

ORDINANCE NO. 3361
INTRODUCED BY: BOARD OF COMMISSIONERS
INTRODUCED ON: JULY 5, 2017
PUBLISHED: JULY 13, 2017
PUBLIC HEARING: AUGUST 15, 2017
PUBLISHED: AUGUST 24, 2017

ORDINANCE NO. 3361

**AN ORDINANCE TO AMEND AN ORDINANCE CODIFIED IN THE
CODE OF THE TOWNSHIP OF NUTLEY, CHAPTER 410,
ENTITLED HISTORIC PRESERVATION.**

Chapter 410

HISTORIC PRESERVATION

§ 410-1. Title.

There is hereby created, ratified and adopted a new chapter of the Revised General Ordinances of the Township of Nutley to be entitled "Historic Preservation Committee."

§ 410-2. Authority.

This chapter has been enacted pursuant to the authority granted under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., including, but not limited to, N.J.S.A. 40:55D-107 to 40:55D-112.

§ 410-3. Definitions; Exemptions.

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

HISTORIC LANDMARK — Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing which has been designated in the Master Plan as being of historical, archeological, cultural, scenic, or architectural importance or which has been identified as an historic landmark in accordance with this chapter.

Exemptions. The certificate of appropriateness requirements of this chapter shall not apply to the following activities:

- A. Changes to the interior of a structure unless the property owner agrees and the interior or parts thereof are historically significant;
- B. Repair or replacement of any existing building component, provided that the proposed work does not alter the exterior appearance of the structure, including but not limited to:
 - 1. The installation of storm windows and doors or the installation of or replacement or repair of existing windows and exterior doors that does not change the design, profile, dimension, scale or appearance;

2. Maintenance and repair of existing roofing material that does not change design, scale or appearance;
3. A structural repair that does not alter the design, scale or appearance of the structure;
4. The replacement, maintenance and repair of existing clapboards, shingles, or other original siding, associated trim, fascia boards and soffits, with the same materials or with materials similar in appropriate size, profile, texture, and appearance. Replacement materials must keep in character with the traditional look and standard installation methods as would be found at the time of the structure's construction or prior renovation. The use of vinyl or aluminum is discouraged;
5. Exterior painting, including the change in color of any existing structures;
6. Minor changes that do not by themselves or in conjunction with prior or subsequent minor changes materially alter the exterior appearance of the structure, including but not limited to:
 - a. Changes to or replacement of light fixtures that are not designated as a historic feature or element;
 - b. Changes in mailboxes; and
 - c. Changes in house numbering.
 - d. Changes in existing signage that is not designated as a historic feature or element or the addition of signage;
 - e. Changes in existing awnings that are not designated as a historic feature or element or the addition of new awnings;
7. Repairs or replacement of exterior brick or masonry, including mortar that does not change the color, style, texture, size, or profile of the materials;
8. Work on the exterior of a structure that does not involve changes (of existing) penetrations of an exterior wall, windows, doors, skylights, or roof, including penetrations, replacement or changes for HVAC ducts, grilles, intake louvers, exhaust louvers, vents and pipes.

§ 410-4. Intended Purposes, Criteria and Objectives.

The purpose of this chapter is to effectuate and accomplish the protection, enhancement, and perpetuation of historic buildings, structures, sites, objects and improvements within the Township of Nutley, to assist in implementing the historic preservation element of the Township's Master Plan, and to advance the following public purposes:

- A. To safeguard the heritage of the Township by preserving the resources within the Township which reflect elements of its historical significance;

- B. To discourage the unnecessary demolition of historic resources;
- C. To identify, designate, and regulate historic landmarks in order to preserve their historical significance;
- D. To encourage the continued use of historic landmarks and to facilitate their appropriate use or reuse;
- E. To maintain and develop an appropriate and harmonious setting for historic landmarks within the Township of Nutley;
- F. To foster civic pride in the history and architecture of the Township of Nutley;
- G. To promote appreciation of historic landmarks for the education, pleasure, and welfare of the local population;
- H. To encourage beautification and private reinvestment in historic landmarks and surrounding properties;
- I. To manage change of historic landmarks by encouraging sensitive alteration and/or new construction;
- J. To recognize the importance of historic landmarks by urging property owners and tenants to maintain their properties in keeping with the requirements and standards of this chapter;
- K. To encourage the proper maintenance and preservation of historic settings and landscapes;
- L. To identify particular historic buildings, structures, sites, objects and improvements of significance to the Township of Nutley reflecting or exemplifying the broad cultural, political, economic or social history of the nation, state or community.
- M. To find historic buildings, structures, sites, objects and improvements associated with an historic personage(s) important in national, state or local history.
- N. To determine the site of an historical event which had a significant effect on the development of the nation, state or community.
- O. To identify historic buildings, structures, sites, objects and improvements which embody the distinctive characteristics of a type, period or method of architecture or engineering;
- P. To find historic buildings, structures, sites, objects and improvements that are representative of the work of an important builder, designer, artist or architect.
- Q. To locate historic buildings, structures, sites, objects and improvements significant for containing elements of design, detail, materials or craftsmanship which represent a significant innovation.
- R. To identify historic buildings, structures, sites, objects and improvements that are able or likely to yield information important in prehistory or history.

§ 410-4.1. Designation of Historic Landmark.

A property may be classified as a Historic Landmark only if the property owner consents and if the property satisfies one or more of the above criteria to be determined at a hearing before the Planning Board in accordance with the notice provisions set forth in Section 410-4.5.

After receiving consent and prior to recommending a building, structure, site, object or improvement as a Historic Landmark to the Planning Board, the Committee shall conduct a meeting of their members to discuss the proposed recommendation.

The Committee shall provide not less than 20 days written notice to the owner(s) of record of the proposed Historic Landmark to allow the owner the opportunity to be heard at the Committee meeting.

If the Committee decides to recommend that the building, structure, site, object or improvement be designated a Historic Landmark then a hearing before the Planning Board must be conducted in accordance with the notice provisions below, before the building, structure, site, object or improvement can be designated a Historic Landmark.

§ 410-4.2. Notice Requirements for Historic Landmark Hearings Before the Historic Preservation Committee and the Planning Board.

Whenever a hearing is required on an application for recommendation to be designated as a Historic Landmark by the Historic Preservation Committee, or for designation as a Historic Landmark by the Planning Board, notice must be given as follows:

(1) The Historic Preservation Committee shall send a letter to the Chairman of the Planning Board to request a hearing date with the Planning Board. An owner of the property being considered for Historic Landmark designation must be given at least 20 days notice prior to the hearing by the Planning Board. Notice is to be made by letter sent by both certified and ordinary mail advising of the date, time and place of the hearing and the nature of the matters to be considered, an identification of the property proposed for designation as a Historic Landmark by street address, if any, or by reference to lot, and block number as shown on the current tax record in the Municipal Tax Assessor's office. Notice to a partnership may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or any other person authorized by law to accept service on behalf of the corporation.

(2) Any notice made by certified mail as hereinabove required shall be deemed to be complete upon mailing in accordance with the provisions of N.J.S.A. 40:55D-14.

§410-4.3. Decisions and Resolutions.

Each decision on any application for designation as Historic Landmark shall be set forth in writing as a resolution of the Planning Board, which shall include findings of fact and legal conclusions. A copy of the written decision or resolution shall be mailed by the Board within 10 days of the date of decision to the Historic Preservation Committee, to the President of the Nutley Historical Society and to the owner of the property and to all persons who have requested it and who have paid the fee prescribed by the Planning Board for such service. A copy of the decision shall also be filed with the office of the Municipal Clerk, who shall make a copy of such filed decision available to any interested party upon payment of a fee calculated in the same manner as those established for copies of other public documents in the municipality.

§410-4.4. Publication of Decisions.

A brief notice of every final decision shall be published in the official newspaper of the municipality. Publication shall be arranged by the Secretary of the Planning Board. Said notice shall be sent to the official newspaper for publication within 10 days of the date of any such decision.

§ 410-5. Appointment of Historic Preservation Committee Members; Terms; Vacancies; Conduct of Hearings.

There is hereby created and designated within the Township a Historic Preservation Committee to be known as the "Nutley Township Historic Preservation Committee" (hereinafter referred to as the "Committee") which shall consist of five members and two alternate members who shall be appointed by the Mayor, with the consent of the governing body. The Mayor shall designate at the time of appointment the regular members by class and the alternate members as "Alternate No. 1" and "Alternate No. 2." The classes of regular members shall be defined as follows:

Class A: a person who is knowledgeable in building design and construction or architectural history and who may reside outside the Township; and

Class B: a person who is knowledgeable in, or who has demonstrated an interest in, local history and who may reside outside the Township; and

Class C: any citizen of the Township who shall hold no other municipal office, position, or employment except for membership on the Planning Board or Zoning Board of Adjustment.

There shall be one regular member designated as Class A, one regular member designated as Class B and three regular members designated as Class C.

The terms of the members first appointed shall be so determined so that to the greatest practicable extent, the expiration of the terms shall be distributed in the case of regular members evenly over the first four years after their appointment; provided that the initial term of no regular member shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of a regular member shall be four years, and the term of an alternate member shall be two years.

Vacancies occurring otherwise than by expiration of term shall be filled for the unexpired term only. Notwithstanding any other provision herein, the term of any member common to the Committee and the Planning Board shall be for the term of membership on the Planning Board, and the term of any member common to the Committee and the Board of Adjustment shall be for the term of membership on the Board of Adjustment.

The Committee shall elect a Chairperson and Vice Chairperson from its members and select a Secretary who may or may not be a member of the Committee or a municipal employee.

The presence of five members, which may include alternate members filling vacancies of regular members, at a meeting shall constitute a quorum.

Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

No member of the Committee shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest.

A member of the Committee may, after public hearing if he or she requests it, be removed by the Board of Commissioners for cause.

All Committee records and minutes shall be government records within the meaning of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and all Committee meetings shall be conducted in accordance with Open Public Meetings Act, N.J.S.A. 10:4-7 et seq.

§ 410-6. Funding.

The governing body shall make provision in its budget and appropriate funds for the expenses of the Committee including administrative expenses for mailings, filings with the County or State. The Committee shall make application to the Township for these funds.

The Committee may employ, contract for, and fix the compensation of experts and other staff and services as it shall deem necessary, and in consultation with the Planning Board and the Commissioners. The Committee shall obtain its legal counsel from the Municipal Attorney.

§ 410-7. Duties of the Historic Preservation Committee.

The Committee shall have the responsibility to:

- A. Establish a regular schedule of meetings on a monthly basis if necessary but no less than on a quarterly basis;
- B. Prepare and/or maintain a survey of proposed historic landmarks of the Township so as to identify historic landmarks that are worthy of protection and preservation. The criteria for evaluating and designating historic landmarks shall be guided by the National Register of Historic Places;
- C. Make recommendations to the Planning Board on the historic preservation plan element of the Master Plan and on the impact for preservation of historic landmarks of any other Master Plan elements;
- D. Advise and make recommendations on the designation of real property, man-made structures, natural objects or configurations or any portion or group of the foregoing for inclusion as a Township historic landmark and for inclusion in the New Jersey National Register of Historic Places which will be subject to final determination by the Planning Board;
- E. Advise the Planning Board and the Board of Adjustment on applications for development, when requested;
- F. Carry out such other advisory, educational and informational functions as will promote historic preservation in the Township;
- G. Review and make decisions regarding any certificates of appropriateness;

- H. Require that a photographic of every historic landmark be created by the Committee upon the adoption of this chapter or the subsequent designation of any historic landmark or the completion of work performed under any certificate of appropriateness which shall be part of the Committee's records, and part of the zoning department file.

§ 410-8. Certificate of Appropriateness.

Prior to the renovation of any property designated as a historic landmark a Certificate of Appropriateness, issued by the Committee, shall be required before any exterior construction work is started on any Historic Landmark, whether or not a building permit is required for such work or unless the exterior construction work is determined to be exempt.

A Certificate of Appropriateness is required:

- (1) To change the physical appearance of a structure exclusive of painting the structure;
- (2) For demolition of all or part of a structure;
- (3) For relocation of a principal or accessory structure; and
- (4) For any addition to or new construction of a principal or accessory structure.

All applicants shall submit an application form accompanied by pictures, descriptions or other information about changes to the Construction Official for prompt distribution to the Committee. Applications for demolition shall include current and historical photographs of the structure.

Anyone considering action that requires a Certificate of Appropriateness is encouraged to request an informal informational meeting with the Committee or its Chairman to review the design issues and standards of appropriateness prior to submitting a formal application for a certificate of appropriateness or for a determination of non-necessity. A request deemed complete by the Construction Official shall be submitted to the Committee Secretary and a meeting is to be scheduled within 45 days of said being deemed complete (unless time constraints are waived by the applicant).

If the property owner fails to consent, the Committee shall hold a public hearing on all applications for a certificate of appropriateness if the Committee determines that the desired work is not exempt. The fee for such a hearing shall be \$50.

After the public hearing the Committee shall render a written determination on the application within 20 days of the hearing explaining the reasons for the decision (unless time constraints are waived by the applicant). The Construction Official shall notify the applicant of said determination in writing within five days. Should the Committee fail to report its decision within the twenty-day period (unless time constraints are waived by the applicant), the application will be deemed approved in favor of issuance of a Certificate of Appropriateness.

Appeals from the Historic Preservation Committee's decision may be made to the Planning Board, pursuant to Section 410-4.2.

A property owner shall post the Certificate of Appropriateness in a conspicuous spot on the exterior of the designated structure while work is in progress. A Certificate of Appropriateness shall be

valid for two years. If demolition is permitted, the certificate of appropriateness shall be valid for one year and cannot be extended.

The issuance of a Certificate of Appropriateness shall not affect the need for obtaining any other permit or approval for construction and complying with the requirements of any other law.

§ 410-9. Enforcement; Violations and Penalties.

The Construction Code Official shall be responsible for enforcement of this chapter.

Any person who shall undertake any activity that requires compliance with this chapter and does not do so shall be deemed to be in violation of this chapter. Any person convicted of violation of this chapter shall be subject to a penalty not to exceed \$500 per day for each violation. Each act in violation of this chapter shall be deemed a separate violation of this chapter.