

Chapter 49

**Historic Preservation**

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History: This Chapter was Ordinance 4014<sup>1</sup> (adopted March 4, 1985).

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<sup>1</sup> As amended by Ordinances 4014A (adopted March 3, 1997), 4014B (adopted March 1, 1999), and 03-0915-03 (adopted October 20, 2003).

**Section 49-1 Intent**

The review process herein defined is intended to effect and accomplish the protection, enhancement, and perpetuation of noteworthy examples, or elements, of Delaware City's cultural, social, economic, religious, political or architectural history in order to:

- a.) Foster civic pride and preserve an appreciation for the historic values on which the city and the nation were founded;
- b.) Maintain and improve property values;
- c.) Protect and enhance the city's attraction to residents and visitors;
- d.) Provide for the education and general welfare of the people of the city;
- e.) Otherwise accomplish the general purposes of this Chapter.

**Section 49-2 Historic Preservation Commission**

a.) The mayor shall appoint a Historic Preservation Commission with the advice and consent of the Council.

b.) The Commission shall consist of seven (7) members with a demonstrated interest in historic preservation.

c.) Each member shall serve a three (3) year term.

d.) Members may be reappointed.

e.) Composition of the Commission shall be as follows:

1.) An architect with experience dealing with historic structures or other acknowledged expert in the field of historic preservation (serving gratuitously);

2.) At least four (4) members shall be residents with municipal voting privileges;

3.) At least four (4) members shall be Delaware City Historic District property owners;

f.) The Commission shall meet on a regular basis as its workload requires and shall adopt such operating procedures as it deems appropriate in keeping with the requirements of the law, including a procedure for maintaining records of its proceedings in accordance with the Sunshine Law of the State of Delaware and the rules of the Mayor and Council. All decisions of the Commission shall be by majority vote of those present and voting, and no action shall be effective unless those present and voting constitute at least a quorum of four (4) of the members of the Commission.

g.) The Commission shall choose its chairman from among its members to serve at the pleasure of the Commission.

**Section 49-3 Powers and Authorities of The Historic Preservation Commission**

a.) The Historic Preservation Commission shall have the power to hold public hearings and to review applications for construction, alteration, relocation, removal, or demolition affecting proposed or designated landmarks or structures within historic district and issue a recommendation in the form of a “Letter of Appropriateness” to the Mayor and Council.

b.) The Historic Preservation Commission shall make recommendations and advise the Mayor and Council on all actions by the Mayor and Council relating to the historical development, heritage, or cultural characteristics of Delaware City.

c.) The Historic Preservation Commission shall maintain records documenting Delaware City’s cultural, social, economic, religious, political, or architectural history as necessary to accomplish the requirements of this Chapter.

d.) The Historic Preservation Commission shall issue a “Letter of Appropriateness” to the applicant within 60 days of submittal of the application to the City Manager. In the event the Commission fails to issue any recommendation whatsoever in the form of a “Letter of Appropriateness” within such 60 day period, the Commission shall be deemed to have recommended approval of the application without conditions.

**Section 49-4 Designation of Landmarks and Historical Districts**

a.) A nomination can be made by one of the following sources:

- 1.) A member of the Mayor and Council;
- 2.) A member of the Historic Preservation Commission;
- 3.) The owner of the property.

b.) Procedures for nomination;

- 1.) On form provided.
- 2.) The Historic Preservation Commission shall establish a procedure to review and recommend nominations for landmarks and historic districts.

c.) Historical district survey. The Historic Preservation Commission shall undertake to establish and maintain a list of structures, sites, and areas of special historical, architectural, or aesthetic interest or value. This list may include single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art, or integrated combinations thereof. The Commission may nominate landmarks and historic districts from said list.

d.) Historic District – The Delaware City Historic District shall consist of:

1.) All properties within the boundary of the Delaware City National Register of Historic Places District.

2.) All other properties containing a landmark, building, or structure listed on the National Register of Historic Places.

e.) Criteria for designation of additional properties:

1.) All properties closely associated with one or more persons, events, activities or institutions that have made a significant contribution to local, state or national history.

2.) All properties containing buildings or structures whose exterior design or features exemplify the distinctive characteristics of an historic type, period, method of construction, or significant architectural innovation; or that represent the work of a master architect or builder.

3.) All properties that have yielded or are likely to yield, information important to local, state or national history.

4.) Its character is a particularly fine or unique example of a utilitarian structure or group of such structures, including, but not limited to, farm houses, gas stations or other commercial structures, with a high level of integrity of architectural significance.

5.) Any property based on its unique location or relationship to other properties cited above.

#### **Section 49-5 Actions Which Shall be Reviewed by the Historic Preservation Commission**

a.) Alteration. A change in the appearance of a building, structure, site, or object, which is not otherwise covered by the definition of demolition, or; any other change for which a permit is required.

b.) Construction. The erection of a new principal or accessory structure on a lot or property within the Historic District.

c.) Demolition. Any act or process that destroys in part or in whole a landmark or a structure within an historic district.

d.) Relocation. Any relocation of a structure on its site or to another site.

#### **Section 49-6 Criteria for Review**

a.) Alterations

1.) The Secretary of Interior's Standards for Rehabilitation (which read as follows) shall apply to alterations.

a.) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

b.) The distinguishing original qualities or characters of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

c.) All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.

d.) Changes that may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

e.) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

f.) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

g.) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

h.) Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.

i.) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood, or environment.

j.) Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

2.) The Secretary of Interior Standards apply as follows:

a.) Any project (public or private) which seeks to take advantage of any local, county, state or federal incentive such as, but not limited to: investment tax credits, low interest loans, block grant funding and real estate tax credits, shall comply to be eligible for these incentives.

b.) Any project requiring a building permit shall be reviewed by the Commission. Compliance with the recommendations of the Commission is voluntary if incentives (per above) are not sought.

c.) The provisions of Section 49-6 a 2 b to the contrary notwithstanding, any project within the Historic District to alter the exterior of any structure which is zoned C-1 Central Commercial, as set forth in the Zoning Code of the City of Delaware City, as amended, shall be reviewed by the Commission. Such projects shall include alterations which may or may not require a building permit, specifically including, but not to be limited to, window and door replacement, siding (except for minor repairs) and roofing (except for minor repairs). Compliance with the recommendations of the Commission shall be mandatory with respect to alterations set forth hereinabove.

3.) Application for review shall be made to the City Manager on the form provided.

b.) Construction

1.) To qualify for a building permit the project must comply with the decision of the Commission.

2.) In reviewing an application the Commission shall base its decision on whether the proposals therein are architecturally compatible with the buildings, structures, or landmarks in said district. In applying such standards, the Commission shall consider, among other factors:

a.) Exterior architectural features, including all signs;

b.) General design, scale and arrangements;

c.) Texture and material;

d.) The relationship of a, b, c, above, to other structures and features of the district;

- e.) The purposes for which the district was created;
  - f.) The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
- 3.) Application shall be made to the City Manager on the form supplied.
- c.) Demolition
- 1.) Permit for Razing or Demolition
    - a.) Application for Razing or Demolition shall be made to the City Manager on the form supplied. The City Manager shall refer all such applications to the Historic Preservation Commission. All actions taken in pursuance of the above requirements shall be preceded by at least one Public Hearing by the Commission at which time any interested party, including the applicant or his representative, shall be heard.
    - b.) All approvals or disapprovals by the Commission shall include a statement of the reasons for such approval or denial and the conditions to be met, where applicable, whereby the applicant could make his application acceptable to the Commission.
    - c.) No reapplication for essentially the same purpose shall be reviewed by the Commission within one (1) year of denial of any applications hereunder except in cases where the applicant purports to have brought himself into compliance with the conditions for approval set forth by the Commission in any earlier denial of said application.
    - d.) If approval is granted by the Commission to allow a property owner(s) to demolish a building in the Historic District, with such approval being conditioned upon the construction of another building on the property to replace the building to be demolished, then the owner(s) of the property, prior to commencement of demolition, shall post a performance bond or mortgage to create a mortgage lien in favor of the City in an amount two (2) times the assessed value of the property, including land and buildings. The choice of whether to present a performance bond or a mortgage to secure a mortgage lien shall be made by the property owner(s) in situations where there is sufficient equity in the property equal to at least the assessed value of the property. If there is not sufficient equity in the property, then a performance bond shall be required.

The time allowed from the commencement of demolition to “under roof” status of the new building shall be six (6) months. The time allowed for a project to be completed and a certificate of occupancy obtained shall be two (2) years. If these time limits are not met and not extended in accordance with the provisions of this Chapter, then the performance bond shall be forfeited or the mortgage lien may be enforced as the case may be.

Within sixty (60) days of written notification to the City of the completion of the new building and the delivery to the City of a permanent certificate of occupancy, either the performance bond shall be canceled or the mortgage lien removed as the case may be.

Any time limitation set forth herein may be extended by application of the property owner(s) and written consent of the Historic Preservation Commission.

2.) Right to Raze or Demolish, Conditions and Procedures. The owner of a building or structure, the razing or demolition of which is subject to the provisions of this Article, shall, as a matter of right, be entitled to raze or demolish such building or structure provided that:

a.) He has applied to the Commission.

b.) The owner has for a period of time set forth in the time schedule hereinafter contained, and at a price reasonably related to its fair market value, made a bona fide offer to sell such building or structure, and the land pertaining thereto, to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it will preserve and restore the building or structure and the land pertaining thereto.

c.) No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such building or structure, and the land pertaining thereto, or the building or structure alone without the land pertaining thereto, prior to the expiration of the applicable time period as set forth in the time schedule below. Any appeal, which may be taken to the court from a decision of the Mayor and Council, shall not affect the right of the owner to make a bona fide offer to sell. Offers to sell shall be made within one (1) year of the date of application to the Commission. The time schedule for offers to sell shall be as follows:



<u>Property Valued At</u>	<u>Minimum Offer To Sell Period</u>
Less than \$50,000.00	6 months
\$50,000.00 to \$100,000.00	9 months
Over \$100,000.00	12 months

3.) Bona Fide Offer to Sell:

Procedures for Filing

Notice of Offer and Questioning Price

Before making a bona fide offer to sell as provided for in this Section, an owner shall first file a statement with the Commission. The statement shall identify the property, state the offering price, the date the offer of sale is to begin and the name and address of the listing real estate agent, if any. The statement shall provide assurance that the building or structure shall be preserved. No time period set forth in the time schedule contained in Section 49-6 c 2 c shall not begin to run until said statement has been filed. Within five (5) days of receipt of a statement, copies of the statement shall be delivered to the Commission.

4.) Question as to Price. The fact that a building or structure has been offered for sale at a price reasonably related to fair market value may be questioned, provided there is filed with the Commission on or before fifteen (15) days after the offer of sale has begun, a petition in writing signed by at least five (5) persons owning real estate in the vicinity of property offered for sale. Alternatively the Commission, may question said price on its own motion. Upon receipt of such petition, or upon its own motion, the Commission shall, at the expense of the City, appoint three (3) disinterested real estate appraisers, familiar with property values in Delaware City, who shall forthwith make an appraisal of the building or structure in question and file a written report with the Commission stating whether or not the offer to sell the building or structure is at a price reasonably related to its fair market value. The opinion of any two (2) of the three (3) appraisers shall be final and binding. In the event the opinion is to the effect that the offer to sell the building or structure is at a price reasonably related to its fair market value, the owner may continue to offer the property for sale. In the event the opinion is to the effect that the offer to sell the building or structure is not at a price reasonably related to its fair market value, the date of the offer to sell shall be void and the owner must re-file the notice provided for above. Notwithstanding an adverse opinion by the appraisers if an owner has entered into a binding bona fide contract prior to the date the appraisers have filed their report with the Commission, the price shall be deemed reasonably related to the fair market value.

5.) Right to Raze or Demolish. The right to raze or demolish a building, structure, or landmark within an historic district shall not be subject to the foregoing conditions of offer to sell where the applicant for a Permit to Raze or Demolish can establish either:

a.) The loss of such building, structure, or landmark would not substantially impair the goals sought to be achieved by the establishment of such district, or

b.) The forced sale of such building, structure, or landmark would be economically infeasible in relation to its effect on the remaining property of the applicant. Such a claim shall be heard by the Commission, upon the petition of the owner of the property. Such hearing shall be public and any interested party shall be heard.

6.) Hazardous Buildings or Structures. Nothing in this Article shall prevent the razing or demolition, without consideration of said Commission, of any building or structure within an historic district which is in such an unsafe condition that it would endanger life or property as determined in accordance with the provisions of the New Castle County Building Code (Section 124 of the BOCA Basic Building Code, 1984, as amended).

d.) Relocation. In the case of a proposed relocation of a historic building or structure, the Commission shall consider:

1.) Whether or not the proposed relocation will have a detrimental effect on the structural soundness of the building or structures;

2.) Whether or not the proposed relocation will have a detrimental effect on the historic, architectural or archaeological aspects of the other buildings, structure, sites, objects or districts in the Historic District;

3.) Whether or not the proposed relocation will provide an environment that will be harmonious with the historic and/or architectural aspects of the building or structure; and

4.) Whether or not the proposed relocation will further the achievement of the goals described in this Chapter.

### **Section 49-7 Economic Hardship**

The Commission shall not impose an economic hardship on a property owner in order to achieve an unnecessarily extravagant solution to a design problem. Every effort shall be made to

achieve a solution which is both architecturally harmonious and within the financial means of the applicant. Demonstration of financial hardship is the responsibility of the applicant.

**Section 49-8 Review**

a.) Mayor and Council Review. Any applicant who is aggrieved by a decision of the Historic Preservation Commission, may, within thirty (30) days of the mailing of the notice of the decision, appeal that decision to the Mayor and Council.

b.) Judicial Review. Any applicant who is aggrieved by any final decision of the Mayor and Council resulting from this Chapter, may, within thirty (30) days of the mailing of the notice of the decision, seek judicial review of that decision in any court of competent jurisdiction.

**Section 49-9 Penalties**

Except in cases where it is otherwise provided by law or ordinance, any person violating any of the provisions of this Chapter or the rules and regulations of the Board shall be deemed guilty of a misdemeanor; and upon conviction thereof after trial before a Magistrate shall be punished by a fine in the sum not exceeding One Hundred Dollars (\$100.00) or by imprisonment for a period not exceeding thirty (30) days or by both such fine and imprisonment.

**Section 49-10 Separate Offenses**

Each day during which any act prohibited or any duty required, by any provision of this Chapter or the rules and regulations of the Commission is committed or is willfully neglected or refused to be complied with shall constitute a distinct and separate offense and be punishable as such.