

CHAPTER 157: HISTORIC PRESERVATION

Section

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GENERAL PROVISIONS

§ 157.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALTERATION. A material or color change in the external architectural features of any structure within an historic district.

CONSERVATION DISTRICT. Pursuant to IC 36-7-11-19, the provision that a district may be created which is called a **CONSERVATION DISTRICT**, the second phase of which is the conversion to historic district status, if the Town Council decides, after the conservation district has been in effect for three years, to enact an ordinance to elevate the district to historic district status. Regulation in a conservation district is less stringent than in an historic district. In a conservation district, a certificate of appropriateness must be granted for:

(1) The demolition of any

(2) The moving of any building;

(3) Any new construction of a principal building or accessory building or structure subject to view from a public way.

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DEMOLITION. The complete or substantial removal of any historic structure or any structure which is located within an historic district or conservation district.

(3) The Town Plan Commission;

DESIGN GUIDELINES. Criteria, locally developed, which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

ECONOMIC HARDSHIP. Established when a preponderance of evidence establishes that the property in question cannot obtain a reasonable economic return or be put to any economically beneficial use.

FAIR MARKET VALUE. The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

HISTORIC DISTRICT. A single building, structure, object, or site or a concentration of buildings, structures, objects, spaces, or sites designated by ordinance adopted under this chapter. Property not so designated will not be considered an historic district within the terms of this chapter.

HISTORIC PRESERVATION AND PROTECTION DISTRICT ORDINANCE. This chapter.

INTERESTED PARTY. One or any of the following:

(1) The Town Council
President;

(2) The Town Council;

(4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this chapter;

(5) An owner or occupant of a property located in an historic district established by an ordinance adopted under this chapter;

(6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors;

(7) The state historic preservation officer under IC 14-3-3.4-10.

PERSON. Includes a firm, a partnership, or a corporation, as well as an individual.

PRIMARY AREA. The principal area of historic and/or architectural significance within an historic district.

RATINGS.

(1) **OUTSTANDING (O).** The **O** rating means that the property has sufficient historic or architectural significance that it is already listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.

(2) **NOTABLE (N).** The **N** rating means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.

(3) **CONTRIBUTING (C).** The **C** rating means the property is at least forty years old, but does not meet the criteria of an **O** or **N** rating. Such resources are important to the density or continuity of the area's historic fabric. Contributing structures can be listed on the National Register only as part of an historic district.

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(4) **NON-CONTRIBUTING (NC).** Property rated **NC** is not included in an inventory unless it is located within the boundaries of an historic district. Such properties may be less than 50 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for the National Register.

REASONABLE RETURN. A measure of the economic return that is, or can be, earned on the fair market value of a property, and that demonstrates that the owner has not been deprived of all economically beneficial or productive use of the property.

ROUTINE MAINTENANCE. Work which would not require a building permit, and any change that is not construction, removal or alteration and for

which no certificate of appropriateness is required.

SECONDARY AREA. An area in an historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

STREETSCAPE. Appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e.g., street lamps, trash receptacles, benches, and the like), use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

VISUAL COMPATIBILITY. Those elements of design that meet the standards set out in § 157.40(B) of this chapter.
(Ord. 2005-05, passed 4-25-05)

HISTORIC PRESERVATION COMMISSION

§ 157.10 COMMISSION ESTABLISHED.

Pursuant to IC 36-7-11, there is hereby established an historic district board of review to be known as the Town of Lowell Historic Preservation Commission (hereinafter referred to as "LHPC" or "the Commission").
(Ord. 2005-05, passed 4-25-05)

§ 157.11 STAFFING.

The staff of the Lowell Building Department shall serve as staff to the Commission at the Commission's discretion. Each official of the town who has responsibility for building inspection, planning or zoning shall provide technical, administrative or clerical assistance when requested by the Commission.
(Ord. 2005-05, passed 4-25-05)

§ 157.12 COMPOSITION.

The Commission shall consist of five voting members who must be residents of the town. All members shall be appointed by the Town Council President subject to the approval of the Town Council. All members shall be interested in the preservation and development of historic buildings and areas and each shall serve at the pleasure of the Town Council President as follows:

(A) The membership shall include individuals who demonstrate expertise or interest in historic preservation activities. To the extent available to the community, the Commission shall include professional members from the disciplines of architecture, history, architectural history, preservation planning, archaeology, or other historic preservation-related disciplines, such as urban planning, American studies, art history, American civilization, cultural geography or cultural anthropology.

(B) Nonvoting, advisory member(s) may be appointed to this Commission by the Town Council President. Such a member shall have recognized expertise in the field of historic preservation. The term of the advisory members shall be for three years.

(C) *Terms of office.* The terms of the original voting Commission members shall be staggered as follows: Two members for three-year terms, two members for two-year terms, and one member for a one-year term. Thereafter, voting members shall each serve for a term of three years, and all terms shall commence on January 1 and expire on December 31. A vacancy shall be filled through appointment by the Town Council President and approval of the Town Council only for the unexpired duration of the term.

(D) *Serve without compensation.* Members of the Commission shall serve without compensation, except for the reasonable expenses incurred in the performance of their duties. (Ord. 2005-05, passed 4-25-05; Am. Ord. 2005-25, passed 10-10-05)

§ 157.13 ORGANIZATION.

(A) *Commission Administrator.* The Lowell Building Director shall serve as the Administrator for the Commission. The Administrator shall provide staff assistance to the Commission, act as the Commission's secretary, and issue certificates of appropriateness as directed by the Commission.

(B) *Commission officers.* The Commission shall elect from its membership a chairman and vice chairman, who shall serve for one year and may be reelected.

(C) *Commission meetings.* The Commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the Commission in its rules. All meetings of the Commission, except executive sessions, shall be conducted in public, and a public record of the Commission resolutions, proceedings, and actions shall be kept and filed with the office of the Clerk-Treasurer.

(D) *Commission rules.* The Commission shall adopt rules consistent with this chapter for the regular transaction of all business. (Ord. 2005-05, passed 5-25-05)

§ 157.14 POWERS.

The Commission's powers and authority include but are not limited to the following:

(A) The Commission is the agency of town government responsible for developing and coordinating historic preservation activities. The Commission shall be concerned with those elements of development, redevelopment, rehabilitation and preservation that affect visual quality in or near the historic district. Areas of concern include, but are not limited to, viewsheds, landscapes and streetscapes of historic importance. The Commission may make recommendations to the Town Council concerning development rights, facade easements, the imposition of restrictions, and the negotiation of historic property contracts for the purpose of ensuring preservation.

(B) The Commission has the authority to receive funds in order to promote its stated mission.

(C) The Commission may not consider details of design, interior arrangement, or building features if those details, arrangements, or features are not subject to public view.

(D) The Commission may not make any requirement except for the purpose of preventing development, alteration, modifications or demolition in the historic district that would be incongruous with the historic district.

(E) The Commission shall conduct a survey, or may adopt existing surveys, to identify historic buildings, structures, places and sites located within the town.

(F) The Commission may promulgate standards for architectural review. These shall include local design guidelines to be published and made accessible to the general public.

(G) The Commission shall draw and submit to the Town Council, for its approval, a map or maps describing the boundaries of any historic district or conservation district. The Commission shall issue a report to the Town Council based upon its survey, identifying and validating the significance of the property or district according to this chapter.

(H) The Commission may issue certificates of appropriateness for any actions required by this chapter.

(I) The Commission may adopt rules consistent with IC 36-7-11 designating situations not requiring a certificate of appropriateness under this chapter.
(Ord. 2005-05, passed 4-25-05)

§ 157.15 PURPOSE.

(A) The purpose of historic preservation and protection is:

- (1) To promote the educational,

(D) It is the intention of the town through this chapter to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, and neighborhoods which impart a distinct aesthetic quality to the town and serve as visible reminders of its historic heritage.
(Ord. 2005-05, passed 4-25-05)

HISTORIC DISTRICTS AND CONSERVATION DISTRICTS

§ 157.25 DISTRICTS ESTABLISHED.

(A) *Initiating an historic district recommendation.* All recommendations for establishment of an historic district shall be in the form of a written report and must be based on the criteria outlined in this chapter. A recommendation for establishing an historic district may be initiated from either of the following two sources:

cultural and general welfare of the citizens of Lowell and insure the harmonious and orderly growth and development of the municipality;

- (2) To maintain established residential neighborhoods in danger of having their distinctiveness destroyed;

- (3) To enhance property values and attract new residents;

- (4) To ensure the viability of the traditional downtown area and to enhance tourism.

(B) It is deemed essential by the town that qualities relating to its history and a harmonious outward appearance of its structures be preserved.

(C) This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and insurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design.

- (1) Based on its survey, the Commission may draw and submit historic district maps for Town Council approval.

- (2) Owners of property in fee simple wishing to establish an historic district which includes their property may petition the Commission to consider drawing and submitting a map of such a district to the Town Council for approval. The Commission may establish criteria in its rules to be met before considering such a petition. The Commission shall determine its recommendation within 90 days of receipt of a petition to establish an historic district.

(B) The Commission may recommend, and the Town Council may provide, that the establishment of an historic district shall occur in two phases.

- (1) *Phase One - conservation district.* Under the first phase, to be called a

conservation district, a certificate of appropriateness is required for the demolition of any building; the moving of any building; and any new construction of

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a principal building or accessory building, or structure subject to view from a public way.

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(2) *Phase Two - historic district.* follows:

After a conservation district has been in effect for three years, the Town Council shall determine whether or not to pass an ordinance to elevate the district to historic district status.

(3) Once established a conservation district shall continue, unless removed by ordinance.

(C) *Commission preparation of historic district maps.* In order to establish an historic district, the Commission shall first prepare a map describing the district in accordance with the following:

(1) The map shall be based on a survey conducted or adopted by the Commission which identifies historic buildings, structures, and places located within the town.

(2) A district may be limited to the boundaries of a property containing a single building, structure, or site.

(3) The map may divide the district into primary and secondary areas as follows:

(a) *Primary area.* The principal area of historic and architectural significance;

(b) *Secondary area.* An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

(4) The Commission shall classify and designate all buildings and structures within each proposed district as historic or non-historic. Historic buildings or sites may include those buildings or sites that meet the architecturally worthy criteria set out in § 157.27. The Commission shall further classify and designate all buildings and structures within a proposed historic district as

(a) Historic buildings and structures shall be further classified as outstanding, notable, or contributing, as established by the Indiana State Division of Historic Preservation and Archaeology and the local survey.

(b) All non-historic buildings shall be classified as non-contributing.

(5) A written report shall accompany all recommendations for designation before the Town Council, in accordance with the criteria for designation, stating the case for accepting the district. (Ord. 2005-05, passed 4-25-05)

§ 157.26 TOWN COUNCIL APPROVAL OF MAPS OF HISTORIC DISTRICTS.

Before an historic district or conservation district is established and the building classification takes effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved by an ordinance of the Town Council according to the following procedure:

(A) The Commission must take official

action deciding whether or not to submit a map to the Town Council for its approval.

(B) Prior to taking action at a meeting, the Commission shall hold a public hearing to allow public comment. A public hearing may be held separately or in conjunction with the meeting where action on the district is to occur.

(C) A public hearing held by the Commission for the purpose of allowing comment on a proposed historic district designation shall be preceded by public notice as set forth in IC 5-3-1-1 et seq. In addition, the Commission shall adopt rules that ensure that owners of all property within the proposed historic district, and all adjacent property owners, as determined by the most recent real estate tax lists, are forwarded written notice of the hearing on the proposed historic district.

(D) A written report shall accompany the map submitted to the Town Council validating the proposed district by addressing the criteria listed in § 157.27.

(E) The Town Council approves the map attached to Ord. 2009-22, marked Exhibit A, setting forth the boundaries of the Lowell Downtown Historic District. The District, as described in the map, runs along East Commercial Avenue from the 200 Block to the 700 Block and includes the two commercial buildings located at 108 and 110 Clark Street. The Town Council also approved the building classifications on the chart attached to Ord. 2009-22 marked Exhibit B. (Ord. 2005-05, passed 4-25-05; Am. Ord. 2009-22, passed 11-23-09)

§ 157.27 HISTORIC DISTRICT CRITERIA.

(A) An historic district shall include a building, groups of buildings, structure(s), site(s), monument(s), streetscape(s), or neighborhood(s) which meet at least one of the following criteria:

(1) *Historic.*

(a) Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the town, state, or nation; or is associated with a person who played a significant role in local, state, or national history; or

(b) Is the site of an historic event; or

(c) Exemplifies the cultural, political, economic, social, or historic heritage of the community.

(2) *Architecturally worthy.*

(a) Embodies distinguishing characteristics of an architectural or engineering type; or

(b) Is the work of a designer whose individual work has significantly influenced the development of the community; or

(c) Is the work of a designer of such prominence that such work gains its value from the designer's reputation; or

(d) Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or

(e) Contains any architectural style, detail, or other element in danger of being lost;

(f) Owing to its unique location or physical characteristics, represents an established and familiar visual feature of a neighborhood or the town; or

(g) Exemplifies the built environment in an era of history characterized by a distinctive architectural style.

(B) An ordinance approving the establishment of an historic district, may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness before a permit may be issued or work begun. (Ord. 2005-05, passed 4-25-05)

§ 157.28 RECORDING OF DESIGNATION.

(A) The boundaries of any historic district or conservation district shall be available in the office of the Building Department.

(B) The Commission shall maintain an official listing of all historic districts or sites within the Town of Lowell. Those established under previous law or ordinances shall be subject to this chapter but in all other respects shall remain unchanged, and shall be considered primary historic areas. (Ord. 2005-05, passed 4-25-05)

BUILDING REGULATIONS

§ 157.35 INTERIM PROTECTION.

(A) When submitting a map to the Town Council, the Commission may declare one or more

buildings or structures that are classified and designated as historic on the map to be under interim protection.

(B) Not more than two working days after declaring a building, structure, or site under interim protection under this section, the Commission shall, by personal delivery or first class mailing, provide or forward notice to the owner or occupant of the building structure or site with a written notice of the declaration. This written notice shall:

(1) Cite the authority of the Commission to put the building, structure or site under interim protection under this section;

(2) Explain the effect of putting the building, structure, or site under interim protection; and

(3) Indicate that the interim protection is temporary.

(C) A building or structure put under interim protection under division (A) above remains under interim protection until the map is:

(1) Submitted to; and

(2) Approved or rejected by ordinance of the Town Council.

(D) While a building, structure, or site is under interim protection:

(1) The building, structure, or site may not be demolished or moved; and

(2) The exterior appearance of the building, structure, or site may not be conspicuously changed by:

(a) Addition; or

(b) Reconstruction; or

(c) Alteration.

(E) The Commission may approve a certificate of appropriateness at any time during the interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in § 157.27 and any proposed preservation guidelines prepared for the building, structure, or site, but the certificate of appropriateness shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the Town Council.

(Ord. 2005-05, passed 4-25-05)

§ 157.36 APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.

(A) Certificate of appropriateness is required and must be issued by the Commission before a permit is issued for, or work is begun on, any of the following:

(1) Within all areas of an historic district:

(a) The demolition of any building;

(b) The moving of any building;

(c) A conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change if cited by individual ordinance; or

(d) Any new construction of a principal building or accessory building or structure subject to view from a public way.

(2) Within a primary area of an historic district:

(a) A change in walls and fences, or the construction of walls and fences along public ways; or

(b) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by

additions,

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reconstruction, alteration and/or maintenance involving exterior color change.

district: (3) Within a conservation

building; (a) The moving of any

any building; or (b) The demolition of

(c) Any new construction of a principal building or accessory building or structure subject to view from a public way.

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(B) *Application.* An application for a certificate of appropriateness shall be made in the office of the Building Department on the forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission and in effect at the time the application is filed.

(C) *Time limit.* The Commission may approve or deny any certificate of appropriateness for any action covered by this chapter. If an application for a certificate of appropriateness is approved by the Commission, or is not acted on by the Commission within 30 days after it is filed, a certificate of appropriateness shall be issued. The Commission may grant an extension of this 30-day limit if the applicant agrees to the extension.

(D) *Written findings.* The Commission shall report its findings and the reasons therefor in written form and supply the applicant with a copy of its report.

(E) *Building permits.* A copy of a valid certificate of appropriateness must be submitted with the application for each building or demolition permit; no building or demolition permit shall be issued unless a copy of the certificate of appropriateness is provided by the applicant with the application.

(F) *Commission review.* In any case where an applicant does not receive a certificate of appropriateness or otherwise feels aggrieved by an action of the Commission, the applicant shall have the right to a rehearing by the Commission upon submission of additional evidence or new information to the Commission along with a written request for rehearing within ten days of the date of the Commission's decision.

(G) *Criteria for considering effect of actions on historic buildings.* The Commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of an historic building or structure, or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs shall require:

(1) That work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

(2) In considering historic and architectural character, the Commission shall consider, among other things, the following:

(a) Purposes of this chapter;

(b) Historical and architectural value and significance of the building, structure, or appurtenance;

(c) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;

(d) The texture, material, color, style, and detailing of the building, structure or appurtenance;

(e) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;

(f) The relationship of buildings, structures, appurtenances, or architectural features similar to ones within the same historic district, including for primary areas, visual compatibility as defined in § 157.40(B); and

(g) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures. (Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

§ 157.37 CERTIFICATE OF APPROPRIATENESS.

(A) *Purpose.* The purpose of this section is to preserve historic buildings and structures that are important to the education, culture, traditions, and economic value of the community by affording the town, preservation organizations, and interested

persons the opportunity to acquire or arrange for the preservation of these buildings.

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(B) *Certificate of appropriateness required.* A certificate of appropriateness must be issued by the Commission before a demolition permit is issued by other agencies of the town and work is begun on the demolition of any building or structure in any area of an historic district or conservation district.

(C) Criteria for the Commission to consider in the case of a proposed demolition shall include the following:

- (1) Effect of the demolition on the character of the historic district;
- (2) State of deterioration, disrepair, and structural stability of the structure. The condition of the building resulting from neglect shall not be considered grounds for demolition;
- (3) Balance of the public interest in preserving the structure or the integrity of the district with the interest of the owner of the building or structure in the use and utilization of the property; and
- (4) Possible alternatives to demolition.

(D) *Factors for allowing demolition without certificate of appropriateness.* If the Commission denies the issuance of a certificate of appropriateness for the demolition of a building or structure, a demolition permit may be issued by other agencies and a building may be demolished, but only after the property owner has established all of the following:

- (1) The property owner must demonstrate to the Commission that an historic building or structure is incapable of earning a reasonable return on its value.
- (2) The property owner shall file with the Administrator documented evidence that a good faith effort is being made to sell or otherwise

dispose of such property to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore such property. Such documented evidence shall be provided at the property owner's expense and shall include:

- (a) Offering price;
- (b) Date the offer of sale began;
- (c) Name and address of listing real estate agent, if any;
- (d) A copy of an advertisement to run in the same manner as the notice in § 157.26(A)(3) which offers the property for sale; and
- (e) An appraisal of the property's fair market value by a licensed real estate appraiser.

(3) Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission classification on the approved map, of not less than 60 days nor more than one year. Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three times before demolition, with the first publication not more than 15 days after the application for a permit to demolish is filed, and the final publication at least 15 days before the date of the permit issuance.

(E) The period of time that a building is placed upon the open market shall be linked with its classification in the survey, as follows:

- (1) Outstanding: 9 months;
- (2) Notable: 6 months;

- (3) Contributing: 4 months;
- (4) Non-contributing: 3 months.

(F) The Commission may approve a certificate of appropriateness at any time during the

notice period described in division (E). If the certificate is approved, a demolition permit shall be issued without further delay, and demolition may proceed.
(Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

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§ 157.38 STAFF APPROVALS FOR MINOR CLASSIFICATIONS.

(A) The Commission may authorize the staff of the Commission, on behalf of the Commission, to grant or deny applications for a certificate of appropriateness if the Commission specifies the type of applications for minor classifications of work that the staff of the Commission is authorized to grant or deny.

(B) The staff shall not be authorized to grant or deny an application for a certificate of appropriateness for the following:

- (1) The demolition of a building, structure, or site.
- (2) The moving of a building or site.
- (3) The construction of an addition to a building or structure.
- (4) The construction of a new building or structure.

structure, or site, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof.

(D) A certificate of appropriateness is not required for the following:

- (1) Ordinary repairs and maintenance as defined in division (C) above;
- (2) Repairs and maintenance

(Ord. 2005-05, passed 4-25-05)

§ 157.39 MAINTENANCE STANDARDS.

(A) *Conformance with statute.* Historic buildings, structures, and sites shall be maintained and meet all applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

(B) Historic buildings shall be properly and timely maintained by the owner or occupant thereof and shall meet all applicable requirements established under statute and ordinance for buildings generally, including but not limited to the Lowell Municipal Code, Building Code, Property Maintenance Code and Zoning Code, where applicable.

(C) *Ordinary repairs and maintenance.* Nothing in this section shall be construed so as to prevent ordinary repairs and maintenance of any building,

designated by the Commission under its rules;

(3) Any special exception granted and approved by the Commission.
(Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

§ 157.40 DEVELOPMENT STANDARDS.

(A) *New construction, contemporary design, and non-historic buildings.*

- (1) For new construction,

contemporary design and non-historic buildings, the purpose of this section is to preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work.

(2) The construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area must be generally of a

design, form, proportion, mass configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district and with places to which it is visually related.

(B) *Criteria for visual compatibility within historic primary areas.* Within the primary area of an historic district, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or

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changed in color, must be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:

(1) *Height.* The height of proposed buildings must be visually compatible with adjacent buildings.

(2) *Proportion of building's front facade.* The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings and places to which it is visually related.

(3) *Proportion of openings within the facility.* The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

(4) *Relationship of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building must be visually compatible with buildings and places to which it is visually related.

(5) *Rhythm of spacing of buildings on streets.* The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the buildings, squares, and places to which it is visually related.

(6) *Rhythm of entrances and porch projections.* The relationship of entrances and

porch projections of a building to sidewalks must be visually compatible with the buildings and places to which it is visually related.

(7) *Relationship of materials, texture, and color.* The relationship of the materials, texture, and color of the facade of a building must be visually compatible with the predominant materials used in the buildings to which it is visually related.

(8) *Roof shapes.* The roof shape of a building must be visually compatible with the buildings to which it is visually related.

(9) *Walls of continuity.*

Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.

(10) *Size of the building.* The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related.

(11) *Directional expression of front elevation.* A building must be visually compatible with the buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.
(Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

§ 157.41 PRESERVATION OF HISTORICAL AND ARCHITECTURAL CHARACTER

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MANDATED.

(A) An historical building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

(B) An historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with division (A) above.
(Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

§ 157.42 PUBLIC SAFETY.

(A) Nothing in this section shall be construed to prevent the construction, reconstruction, alteration, or demolition of a structure, building, or any part thereof within an historic district when so ordered by an

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agency of government having jurisdiction thereof provided that the following actions occur first:

(1) The agency having jurisdiction shall have determined that a structure or building or any part thereof is immediately hazardous or dangerous to the health and safety of persons or to property.

(2) The agency issuing the order notifies the Commission Administrator of the intent to issue a demolition permit order and the Commission Administrator notifies the Commission of receipt of that intention.

(3) If demolition is ordered, the agency issuing such an order shall make every reasonable effort to secure the property or otherwise delay demolition until the Commission can act as designated in this chapter.

(4) Demolition so ordered may occur prior to Commission action only when an immediate hazard or danger to the health and safety of persons or property exists and no reasonable steps can be taken to afford protection to persons or properly affected.

(B) The Commission, on its own initiative, may file a petition with the Director of Community Development or other public safety or housing officer requesting that the officer proceed under the appropriate statute, ordinance or law to require correction of defects or repairs to any structure covered by this section so that the structure is preserved and protected in consonance with this chapter and the property maintenance and other applicable ordinances.

(1) The owner is required to

make necessary structural repairs to remain in compliance with minimum building and property standards and the intent of this chapter.

(2) If the owner is unwilling to repair then the town may make the repairs and place a lien for the costs of the repairs upon the property.

(3) The town has determined it will not undertake such repairs that will remove the threat to health and safety of persons or property and place a lien for the repairs on the property. (Ord. 2005-05, passed 4-25-05) Penalty, see § 157.99

§ 157.43 CONFLICTS WITH ZONING DISTRICTS.

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is conflict between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements apply. (Ord. 2005-05, passed 4-25-05)

§ 157.44 ENFORCEMENT.

This chapter shall be enforced using personnel and policies designated by the Building Director and his or her designees. (Ord. 2005-05, passed 4-25-05)

§ 157.45 JUDICIAL REVIEW.

Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review thereof in accordance with IC 4-21.5, Administrative Orders and Procedures. (Ord. 2005-05, passed 4-25-05)

§ 157.99 PENALTY.

(A) (1) Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this chapter shall pay a fine, as follows, for each offense:

(a) Not less than \$25 nor more than \$2,500 each day for demolition.

(b) Not less than \$25 nor more than \$1,000 each day for all other offenses.

(2) Each day of the existence of any violation of this chapter shall be a separate offense.

(B) The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this chapter is declared to be in violation of this chapter and unlawful.

(C) The town may institute a suit for injunction in the circuit court to restrain any person or governmental unit from violating any provision of this chapter and to cause such violation to be prevented, abated or removed. An action may also be instituted by any interested party who is adversely affected by the violation of any provision of this chapter.

(D) The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(E) Every interested party has a private right of action to enforce and prevent violation of a provision of this chapter or an ordinance adopted under this chapter, and with respect to any building, structure, or site within a historic district, has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted under this chapter, as follows:

(1) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this chapter.

(2) The interested party bringing an action under this chapter is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted under this chapter, had been, or was about to be violated or breached.

(3) An interested party who obtains a favorable judgment in an action under this chapter may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.

(4) An action arising under this chapter must be brought in the circuit court of Lake County. No change of venue from the county shall be allowed in this action.

(F) The remedies provided in this chapter are in addition to other remedies that maybe available at law or in equity.

Statutory reference:

Private rights of action, see IC 36-7-11-21

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