

LOCAL LAW NO. 1 OF 2008

HISTORIC PRESERVATION LAW

FOR THE VILLAGE OF SALEM, NEW YORK

Section 1: Purpose

The Board of Trustees of the Village of Salem (the “Board”) recognizes that the Village is known for unique historical, cultural, architectural, and archeological resources. It is a matter of Village public policy to preserve, enhance, and perpetuate these resources in order to promote and protect the prosperity, education, and general welfare of residents, businesses, and visitors.

This preservation law is designed to secure these goals:

- A. To protect, enhance, and perpetuate resources that contribute to the Village’s historical, cultural, social, economic, political, archeological, and architectural identity;
- B. To insure the harmonious, orderly, and efficient growth and development of the Village;
- C. To foster civic pride through the conservation of downtown and the neighborhoods;
- D. To stabilize the economy of the Village through the continued use, preservation, and revitalization of its resources;
- E. To promote the use of these resources for the education, pleasure, and welfare of the people of the Village of Salem;
- F. To protect and enhance the Village’s attractions for visitors and support and stimulate the businesses thereby provided;
- G. To provide a review process for the preservation and appropriate development of the Village’s resources;
- H. To recommend the acquisition of landmark structures by the Village of Salem, and;
- I. To recommend the donation of façade easements and development rights on property to the Village of Salem.

Section 2: Village of Salem Historic Preservation Commission

There is hereby created the Village of Salem Historic Preservation Commission.

All members of the Commission are appointed by the Board and shall serve at its will and pleasure. The Commission shall consist of five members. The initial appointment of members shall include two members having a term of three years, two members having a term of two years, and one member having a term of one year. Thereafter all appointments shall be for three years. Commission members shall be eligible for reappointment. All Commission members shall be residents of the Village or Town of Salem and shall have an interest in historic preservation. To the extent available in the Village of Salem, appointments shall, to the extent possible, include two resident property owners of the Salem Historic District, one architect experienced in historic preservation, and one historian. If informed, a non-voting representative of the Village Zoning Board of Appeals may attend commission meetings where applications involve zoning issues. The Board shall document a “good faith effort” to locate qualified members to serve on the Commission.

Section 3: Powers of the Village of Salem Historic Preservation Commission

- A. The Commission shall have the ability to promulgate rules, regulations, and design guidelines as necessary to carry out the duties of the Commission.
- B. The Commission shall conduct a continuing study and survey of historic resources within the Village of Salem. This shall be done in cooperation with the Village of Salem Historian, who serves as keeper of the surveys.
- C. The Commission shall adopt criteria for the identification and delineation and designation of historic districts and landmarks. It shall propose to the Board the designation of new or the expansion of existing historic districts and landmarks for ratification.
- D. The Commission shall review applications proposing alteration, construction, demolition, or relocation of any individual landmark or resource located in a historic district. The Commission shall grant or deny certificates of appropriateness (within the rules of Village zoning and the guidelines of the Commission). The Commission may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.
- E. The Commission, subject to the approval of the Board, is authorized to apply for, receive, hold, and spend funds from private and public sources to promote the preservation of landmarks and historic districts within the Village.
- F. The Commission shall increase public awareness of the value of historic, cultural, and architectural preservation by developing and presenting public education programs.
- G. The Commission, subject to the approval of the Board, is authorized to employ professional consultants necessary to carry out its duties.
- H. The Commission is authorized, solely in performance of its official duties and only at reasonable times, and with permission of the property owner, to enter upon private land for the

examination or survey thereof. No member or agent of the Commission shall enter private dwellings or structures without the consent of the owner or occupant thereof.

I. The Commission shall recommend that the Board accept donation of facade easements and development rights, and can also recommend to the Board the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this act;

J. The Commission shall recommend acquisition of a landmark structure by the Board when its preservation is essential to the purposes of this ordinance and where private preservation is not feasible.

Section 4: Rules of Procedure for the Village of Salem Historic Preservation Commission

To fulfill the purposes of this ordinance:

A. Annually the Commission shall elect from its membership a chair, a vice-chair, and a secretary. If neither the chair nor the vice-chair attends a particular meeting, the remaining members shall select an acting chair.

B. The Commission shall meet at least once a month. The Board, the chair, or any two commission members may call a special meeting to consider an urgent matter.

C. A quorum for the transaction of business shall consist of three of the Commission's members, but not less than a majority of the membership may grant or deny a certificate of appropriateness.

D. The Commission shall keep minutes and records of all meetings, including voting records, attendance, resolutions, determinations, and decisions. All such material shall be a matter of public record and be filed with the Village Clerk. The Commission shall periodically provide the State Historic Preservation Officer with a report of its activities.

Section 5: Designation of Historic Districts or Landmarks

A. In addition to the Salem National Register Historic District, the Board may establish historic districts and landmarks within the area of its jurisdiction. The Commission may designate/recommend for designation an individual property as a landmark if it:

1. Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or
2. Is identified with historic personages; or
3. Embodies the distinguishing characteristics of an architectural style; or
4. Is the work of a designer whose work has significantly influenced an age; or

5. Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.

B. The Commission may designate/recommend for designation a group of properties as a historic district if it:

1. Contains properties which meet one or more of the criteria for designation of a landmark in Section 5A; and
2. By reason of possessing such qualities, it constitutes a distinct section of the Village.

C. Building on the National Register Historic District survey, the Commission shall undertake ongoing surveys of the Village's historic resources, consisting of an inventory of properties, following the format of the State Historic Preservation Office, within the Village of Salem. The location of individual resources or the boundaries of historic districts must be specified in detail and a copy shall be filed with the Village Clerk for public inspection.

D. A resource or resources may be nominated for designation upon a motion of three members of the Commission or by an organization with interest in a property or by the owner of the property being nominated. A nomination shall contain information specified by the Commission. If the Commission recommends a nomination to the Village for designation, it should include a statement of significance, a map of the proposed boundaries, and written justification of the boundaries.

E. The Board shall conduct a public hearing, after notice, to discuss the proposed nomination and boundaries thereof. A timely notice of the hearing must be specifically sent to the owners of the properties proposed for designation. The Commission may present documentary evidence at the hearing which will become part of the record regarding the importance of the proposed resource or resources. Within 60 days, the Board shall adopt the proposed nomination, reject it entirely, or modify it.

F. The Commission shall forward notice of each property designated for filing with the Village Clerk and a building code enforcement officer as appointed by the Board.

Section 6: Certificates of Appropriateness

No person shall carry out exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property [activity requiring a building permit] within the historic district without first completing an application for a certificate of appropriateness, by which such work is approved by the Historic Preservation Commission. Likewise, no construction that affects the appearance and cohesiveness of a historic resource shall be undertaken without a certificate of appropriateness from the Commission.

- A. The Commission shall serve as a review body with the power to approve or deny applications for certificates of appropriateness.
- B. In approving and denying applications for certificates of appropriateness, the Commission shall be guided by the criteria in Section 7, as well as any guidelines adopted under the powers given to the Commission in Section 3.
- C. A certificate of appropriateness shall not be required for ordinary repair or maintenance of any resource.
- D. A certificate of appropriateness shall not be required for removal of dangerous conditions if ordered by a qualified public official.
- E. The Commission shall only consider portions of structures visible from a public road.
- F. All decisions of the Commission shall be in writing and shall state the findings of the Commission and its recommendations with the reasons for them.

Section 7: Criteria for Issuance of a Certificate of Appropriateness

The Commission shall base its decision to grant or deny certificates of appropriateness on these factors:

- A. The architectural design of an existing building, structure, or appurtenance and the proposed alteration;
- B. The historical, cultural, architectural, and archeological significance of the resource;
- C. The condition of the resource;
- D. New materials may be appropriate if the historic materials are either difficult to repair, locate, or reproduce and then only if the new materials match the historic in appearance and other visual qualities;
- E. The relationship of the above concerns to and their effect upon the immediate surroundings, and if within a historic district, upon the character and integrity of the district as a whole;
- F. Properties which contribute to the character of a historic district shall be retained, with their historic features altered as little as possible;
- G. Any alteration of existing properties shall be compatible with their historic character as well as the surrounding district;
- H. New construction shall be compatible with the district in which it is located.
- I. In applying the concept of compatibility, the Commission shall consider:

1. The design, character, and appropriateness of the proposed alteration or new construction to the property;
2. The scale of the proposed alteration or new construction in relation to the property, surrounding properties, and the Village;
3. The texture, materials, and relation to similar features in comparable properties in the village;
4. The visual compatibility with surrounding properties, including proportion of the property's front façade, proportion and arrangement of windows and openings within the façade, roof shape, and the rhythm of spacing of the streetscape, including setback.

Section 8: Certificate of Appropriateness Application Procedure

The Village of Salem shall issue no building permit that affects a designated resource without a certificate of appropriateness from the Historic Review Commission. Thus, prior to the commencement of work requiring a certificate of appropriateness, the owner shall be informed by the Village that he or she needs to obtain the certificate.

- A. The application shall contain:
 1. Name, address, telephone number of applicant;
 2. Location and photographs of property;
 3. If available, elevation drawings of proposed changes;
 4. If available, perspective drawings;
 5. Samples of materials to be used;
 6. If the proposal includes signs or lettering, visuals showing lettering, dimensions, location, and method of illumination;
 7. Other information that the Commission may deem necessary to visualize the proposed work.

- B. The certificate of appropriateness required by this ordinance shall be in addition to and not in lieu of a building permit, variance, or other permits required by the Village.

C. The Historic Preservation Commission, upon receipt of the completed application, shall inform the applicant of the time and place of the Commission's application review. The applicant shall have the right to present any relevant evidence in support of the application.

D. Based on the information presented at the application review, the Commission, if it chooses, may set a date and time for a public hearing on the application. At that time an opportunity will be provided for proponents and opponents of the application to present their views.

E. The Commission shall have the right to develop guidelines to suggest modifications to enable the applicant to meet the requirements of the Commission.

F. Within 30 days after the application review, or after a public hearing if held, the Commission shall act upon the findings, either approving with modifications or denying. Evidence of approval of the application shall be a certificate of appropriateness issued by the Commission, and whatever its decision, notice in writing shall be given to the applicant and a copy filed with the Village Clerk for public inspection.

G. Certificates of appropriateness shall be valid for 12 months, after which the owner must reapply if he or she still wishes to undertake work on the property.

Section 9: Hardship Criteria and Application for Alteration or Demolition

A. An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship.

B. To prove hardship in case of demolition, the applicant shall establish that:

1. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
2. The property cannot be adapted for another use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
3. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

C. Hardship Application: After written notification from the Commission of denial of a certificate of appropriateness, an applicant may begin the hardship process. The Commission must find that a hardship exists before a building or demolition permit shall be issued.

1. The Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.

2. The applicant shall consult in good faith with the Commission and interested parties in a diligent effort to seek an alternative that will result in the preservation of the property.

3. Decisions of the Commission shall be in writing and a copy filed with the Village Clerk for public inspection. If the application is granted, the Commission shall approve only such work as is necessary to alleviate the hardship.

Section 10: Demolition by Neglect

No owner of any designated resource within a preservation district or such persons who may have legal control thereof shall allow a property to fall into disrepair, decay, deterioration, and unreasonable structural unsoundness. Such conditions produce a detrimental effect upon the character of a historic district as a whole and the life and character of the property itself.

A. Examples of such deterioration include:

1. Deterioration of exterior walls or other vertical supports;
2. Deterioration of roofs or other horizontal members;
3. Deterioration of exterior chimneys;
4. Deterioration or crumbling of exterior stucco or mortar;
5. Ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors;
6. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for public safety.

B. The Commission recommends to the Board that they exercise the powers provided in the Structural Safety Law of 1980 on an annual basis. (A copy of the law is attached.)

Section 11: Appeals

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

Section 12: Enforcement

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of a code enforcement officer to inspect periodically any such work to assure compliance. In the event work is found not to be in accordance with the certificate of appropriateness, or upon notification of such fact by the Historic Preservation Commission, a code enforcement officer shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

Section 13: Violations

Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair is in violation of this ordinance. Any action to enforce this subsection shall be brought by the Village attorney, as instructed by the Board. Persons, firms, or corporations convicted in a court of law of violating any provision of this law shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction each violation shall be punishable by a fine of not more than \$250 per day. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

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