon appropriate persuasive evidence.
- B. If the Historic Preservation Commission disapproves an application for demolition of an historic landmark or a building, structure, site, object or improvement located in an historic district, the owner may appeal the decision in Superior Court.
- C. An applicant for a Certificate of Appropriateness who is dissatisfied with the actions of the Historic Administrative Officer or Commission in denying the Certificate of Appropriateness or in issuing the Certificate of Appropriateness with objectionable conditions may appeal that action to the Combined Planning Board within 30 calendar days from the date of receiving the written decision.
  - 1. This right of appeal is limited to the applicant only.
  - 2. Appeals should be made under N.J.S.A. 40:55D-70(a).

## **ARTICLE V: VIOLATIONS, PENALTIES AND INJUNCTIVE RELIEF**

### **§ 3-24 Violations**

- A. If any person shall undertake any construction activity on an historic landmark or on a 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.

- B. After learning of the violation, the Historic Administrative Officer shall personally serve a notice describing the violation in detail upon the owner of the lot whereon the violation is occurring.
  - 1. If the owner cannot be personally served within the Township 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.
- C. 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 § 3-19 (Minor Work Application Review Process) or § 3-20 (Major Application Review Procedures), as appropriate, and the notice of violation shall advise the violator of such.
- D. Upon receipt of the violator's application, the Commission shall conduct a review of the said application and review in the same manner as prescribed for regular applications pursuant to § 3-18 (Procedures for Commission Review of Work on Historic Sites, Landmarks and within Historic Districts) of this Chapter.
- E. 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/or Administrative Officer relating to the said application is pending before the Planning Board or any court; and
  - 4. All appeal periods relating to the said application have expired.
- F. Outcomes
  - 1. 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.
  - 2. 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.
  - 3. 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 below.
- G. If a violation involves ongoing unauthorized construction or demolition work, the Construction Official/Zoning Officer shall immediately issue a stop construction order in accordance with the Uniform Construction Code, N.J.S.A. 52:27D-119 et seq.
- 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 Zoning Officer shall cause to be issued a summons and complaint, returnable in Municipal Court, charging violation of this article.
  - 1. Each separate day that the violation exists shall be deemed to be a new and separate violation of this article.

### **§ 3-25 Penalties**

- A. 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 fifty dollars (\$50.00);
  - 2. For each day between 11 and 25 days: a fine of up to one hundred (\$100.00) dollars per violation or in the maximum amount then in effect pursuant to state statute; and
  - 3. For each day beyond 25 days: a fine of up to five hundred (\$500.00) dollars per violation or in the maximum amount then in effect pursuant to state statute
- 1. In the case of a demolition without a Certificate of Appropriateness therefor, a violation shall be punishable by a fine not to exceed \$2,000 and/or up to 90 days in jail, or both, or by a period of community service not exceeding 90 days.

In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the Historic 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 Zoning 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 below.
- 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 Zoning Officer is empowered to apply to the Superior Court of New Jersey for injunctive relief as is necessary to prevent such actions.

## **ARTICLE VII PREVENTITIVE MAINTENANCE, NOTICE OF VIOLATIONS**

### **§ 3-26 Maintenance**

- A. Recognizing the need for preventive maintenance to ensure the continued useful life of landmarks and improvements in historic districts, the Township hereby declares that Code enforcement vis-a-vis landmarks and improvements in historic district is a high priority.
- B. 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 Historic 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:
  - 1. 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

2. Stating that, if the owner does not take all necessary remedial action within 60 days or such extensions as the Historic Administrative Officer may enter upon the property and arrange the abatement such violations and cause the cost thereof to become a lien on the property.
- C. Upon receipt of such notice, the owner may, within 20 days after such receipt, notify the Historic Administrative Officer of his or her intentions to have a hearing as to the allegations and estimates set forth in the notice.
1. Such hearing shall be conducted by the Historic Preservation Advisory Commission and shall, so far as possible, be a formal adversary proceeding in which the Historic Administrative Officer shall establish the matters alleged in the notice by a preponderance of the evidence.
  2. If a hearing is requested, the Historic 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. If the owner does not request a hearing, the findings of the Historic Administrative Officer set forth in the notice issued in § 3-26 shall be binding, and the Historic Administrative Officer may take such necessary action as granted by the provisions of this article.
3. If the owner does not comply with the findings of the Historic Administrative Officer, the Historic 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.
  4. The Historic 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.
  5. 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.

## **ARTICLE VII: INTERPRETIVE STATEMENT**

- A. Nothing contained within this article shall supersede the powers of other local legislative or regulatory bodies or relieve any property owner of complying with the requirements of any other state statutes or municipal ordinances or regulations.
- B. In the event of any inconsistency, ambiguity or overlapping of requirements between the provisions of this article and any other requirements enforced by the municipality, the more restrictive shall apply, to the effect that state and/or federal legislation has not preempted the municipality's power to enforce more stringent standards.
- C. These article requirements should not be viewed as requiring or prohibiting the use of any particular architectural style. The purpose is to honor and preserve the Downe Township's past in a manner that keeps it compatible with and relevant to the present. To that end, new construction in or near an historic building, structure, object or site should not necessarily duplicate the style of the past but should be compatible with and not detract from the historic building, structure, site, object, neighborhood and its environment.

**Section One. Repealer.** All former Ordinances of the Township of Downe which are in conflict with the provisions contained in this Ordinance are hereby repealed upon the adoption of this Ordinance.



**Section Two. Severability.** If any part or parts of this Ordinance are held to be invalid for any reason such decision shall not affect the validity of the remaining portions of this Ordinance.

**Section Three.** This Ordinance shall take effect after final approval and publication as required by law.

DATE: \_\_\_\_\_

TOWNSHIP OF DOWNE

BY: \_\_\_\_\_  
Robert Campbell, Mayor

\_\_\_\_\_  
Nadine E. Lockley, Municipal Clerk

STATE OF NEW JERSEY :  
:SS  
COUNTY OF CUMBERLAND :

Please take notice that the above Ordinance was adopted after a Public Hearing at a meeting of the Downe Township Committee on the 9th day of March, 2020 at the Downe Township Municipal Building in Newport, New Jersey.

ATTEST

\_\_\_\_\_  
Nadine E. Lockley, Municipal Clerk



**TOWNSHIP OF DOWNE  
CUMBERLAND COUNTY, NEW JERSEY  
RECORD FOR ORDINANCE # 2020-5**

**Introduce Ordinance on First Reading**

**Motion: BART**

**Second: BURT**

Introduce Ordinance / First Reading Date: February 10, 2020

Ordinance Published: February 14, 2020

Ordinance Posted: February 11, 2020

Public Hearing / Second Reading Date: March 9, 2020

ROLL CALL	YES	NO	ABSTAIN	ABSENT
Burt, S.	X			
Byrne, S.	X			
Rothman, M.	X			
Bart, E.	X			
Campbell, R.	X			

**Adoption of Ordinance**

**Motion: BYRNE**

**Second: BURT**

ROLL CALL	YES	NO	ABSTAIN	ABSENT
Burt, S.	X			
Byrne, S.	X			
Rothman, M.	X			
Bart, E.				X
Campbell, R.	x			

Final Adoption Date: MARCH 9, 2020

Notice of Final Passage Published: MARCH 13, 2020

Notice of Final Passage Posted: MARCH 10, 2020

\_\_\_\_\_ Date

\_\_\_\_\_ Nadine E. Lockley, Municipal Clerk