

TOWN OF NORTH CASTLE

**Local Law No. 3 For the Year 2010
(Adopted May 25, 2010)**

A Local Law to amend in its entirety Chapter 126 of the Code of the Town of North Castle entitled Landmarks Preservation.

Be It Enacted by the Town Board of the Town of North Castle as follows:

1. Section 126-1 It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of structures of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this chapter is to:

A. Effect and accomplish the protection, enhancement, perpetuation and reasonable degree of control over structures, landmarks and preservation districts, hereafter referred to as a "designation," which represent or reflect elements of the Town's cultural, social, economic, political and architectural history.

B. Safeguard the Town's historic, aesthetic and cultural heritage, as embodied and reflected in designations.

C. Foster civic pride in the beauty and noble accomplishments of the past.

D. Enhance and protect the Town's attractions to tourists and visitors.

E. Promote the use of designations for the education, pleasure and welfare of the people of the Town.

2. § 126-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALTERATION: Any act or process which changes one or more of the exterior architectural features of a designation.

CERTIFICATE OF APPROPRIATENESS: A document evidencing approval by the Landmarks Preservation Committee (LPC) of a proposal to make a material change(s) in appearance(s) of a designation.

COMMITTEE, LANDMARKS PRESERVATION: The Town of North Castle Landmarks Preservation Committee (LPC).

DESIGNATION: Selection of a site and/or structure, as noted in § 126-1A above.

EXTERIOR ARCHITECTURAL FEATURE: The architectural style, design, general arrangement and components of all of the outer structures and surfaces of a designated site or structure, as distinguished from the interior spaces enclosed by said exterior surfaces, including but not limited to the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to an improvement and of outdoor advertising and signs of any nature within a designation.

IMPROVED PARCEL: The unit of real property which includes a physical change constituting an improvement, and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes; provided, however, that the term "improved parcel" shall also include any unimproved area of land which is treated as a single entity for tax purposes and any tax-exempt improved parcel.

LANDMARK: Any improved parcel which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the town, state or nation and which has been designated pursuant to the provisions of this chapter. More specifically, a landmark is a structure, memorial or site or a group of structures or memorials, including the adjacent areas necessary for the proper appreciation of the landmark, deemed worthy of preservation by reason of its value to the community as an outstanding example of a structure or memorial representative of its era, either past or present; one of the few remaining examples of a past or present architectural style or combinations of style; a place where an historical event of significance to the community, region, state or nation or representative activity of a past era took place; or any structure, memorial or site which has a special character, special historical and aesthetic interest and value as part of the development, heritage and cultural characteristics of the community.

ORDINARY REPAIRS AND MAINTENANCE PRESERVATION: Work done in and on any designation or replacement of any part of a designation, for which a permit issued by the Town Building Inspector is not required by law, and where the purpose and effect of such work or replacement is to correct a deterioration or decay of or damage to such designation or any part thereof and to restore same, as nearly as practicable, to its condition prior to the occurrence of such deterioration, decay or damage. Preservation aims at halting deterioration and providing structural stability, but does not contemplate significant rebuilding.

PRESERVATION DISTRICT: Any area which:

A. Contains one or more improved parcels or landmarks which:

(1) Together or separately has a special character or special historical or aesthetic interest or value;

(2) Represents one or more periods or styles of architecture typical of one or more areas in the history of the Town; and

(3) Causes such area, by reason of such factors, to constitute a distinct section of the Town; and

B. Has been designated as a preservation district, pursuant to the provisions of this chapter.

STRUCTURE: Any building, improvement, place, work of art or other object constituting a physical change to real property, or any part thereof.

3. § 126-3 Landmarks Preservation Committee created.

There is hereby created a Landmarks Preservation Committee, which shall consist of nine members to be appointed by the Town Board for terms of three years, provided that, of those members first taking office, three shall be appointed, at the pleasure of the Town Board, for one year, three for two years and three for three years. Each member shall serve until the appointment of a successor. The membership shall be limited to residents of North Castle and shall include to the extent possible at least one architect, one civil engineer, one historian and one realtor, all qualified in their respective fields.

4. § 126-4 Powers and duties of Committee.

The powers of the Committee shall include:

- (i) Employment of staff and professional consultants, with approval of the Town Board, as necessary to carry out the duties of the Committee;
- (ii) Promulgation of rules and regulations as necessary to carry out the duties of the Committee;
- (iii) Adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
- (iv) Conduct of surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town;
- (v) Designation of identified structures or resources as landmarks and historic districts;
- (vi) Acceptance on behalf of the Town of the donation of facade easements and development rights and the making of recommendations to the Town concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purposes of this act;
- (vii) Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs;

- (viii) Making recommendations to the Town Board concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the Town;
- (ix) Recommending acquisition of a landmark structure by the Town where its preservation is essential to the purposes of this act and where private preservation is not feasible; and
- (x) Approval or disapproval of applications for certificates of appropriateness pursuant to this act.

The LPC shall adopt rules for the transaction of its business, which shall include provisions for the time and place of holding meetings and the giving of notice thereof to the public. A minimum of six regular meetings shall be held each year. At any meeting, any person shall be entitled to appear and be heard on a matter before the LPC before it reaches its decision. Special meetings may be called by the Chairperson or by any three members at any time, provided that at least 48 hours notice shall be given each member, the Town Clerk, and the public, before a special meeting is held. Notification for all meetings must be in writing and posted.

5. § 126-5 Election of officers.

The LPC shall elect, from its members, a Chairperson and Vice Chairperson, whose terms of office shall be fixed by the members. The Chairperson shall preside over the meetings of the LPC and shall have the right to vote and speak on all matters as other members. The Vice Chairperson shall, in the absence or disability of the Chairperson, perform the duties of the Chairperson and, if a vacancy shall occur in the office of the Chairperson, shall become Chairperson for the unexpired portion of the term of the Chairperson. In the absence or disability of both the Chairperson and Vice Chairperson, the LPC shall, by a majority vote of those present, choose one of its members to perform the duties of the Chairperson.

6. § 126-6 Quorum.

A quorum for the transaction of business shall consist of five of the Committee's members.

A member of the LPC shall abstain from voting on any matter in which the member may be beneficially interested.

7. § 126-7 Secretary.

The LPC shall elect from its members a Secretary, whose term of office shall be fixed by the LPC and who shall keep a written record of all of the transactions of the LPC. The records of the LPC shall set forth the vote or abstention of every member participating therein and

the absence of or failure to vote of every other member. All written records of the LPC shall be open to the public. The Secretary shall send out notices and agenda of all meetings. The Secretary shall assist in the preparation of a budget for the LPC.

8. § 126-8 Records.

For official documentation, any designation must be photographed and the various views drawn that are necessary to depict its exterior design and construction. Where necessary and with the consent of the owner(s), interior portions may be included in the documentation.

9. § 126-9 Budget.

The Vice Chairperson shall be responsible for the preparation of a yearly budget and submit it to the LPC for its approval. The approved budget shall be submitted to the Town Board for its action by the first Tuesday in October of each year.

10. § 126-10 Agenda.

Items for consideration at any meeting must be submitted to the Secretary one week prior to the issuance of the agenda for the next meeting, except for special meetings which must be submitted with the notice of the meeting.

11. § 126-11 Meetings of Committee to be open to public.

All meetings of the LPC shall be open to the public.

ARTICLE II Designation Procedure (§ 126-12 — § 126-15)

12. § 126-12 Initial investigation; submission of report.

The LPC shall investigate, pursuant to requests by a third party or on its own motion, possible designations. The LPC shall nominate and render a written report to the Town Board on any proposed designations, which report shall contain the findings of fact of the LPC and shall identify proposed designations by description setting forth the general characteristics and location thereof.

13. § 126-13 Hearing by Town Board.

Upon receipt of a nomination report of the LPC, the Town Board shall call a public hearing to consider whether or not the Town Board should, by resolution, establish a designation. Such public hearing shall be held within 60 days from the receipt of the LPC's report, which

hearing shall be advertised in a newspaper having general circulation in the town at least 20 days prior to the date of such hearing. Written notice of such hearing shall be sent, by certified mail, return receipt requested, to the present owner(s) of the property directly affected by such hearing and to all property owners, as appear on the latest tax roll of the town, within a two-hundred-foot distance from the boundary of the property affected by the proposed designation. The latest assessment roll on file in the office of the Assessor shall be conclusive as to the name(s) of the owner(s) of the property.

14. § 126-14 Time limit for decision.

Within 45 days following such hearing, the Town Board shall adopt a resolution denying or establishing a designation.

15. § 126-15 Recording of decision.

Within 10 days following the adoption of a resolution establishing a designation, such information shall be so recorded on the official Zoning Map of the town and shall be immediately effective after public notice and recordation.

ARTICLE III Construction Restrictions (§ 126-16 — § 126-23)

16. § 126-16 General criteria to be used by Committee.

The LPC shall transact its business pursuant to the terms of this chapter. The LPC shall only have jurisdiction with respect to exterior architectural features. The LPC shall exercise its aesthetic judgment and maintain the desirable character of the designation and prevent construction, reconstruction, alteration or demolition out of harmony or character with existing improvements insofar as style, materials, color, line and detail are concerned.

17. § 126-17 Use of certain criteria prohibited.

Nothing contained in this chapter shall be construed as authorizing the LPC in acting, with respect to any designation's use, or in adopting regulations in relation thereto, to regulate density of population or to regulate and restrict the locations of trades and industries or the location of buildings designed for specific uses or to create designations for any such purpose.

18. § 126-18 Certificate of appropriateness.

Certificate of Appropriateness for Alteration, Demolition or New Construction Affecting Landmarks or Historic Districts

(1) No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or a property within a historic district, nor shall

any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the LPC.

(2) Criteria for Approval of A Certificate of Appropriateness

(A) In passing upon an application for a certificate of appropriateness, the LPC shall not consider changes to interior spaces, unless they are open to the public.

The Committee's decision shall be based on the following principles:

- (i) properties which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible;
- (ii) any alteration of existing properties, whether a Landmark or within a Historic District, shall be compatible with their historic character, as well as with the surrounding district; and
- (iii) new construction shall be compatible with the district in which it is located.

(B) In applying the principle of compatibility, the Committee shall consider the following factors:

- (i) the general design, character and appropriateness to the property of the proposed alteration or new construction;
- (ii) the scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
- (iii) texture, materials, and color and their relation to similar features of other properties in the neighborhood;
- (iv) visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
- (v) the importance of historic, architectural or other features to the significance of the property.

(3) Certificate of Appropriateness Application Procedure

(A) Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the LPC. The application shall contain:

- (i) name, address and telephone number of applicant;
- (ii) location and photographs of property;
- (iii) elevation drawings of proposed changes, if available;
- (iv) perspective drawings, including relationship to adjacent properties, if available;
- (v) samples of color or materials to be used;
- (vi) where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and
- (vii) any other information which the Committee may deem necessary in order to visualize the proposed work

(B) No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the LPC. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Town of North Castle . Before acting on or forwarding to the appropriate board any application for a variance, special use permit, site plan, building permit, demolition permit, sign permit or subdivision the Building Inspector shall first consult a current list of all properties designated as individual Landmarks or as contained within Historic Districts to determine the requesting property's status.

(C) The Committee shall approve, deny or approve the permit with modifications within 45 days from receipt of the completed application. The Committee may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views.

(D) All decisions of the Committee shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's Office for public inspection. The Committee's decision shall state the reasons for denying or modifying any application.

(E) Certificates of appropriateness shall be valid for 24 months, after which the owner must reapply if he still wishes to undertake work on the property.

19. § 126-19 Restrictions on consideration of interior arrangement.

The Committee shall not consider interior arrangement, provided that said arrangements do not affect or require exterior alterations.

20. § 126-20 Matters not affected.

A. Ordinary repairs or condemnations, having prior permits, are not affected by this chapter. This chapter shall not be construed to prevent:

(1) The ordinary maintenance or repair of any exterior architectural feature in a designation which is not an alteration.

(2) The construction, reconstruction, alteration or demolition of any exterior architectural feature which the town's Building Inspector certifies, in writing to the LPC, is required for public safety because of a potentially unsafe or dangerous condition; provided, however, that the LPC first issues a certificate of appropriateness.

(3) The construction, reconstruction, alteration or demolition of any exterior architectural feature under a permit issued by the Building Inspector prior to the effective date of a designation.

B. In the event of a natural disaster destroying all or part of a designation which may render the designation unsafe to the general public, then the Town's Building Inspector shall be empowered to take suitable action(s) under such conditions to protect the general public.

21. § 126-21 Variances.

Where, by reason of topographical conditions, district borderline situations, immediately adjoining existing developments or because of other unusual circumstances, the strict application of any provision of this chapter would result in exceptional hardship upon the owner of a designation, the LPC, in passing upon any application for a certificate of appropriateness, shall have the power to reasonably interpret the meaning of this chapter so as to relieve such hardship, provided that such interpretation shall maintain such designation in substantive harmony with the general purpose and intent of this chapter. In granting variations, the LPC may impose such reasonable and additional stipulations and conditions as will, in its judgment, better fulfill the purpose of this chapter.

22. § 126-22 Criteria required for hardship exception.

1. An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- (i) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- (ii) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- (iii) efforts to find a purchaser interested in acquiring the property and preserving it have failed.

2. Hardship Criteria for Alteration

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

3. Hardship Application Procedure

(A) After receiving written notification from the Committee of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Committee makes a finding that a hardship exists.

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

(C) The applicant shall consult in good faith with the Committee, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

(D) All decisions of the Committee shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's Office for public inspection. The Committee's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Committee shall approve only such work as is necessary to alleviate the hardship.

ARTICLE IV Appeals; Maintenance; Penalties; Title (§ 126-23 — § 126-27)

23. § 126-23 Appeals.

Any person or persons jointly or severally aggrieved by a decision of the LPC with respect to the issuance or denial of a Certificate of Appropriateness, may, within 30 days from the

date when a final decision is filed in the office of the Town Clerk, appeal to the Town Board for a review of such decision. Notice of such appeal shall be in writing to the Town Board and the LPC and shall include a copy of the official decision. The Town Board, upon receipt of such appeal, shall hold a public hearing within 60 days. Notice of such hearing shall be given to the LPC as well as the public. A legal notice shall be published (in a newspaper having a circulation within the Town) at least 10 days prior to the hearing date. The Town Board shall have the power, within 30 days after such hearing, to affirm, modify or reverse the decision appealed from.

24. § 126-24 Maintenance.

Maintenance and Repair Required

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district, which does not involve a change in design, material, color or outward appearance.

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the LPC, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

Examples of such deterioration include:

- (A) Deterioration of exterior walls or other vertical supports.
- (B) Deterioration of roofs or other horizontal members.
- (C) Deterioration of exterior chimneys.
- (D) Deterioration or crumbling of exterior stucco or mortar.
- (E) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
- (F) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition, is necessary for the public safety.

25. § 126-25 Issuance of orders relative to maintenance and repair.

The LPC shall have the power to issue an order, consistent with this section, relative to preservation maintenance and repair. When such an order will involve excessive costs and/or personal hardship to the individual owner(s), the LPC will make every effort to aid in securing financial assistance to the owner(s) through existing funding programs for qualified

historical designations. Any order of the Committee may be appealed from in the same method as herein contained.

26. § 126-26 Penalties for offenses; additional remedies.

A. Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

B. In addition to the foregoing provisions, the Town Board shall have such other remedies for any violation or threatened violation of this chapter as are now or hereafter shall be provided by law.

27. § 126-27 Title.

This chapter shall be known as the “Landmarks Preservation Ordinance”

28. §126-28. Effective Date.

This Local Law shall be effective upon filing of same with the Secretary of State of the State of New York.