

Historic District Bylaw

Amended 05/04/2023

1 PURPOSE AND VALIDITY

- 1.1 The purpose of this bylaw is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of Lenox, or significant for their architecture, and the maintenance and improvement of settings for such buildings and places and the encouragement of design compatibility therewith.
- 1.2 For the purposes and reasons set forth in the Massachusetts General Laws Chapter 40 C, as most recently amended, hereinafter cited as the HISTORIC DISTRICT ACT; except for the ordinary maintenance, repair or replacement of any architectural feature which does not involve a change in design, material, or the outward appearance thereof, landscaping with plants, trees, or shrubs, or meeting requirements certified by a duly authorized public officer to be necessary for public safety because of unsafe or dangerous condition, no building or structure within the Historic District shall be constructed or altered in any way that affects its exterior appearance, unless the Lenox Historic District Commission shall first have issued a Certificate of Appropriateness, a Certificate of Hardship, a Certificate of Non-Applicability, or the commission's review is limited by Section 9 below with respect to such construction or alteration.
- 1.3 The provisions of this bylaw shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 1.4 In case of any conflict between the wording of this text and the Massachusetts General Laws, the Massachusetts General Laws shall govern.
- 1.5 Where this bylaw imposes a greater control than is imposed by other bylaws of the Town of Lenox, the provisions of this bylaw shall govern.

2 HISTORIC DISTRICT BOUNDARIES

- 2.1 The location and boundaries of this district are hereby established as shown on the map entitled "Historic District Map of the Town of Lenox" dated June 12, 1975.
- 2.2 Where the district boundary is indicated as parallel to a street, such district boundary shall be measured from the street right-of-way boundary on that side.

Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Historic District Commission.

- 2.3 In general, the land included within the Lenox Historic District is described as follows: Main Street and the land on both sides of said Main Street one hundred fifty (150) feet from the street boundary lines from the northern boundary of lands of Church on the Hill to and including the Paterson Monument; also a portion of Cliffwood Street which includes Lot No. 45 and Lot No. 47 on said Cliffwood Street, as shown on the Historic District Map of the Town of Lenox dated June 12, 1975; and also including Lot No. 25 on said map on the southwest corner of Main and West Streets; also Walker Street and the land on both sides of said Walker Street one hundred fifty (150) feet from the street boundary lines from the Paterson Monument to the eastern boundary of lands of Trinity Parish, and also a portion of Kemble Street which includes Lot No. 5 on said map; also Church Street and the land one hundred fifty (150) feet easterly from the boundary lines of said Church Street; also Franklin Street and the land ninety-five (95) feet northerly from the street boundary of said Franklin Street; also Housatonic Street between Main and Church Streets and all the land between Main and Church Streets.

3 **DEFINITIONS** – As used in this bylaw:

- a. **"Altered"** includes the words "rebuilt," "reconstructed," "restored," "removed," and "demolished," and the phrase "changed in exterior color;"
- b. **"Building"** means a combination of materials forming a shelter for persons, animals or property;
- c. **"Structure"** means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway;
- d. **"Commission"** means the commission acting as the Historic District Commission;
- e. **"Constructed"** includes the words "built," "erected," "installed," "enlarged" and "moved;"
- f. **"Exterior Architectural Feature"** means such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including, but not limited, to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures;

- g. **"Person Aggrieved"** means the applicant, an owner of adjoining property, an owner of property within the same Historic District as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts;

4 BYLAW AMENDMENTS

- 4.1 Any bylaw creating an Historic District may, from time to time, be amended in any manner not inconsistent with the provisions of the Historic Districts Act by a two-thirds vote of a Town meeting, provided that the substance of such amendment has first been submitted to the Historic District Commission having jurisdiction over such district for its recommendation and its recommendation has been received, or sixty (60) days have elapsed without such recommendation.
- 4.2 No bylaw creating an Historic District, or changing the boundaries of an Historic District, shall become effective until a map or maps setting forth the boundaries of the Historic District, or the change in the boundaries thereof, has been filed with the Town Clerk and has been recorded in the Berkshire Middle District Registry of Deeds.
- 4.3 An Historic District may be enlarged or reduced or an additional Historic District in the town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing Historic District the investigation, report and hearing shall be by the Historic District Commission having jurisdiction over such Historic District instead of by a study committee; (b) in the case of creation of an additional Historic District the investigation report and hearing shall be by the Historic District Commission of the Town, instead of by a study committee unless the Commission recommends otherwise; and (c) if the district is to be reduced, written notice as above provided of the Commission's hearing on the proposal shall be given to said owners of each property in the district.
- 4.4 All bylaws creating an Historic District adopted by the Town under authority of the Historic Districts Act, amendments thereto, maps and Historic Districts created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts Historical Commission.

5 MEMBERSHIP AND MEETINGS

5.1 MEMBERSHIP

- a. The Historic District Commission shall consist of five (5) members and two (2) alternates appointed by the Board of Selectmen. Membership shall include one resident of or property owner in the Historic District, one resident of the Lenox community, one member from two nominees submitted by the Berkshire County Historical Society, one member from two nominees submitted by the chapter of the American Institute of Architects covering the area, and one member from two nominees submitted by the Board of Realtors covering the area. Alternates shall consist of two (2) residents of the Lenox community.

If within thirty days after submission of a written request for nominees to an organization entitled to submit nominations for membership on the commission no such nominations have been made the appointing body may proceed to make the appointment to the commission without nomination by such organization.

- b. The appointments to membership in the Commission shall be arranged so that the term of the member from the Board of Realtors and the term of the member from the American Institute of Architects shall originally be for a period of one (1) year; the term of the member from the Berkshire County Historical Society and the term of the resident of the Lenox community shall originally be for a period of two (2) years; and the term of the resident of or property owner in the district shall be for a period of three (3) years. Thereafter, all appointments shall be for a period of three (3) years. Vacancies shall be filled in the same manner as the original appointment for the unexpired term. Alternates shall be appointed annually.

- 5.2 MEETINGS** - Meetings of the Commission shall be held at the call of the chairperson or shall be called at the request of two (2) members of the Commission or in such other manner as the Commission shall determine in its rules. A majority of the members of the Commission shall constitute a quorum. The concurring vote of a majority of the members of the Commission shall be necessary to issue a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship. Therefore, the concurring vote of a minimum of three (3) members of the Commission shall be necessary to issue a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship.

6 CERTIFICATES

- 6.1 Appropriateness** - If the Commission determines that the construction or alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for, or compatible with, the preservation or protection of the Historic District, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant. In the case of a disapproval of an application for a Certificate of Appropriateness, the Commission shall place upon its records the

reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the Commission, to be issued to the applicant, and the Commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the Commission. If, within fourteen (14) days of the receipt of such notice, the applicant files a written modification of his or her application in conformity with the recommended changes of the Commission, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant.

6.2 Non-Applicability -In the case of a determination by the Commission that an application for a Certificate of Appropriateness or for a Certificate of Non-Applicability does not involve any exterior architectural features, or involves an exterior architectural feature which is not then subject to review by the Commission, the Commission shall issue a Certificate of Non-Applicability to the applicant.

6.3 Hardship - If the construction or alteration for which an application for a Certificate of Appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a Certificate of Hardship, the Commission shall determine whether, owing to conditions especially affecting the building or structures involved, but not affecting the Historic District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this bylaw. If the Commission determines that owing to such conditions, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or, in the event of failure to make a determination on an application within sixty (60) days after the filing of the application, the Commission shall cause a Certificate of Hardship to be issued to the applicant.

6.4 Filing - The Commission shall file with the Town Clerk and with the Building Commissioner a copy or notice of all certificates and determinations of disapproval issued by it. Each certificate issued by the Commission shall be dated and signed by its chairperson, or such other person designated by the Commission to sign such certificates on its behalf.

7 APPLICATIONS

7.1 No building or structure with the Historic District shall be constructed or altered in any way that affects its exterior appearance and no permit for demolition or removal of a building or structure within an Historic District shall be issued by a

city or town or any department, unless the Lenox Historic District Commission shall first have issued a Certificate of Appropriateness, a Certificate of Hardship, a Certificate of Non-Applicability, or the Commission's review is limited by Section 9 below with respect to such construction or alteration.

- 7.2** Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship, as the case may be, in such form as the Commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

8 POWERS AND DUTIES

- 8.1** In passing upon matters before it, the Commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Commission shall consider the appropriateness of the size, scale and shape of the same in relation to the land area upon which the building or structure is situated, to adjacent buildings and structures and to buildings and structures in the surrounding area. The commission shall not consider interior arrangements or architectural features not subject to public view.
- 8.2** When ruling on applications for certificates of appropriateness for solar energy systems, as defined in Massachusetts General Laws Chapter 40A Section 1A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access.
- 8.3** The Commission may, in appropriate cases, impose dimensional and setback requirements in addition to those required by applicable bylaw.
- 8.4** Before the reconstruction of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, a Certificate of Appropriateness must be obtained from the Commission.
- 8.5** The Commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, may be constructed or altered without review by the Commission without causing substantial derogation from the intent and purposes of this chapter.

- 8.6** The Commission may, after public hearing, set forth in such manner as it may determine, the various designs of certain appurtenances, such as light fixtures, which will meet the requirements of a Historic District, but no such determination shall limit the right of an applicant to present other designs to the Commission for its approval.
- 8.7** The Commission shall require appropriate drawings to show the nature and extent of proposed construction or alterations.
- 8.8** The Commission may, subject to appropriations, employ clerical and technical assistants or consultants and incur other expenses appropriate to the carrying out of its work, and may accept money gifts and expend same for such purposes.
- 8.9** The Commission may administer on behalf of the Town any properties or easements, restrictions or other interests in real property which the Town may have or may accept as gifts or otherwise and which the Town may designate the Commission as the administrator thereof.
- 8.10** The Commission shall have, in addition to the powers, authority and duties granted to it by this bylaw, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of a Town meeting.
- 8.11** The Commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of the Historic District Act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The Commission shall file a copy of any such rules and regulations with the Town Clerk.

9 LIMITATIONS

- 9.1** The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historical aspects or the architectural characteristics of the surroundings and the Historic District.

The following shall not be subject to review by the commission:

- a. ordinary maintenance, repair or replacement of any architectural feature which does not involve a change in design, material, or the outward appearance thereof;
- b. meeting requirements certified by a duly authorized public officer to be necessary for public safety because of unsafe or dangerous condition, subject, however, to

such conditions as to location, style and materials as the commission may reasonably specify;

- c. landscaping with plants, trees, or shrubs;
- d. interior arrangements or architectural features not subject to public view;
- e. terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level;
- f. the color of paint;
- g. the color of materials used on roofs;
- h. temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify;
- i. storm doors and storm windows, screens, window air conditioners.

9.2 Upon request, the commission shall issue a Certificate of Non-Applicability with respect to construction or alteration in any category then not subject to review by the Commission.

10 PUBLIC HEARINGS

10.1 Meetings of the Commission shall be held at the call of the chairperson or shall be called at the request of two (2) members of the Commission or in such other manner as the Commission shall determine in its rules. A majority of the members of the Commission shall constitute a quorum. The concurring vote of a majority of the members of the Commission shall be necessary to issue a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship.

10.2 The Commission shall determine promptly, and in all events within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

- 10.3** The Commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board of the Town, to any person filing written request for notice of hearings, such request to be renewed yearly in December and to such other persons as the Commission shall deem entitled to notice.
- 10.4** As soon as convenient after such public hearing, but in any event within sixty (60) days after the filing of such application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the Commission shall fail to make a determination within such period of time, the Commission shall thereupon issue a Certificate of Hardship.
- 10.5** A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof.
- 10.6** In addition, a public hearing on an application may be waived by the Commission if the Commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the Historic District that it may be reviewed by the Commission without public hearing on the application. If the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as above provided, and ten days shall elapse after the mailing of such notice before the Commission may act upon such application.

11 ENFORCEMENT

- 11.1** No building permit for construction of a building or structure or for alteration of an exterior architectural feature within the Historic District and no permit for demolition or removal of a building or structure within the Historic District shall be issued by the Town or any department thereof until the certificate required by this section has been issued by the Commission.
- 11.2** The Historic District Bylaw shall be enforced by the Building Commissioner. The Building Commissioner, on evidence of any violation, after investigation and inspection, shall give written notice of such violation to the building owner. The Building Commissioner shall demand in such notice that the violation shall be abated within a reasonable time, designated therein by the Building Commissioner.

11.3 The Berkshire Superior Court sitting in equity shall have jurisdiction to enforce the provisions of this bylaw, and the determinations, rulings and regulations issued pursuant thereto, and may, upon the petition of the Board of Selectmen or of the Commission, restrain by injunction violations thereof; and, without limitation, such Court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

11.4 Whoever violates any of the provisions of this bylaw shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

12 APPEALS

12.1 Any Person Aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the Town Clerk, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the Town is a member. The finding of the person or persons making such review shall be filed with the Town Clerk within forty-five (45) days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court as provided in the following section.

12.2 Any Person Aggrieved by a determination of the Commission, or by the finding of a person or persons making a review may, within twenty (20) days after the filing of such determination with the Town Clerk, appeal to the Berkshire Superior Court sitting in equity. The Court shall hear all pertinent evidence, and shall annul the determination of the Commission if it finds the decision of the Commission to be unsupported by the evidence, or to exceed the authority of the Commission, or may remand the case for further action by the Commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the Commission unless it shall appear to the Court that the Commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the Commission unless it shall appear to the Court that the appellant acted in bad faith or with malice in making the appeal to the Court.

12.3 "**Person Aggrieved**" means the applicant, an owner of adjoining property, an owner of property within the same Historic District as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts.