

Chapter 127: HISTORIC PRESERVATION

[HISTORY: Adopted by the Board of Trustees of the Village of Ellenville 6-14-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 70.

Unsafe buildings — See Ch. 71.

Zoning — See Ch. 227.

§ 127-1. Findings; purpose.

- A. Pursuant to the provisions of § 96-a and Article 5-K of the New York State General Municipal Law, the Village Board of Trustees of the Village of Ellenville hereby finds that:
- (1) There exist in the Village of Ellenville places, sites, structures and buildings of special historic significance or which, by reason of famous events or the antiquity or uniqueness of architectural construction and design, are of particular significance to the heritage of the Village.
 - (2) The conservation, protection and preservation of such places, sites, structures and buildings is a public necessity in harmony with the Village's Comprehensive Master Plan and will promote the public health, safety and general welfare.
- B. Now, therefore, the Village Board of Trustees hereby declares that the purpose of this chapter is to accomplish the conservation, protection and preservation of such places, sites, structures and buildings.

§ 127-2. 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 structure designated as a landmark or any structure or building in an historic district.

BUILDING — A structure wholly or partially enclosed within exterior walls or within exterior or party walls and a roof, affording shelter to persons, animals or property.

EXTERIOR ARCHITECTURAL FEATURES — The architectural style, design, general arrangement and components of all of the outer surfaces of any building or structure, 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 said building or structure.

HISTORIC DISTRICT — Any area which contains places, sites, structures or buildings which have a special character and ambience or historical value or aesthetic interest and which represent one or more periods or styles of architecture of an era of history and which cause such area to constitute a distinct section of the Village.

LANDMARK — Any place, structure or building of historic value or aesthetic interest by reason of its antiquity or uniqueness of architectural design or as part of the development, heritage or cultural characteristics of the Village.

LANDMARK AND HISTORIC DISTRICT MAP — A map to be prepared and maintained by the Village Planner identifying the location of all landmarks, landmark sites and historic districts.

LANDMARK SITE — Any parcel or part thereof on which is situated a landmark, and any abutting parcel or part thereof constituting part of the premises on which the landmark is situated.

STRUCTURES — Any assembly of materials forming a construction framed of components, structural parts for occupancy or use, including buildings.

STYLES OF ARCHITECTURE — A style recognized by one of the following organizations:

- A. The National Register of Historic Places.
- B. The Historic American Building Survey.
- C. The Historic American Engineering Record, United States Department of the Interior, National Park Service.

- D. The Division for Historic Preservation, the New York State Office of Parks and Recreation.
- E. The National Trust for Historic Preservation.
- F. The Society of Architectural Historians.

§ 127-3. Historic Preservation Commission.

- A. There is hereby created a commission to be known as the "Historic Preservation Commission of the Village of Ellenville," hereinafter referred to as "the Commission."
- B. The Commission shall consist of five members to be appointed by the Mayor with the approval of the Village Board of Trustees. Members shall have a known interest in historic preservation and architectural development within the Village of Ellenville.
 - (1) To the extent of availability in the Ellenville community, consideration should be given to balancing representation on the Commission so as to include such expertise as an architect and an architectural historian, an attorney, a person familiar with local history, a licensed real estate broker and a local merchant/businessperson. All members must demonstrate a significant interest, competence or knowledge in and commitment to the field of historic preservation. **[Amended 9-12-2005 by L.L. No. 10-2005]**
- C. Commission members shall serve for a term of three years, with the exception of the initial term of one of the members, which shall be one year; two which shall be two years, and two which shall be three years. The Mayor shall appoint any replacement member to the Commission to complete an unexpired term.
- D. The Chairperson of the Commission shall be appointed by the Mayor with the approval of the Village Board of Trustees.
- E. The powers of the Commission shall include:
 - (1) Appointment of professional consultants as necessary to carry out the duties of the Commission, compensation of whom shall be only as approved by the Village Board.
 - (2) Promulgation of rules and regulations as necessary for the conduct of its business.
 - (3) Adoption of criteria for the identification of significant historic, architectural and cultural landmarks and for the delineation of historic districts.
 - (4) Provisions for surveys of significant historic, architectural and cultural landmarks and historic districts within the Village.
 - (5) Designation of identified structures or resources as landmarks or historic districts. **[Amended 9-12-2005 by L.L. No. 10-2005]**
 - (6) Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs.
 - (7) Making recommendations to the Village Board of Trustees concerning the utilization of state, federal or private funds to promote preservation of landmarks and historic districts within the Village.
 - (8) Approval or disapproval of applications for certificates of approval pursuant to this chapter.
 - (9) The Commission may, upon request, advise owners of property or structures within the Village on the physical and financial aspects of preservation, renovation, rehabilitation and reuse.
 - (10) The Commission may undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or to the advancement of the purposes set forth in this chapter.
- F. The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any three of the Commission members or on the call of the Chairperson or the Mayor. The Commission shall provide the Village Clerk with a schedule of its regular monthly meetings.

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

§ 127-4. Designation of landmarks.

- A. Any property owner may request the designation of a landmark, site or historic district by submitting to the Village Board an application for such designation on a form furnished by the Commission. The Commission, in addition, may, on its own motion, initiate proceedings to propose an individual property for designation as a landmark if it:
- (1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state, or nation;
 - (2) Is identified with historic personages;
 - (3) Embodies the distinguishing characteristics of an architectural style;
 - (4) Is the work of a designer whose work has significantly influenced an age; or
 - (5) Because of a unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.
- B. (Reserved) *Editor's Note: Former Subsection B, regarding notice to landowners of application for historic landmark designation, was repealed 9-12-2005 by L.L. No. 10-2005.*
- C. The Commission shall submit its recommendation within 30 days after the receipt of the application or initiation of the proceeding by the Commission. The recommendation may be limited to the proposed historic district, landmark or landmark site as described in the application or may include modifications thereof.
- D. Upon receipt of the recommendation, the Village Board shall call a public hearing within 90 days of the date of receipt of the recommendation. No application shall be renewed for a period of one year from the date of initial filing. Upon approval or disapproval, the decision shall immediately be filed with the Village Clerk, and notice of such approval or disapproval shall be mailed by the Village Clerk to the owners and residents of the subject property by certified mail, return receipt requested.
- E. A public hearing called by the Village Board to review an application shall be advertised in a newspaper of general circulation in the Village at least 14 days prior to such hearing, and notice thereof shall be served by certified mail, return receipt requested, postmarked at least 14 days prior to the date of the public hearing, upon the owner or owners of the proposed landmark or landmark site or the owners of the property within the proposed historic districts as shown by the tax rolls of the Village and to every property owner and resident within 300 feet of the exterior boundary lines of the subject place, site, structure or historic district. No place, structure or building shall be designated as a landmark or landmark site and no area shall be designated as an historic district except pursuant to a public hearing duly advertised as herein provided.
- F. When the Village Board approves or denies an application, the Building Department, the Commission and the owner or owners of the subject property and the residents thereof shall be notified by the Village Clerk by certified mail, return receipt requested.

§ 127-5. Building permits.

- A. Upon receipt of the notice that the Village is considering a place, site, structure or building for designation as a landmark or landmark site or as part of an historic district, the Building Inspector shall not issue any permit for the demolition, alteration or improvement of said place, site, structure or building in the limited instance(s) where such activity affects any exterior portion thereof, until there is a final determination by the Village Board that said place, site, structure or building has not qualified as a landmark or landmark site or as part of an historic district. If within said period the Village Board designated the property in question as a landmark or landmark site or as part of an historic district, no building permit shall be issued except pursuant to § 127-6 of this chapter.

- B. Upon notification that the Village Board has designated a landmark, a landmark site or an historic district, the Building Inspector immediately shall cause such property to be so designated as such in the records of the Building Department. Furthermore, the Village Planner shall immediately cause such property to be so designated on the Landmark and Historic District Map.

§ 127-6. Construction, exterior alteration, removal or demolition of landmarks.

- A. No structure, site, place or building designated as a landmark or landmark site appearing on the Landmark and Historic District Map of the Village of Ellenville, nor any place, site, structure, building or property located wholly or partly within the boundaries of the historic district shall be constructed, repaired, moved, demolished, or in any way incur alterations to its exterior without first obtaining a certificate of approval from the Commission.
- B. The Commission shall review all plans for the moving, exterior construction, exterior alteration or repair, landscaping or demolition of places, sites, structures or buildings designated as landmarks or landmark sites and all places, sites, structures or buildings wholly or partly within the boundaries of the historic district.
- (1) It shall be the duty of the Commission to review such plans before a building permit for the proposed activity is granted by the Building Inspector.
 - (2) This Commission shall review only plans relating to the exterior features of a structure or building as are visible from a public way and shall have no jurisdiction to consider interior walls, arrangements or structures.
 - (3) In reviewing the plans, the Commission shall give consideration to:
 - (a) The historical and architectural value and significance of the building or structure and its relationship to the historic and architectural value of the surrounding area.
 - (b) The general appropriateness of the proposed exterior design, colors, arrangement, texture and materials. Samples of materials may be required.
 - (c) Any other factors relating to the aesthetic considerations which the Commission deems pertinent to the benefit of the Village and to the historic significance of the structure or building and surrounding area.
- C. Exterior alterations, repairs and additions to the buildings or structures located wholly or partly within the boundaries of the historic district or which are designated as landmarks shall be made consistent with the building materials and styles of the particular architectural period of which said building or structure is characteristic. Reasonable substitutes of exterior building materials which substantially conform with original materials shall be permitted under this section upon prior review of the Commission.
- D. New construction shall be consistent with the architectural styles and historic value in the historic district. However, the Commission may approve the construction of buildings or structures which have a dissimilar architectural style to that of the historic district if said Commission deems it proper that the new construction will be in the best interest of the historic district.
- E. (Reserved) *Editor's Note: Former Subsection E, allowing moving of buildings as an alternative to demolition, was repealed 9-12-2005 by L.L. No. 10-2005.*
- F. Procedure for review of plans: **[Amended 9-12-2005 by Ord. No. 10-2005]**
- (1) Prior to the commencement of any work requiring a certificate of approval, the owner shall file an application for such certificate with the Commission. The application shall state, where appropriate, that the property is a landmark and/or is located within or on the boundaries of the historic district. The plans shall be submitted showing the structure or building in question and also giving its relation to adjacent structures or buildings and the construction, exterior alteration, repair, moving or demolition sought to be accomplished.
 - (2) The Commission shall approve, modify and approve or disapprove such plans within 62 days from receipt of the completed application, and shall transmit a record of its proceedings and findings to the Building Inspector and the applicant by certified mail, return receipt requested. The Commission shall 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.

- (3) The certificate of approval required by this section of the law shall be in addition to and not in lieu of any permits that may be required by any other laws or regulations of the Village.
- G. Nothing in this chapter shall be construed to prevent ordinary maintenance or repair, with like materials of similar quality and color, of any place, site, structure or building designated as a landmark or landmark site or any property located wholly or partly within the boundaries of an historic district.
- H. This chapter shall not apply in any case where the Building Inspector or any authorized Village enforcement agency orders or directs the construction, removal, exterior alteration or demolition of any improvement on a landmark site or in an historic district for the purpose of remedying conditions determined to be unsafe or dangerous to the health or property of any person.

§ 127-7. Identification of landmarks.

The Village Planner of the Village of Ellenville shall be responsible for appropriate public identification of areas designated as landmarks or landmark sites on the Landmark and Historic District Map. The Commission may approve the size, style, color, typography, material of construction and wording of all privately owned signs identifying landmarks, landmark sites and properties within historic districts prior to installation, consistent with the provisions of this chapter.

§ 127-8. Enforcement.

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

§ 127-9. Maintenance and repair required.

- A. Nothing in this chapter shall be construed to prevent the ordinary maintenance, repainting and repair of any exterior architectural feature of a landmark or property within an historic district which does not involve a change in outward appearance.
- B. No owner or person with an interest in real property designated as a landmark or included within an 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 Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.
- C. Examples of such deterioration include:
- (1) Deterioration of exterior walls or other vertical supports.
 - (2) Deterioration of roofs or other horizontal members.
 - (3) Deterioration of exterior chimneys.
 - (4) Deterioration or crumbling of exterior stucco or mortar.
 - (5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
 - (6) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

§ 127-10. Penalties for offenses.

- A. Failure to comply with any of the provisions of this chapter shall result in the termination of any permits issued or any proceedings commenced under the provisions of this chapter, and penalties for offenses thereof shall be under the enforcement procedures laws of the Village. Penalties shall be consistent with the Village Zoning Ordinance and the Village

Building Construction and Fire Prevention Ordinance **Editor's Note: See Ch. 227, Zoning, and Ch. 70, Building Construction and Fire Prevention.** for violations, as an offense.

- B. Any person who demolishes, causes exterior alterations, or constructs a designated property, or permits such a property to fall into a serious state of disrepair, in violation of this chapter, shall be required to restore the property and its site to the appearance prior to the violation. Expressly excluded from penalty under this section is fire damage or fire destruction to a structure not intentionally caused by the action(s) or omission(s) of the owner or person(s) in possession of the property. Any action to enforce this subsection shall be brought by the Village Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 127-11. Appeals.

- A. Any person aggrieved by a decision of the Historic Preservation Commission relating to a hardship or a certificate of approval may, within 30 days of the decision being filed in the Village Clerk's office, file a written application with the Village Board of Trustees for review of the decision. **[Amended 11-13-2006 by L.L. No. 16-2006]**
- B. The Board of Trustees shall review the decision of the Commission at a regularly scheduled or special meeting within 30 days after the application for review is filed with the Village Clerk, at which time an opportunity to comment on the appeal is afforded to all interested parties or any member of the public. A majority plus one of the membership of the Board of Trustees is required to change a decision of the Commission.
- C. In reaching its decision, the Board of Trustees shall consider the record of the case provided to the Commission. Any new issues, additional information or considerations must first be referred to the Commission for its initial determination. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria. **[Amended 11-13-2006 by L.L. No. 16-2006]**

§ 127-12. Hardship application procedure; criteria for proving hardship.

- A. Any person whose application for a certificate of approval has been denied by the Commission may apply to the Commission for relief on the ground of hardship within 30 days of being served with the decision. **[Amended 9-12-2005 by L.L. No. 10-2005]**
- B. The Commission shall review the decision at a meeting within 30 days after the application for review is filed. The Commission shall decide the application within 62 days after the meeting, or any adjournments or extensions thereof. The concurring vote of a majority of the Commission shall be necessary to reverse or modify the prior determination. **[Amended 9-12-2005 by L.L. No. 10-2005]**
- C. In order to prove hardship, the applicant shall demonstrate to the Commission that: **[Amended 9-12-2005 by L.L. No. 10-2005]**
- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - (2) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
 - (3) The requested use, if approved, would not alter the criteria for the designation of landmarks as described in Subsection A of § 127-4 of this chapter; and
 - (4) The alleged hardship has not been self-created, which consideration shall be relevant to the decision of the Commission, but shall not necessarily preclude the granting of relief. **[Amended 9-12-2005 by L.L. No. 10-2005]**