

Model Landmarks Preservation Local Law for New York State Municipalities JULY 2014
Modified and Proposed for the Village of Ballston Spa, January 2025

A LOCAL LAW relating to the establishment of landmarks, historic districts, and scenic landmarks in the Village of Ballston Spa

Section 1. Title.

This local law shall be known and may be cited as the Village of Ballston Spa Historic Preservation Local Law.

Section 2. Purpose.

The Village Board of Trustees finds that there exist within the Village of Ballston Spa places, sites, structures and buildings of historic or architectural significance, antiquity, uniqueness of exterior design or construction, which should be conserved, protected and preserved to maintain the historic and architectural character of Ballston Spa, to contribute to the aesthetic value of the Village and to promote the general good, welfare, health and safety of the Village and its residents.

The purpose of this local law is to promote the general welfare by providing for the identification, protection, enhancement, perpetuation, and use of buildings, structures, signs, features, improvements, sites, and areas within the Village that reflect special elements of the Village's historical, architectural, cultural, economic or aesthetic heritage for the following reasons:

- (a) To foster public knowledge, understanding, and appreciation in the beauty and character of the Village and in the accomplishments of its past;
- (b) To ensure the harmonious, orderly, and efficient growth and development of the Village;
- (c) To enhance the visual character of the Village by encouraging new design and construction that complements the Village's historic buildings;
- (d) To protect and promote the economic benefits of historic preservation to the Village, its inhabitants and visitors;
- (e) To protect property values in the Village;
- (f) To promote and encourage continued private ownership and stewardship of historic structures;
- (g) To identify as early as possible and resolve conflicts between the preservation of historic landmarks/districts and alternative land uses; and
- (h) To conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

Section 3: Enabling Authority.

Pursuant to Article 5, § 96-a; Article 5-G, Article 5-J and Article 5-K, § 119-dd of the General Municipal Law; Article 14 of the Parks, Recreation and Historic Preservation Law; and § 10 of the Municipal Home Rule Law; it is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts are necessary to promote the cultural, economic and general welfare of the public.

Section 4. Historic Preservation Commission.

There is hereby created a commission to be known as the Village of Ballston Spa Historic Preservation Commission (commission).

- (a) Membership: The commission shall consist of five members.
- (b) Appointments: Members of the commission shall be appointed by Village mayor subject to approval of the Village Board of Trustees. No person appointed to the commission can also serve as Mayor or a member of the Village Board of Trustees.
- (c) Term of Office: The terms for all members of the commission shall be staggered and fixed so that the term of one member shall expire at the end of the calendar year in which all such commission members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the commission.
- (d) Qualifications: To the extent possible, commission members shall be required to have the following expertise:
 - i. at least one shall be a historian;
 - ii. at least one shall be a state-licensed real estate professional;
 - iii. at least one shall have demonstrated significant interest in and commitment to the field of preservation planning as evidenced either by involvement in a local or regional historic preservation group, employment or volunteer activity in the field of preservation planning, or other serious interest in the field; and,
 - iv. all members shall have a known interest in historic preservation and planning within the Village of Ballston Spa
- (e) Vacancies: Vacancies occurring in the commission other than by expiration of term of office shall be filled by appointment on nomination of the mayor and approval to the

Trustees. Any such appointment shall be for the unexpired portion of the term of the replaced member, and the appointment must be made in accordance with the criteria established above for original appointments.

(f) Reappointment: Members may serve for no more than a maximum of two full terms before stepping down from the commission. A previous appointee may be reappointed after a two year hiatus from the commission. Each member shall serve until the appointment of a successor, or until they serve two consecutive terms.

(g) Compensation: Members shall serve without compensation.

(h) Training and attendance requirements:

- i. Each member of the commission shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet this requirement. Such training shall be approved by the Board of Trustees and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
- ii. To be eligible for reappointment to the commission, a member shall have completed the training approved by the Board of Trustees.
- iii. The training may be waived or modified by resolution of the Board of Trustees, in its judgment, it is in the best interest to do so.
- iv. No decision of a commission shall be voided or declared invalid because of a failure to comply with this subdivision.

Section 5. Organization.

(a) Chairperson; designation and duties.

- i. The chairperson and vice chairperson of the commission shall be designated by vote of an affirmative majority of the members of the commission.
- ii. The chairperson shall have the right to vote in all matters before the commission.
- iii. All meetings of the commission shall be held at the call of the chairperson and at such other times as the commission may determine by affirmative vote. Such chairperson, or in his or her absence, the vice chairperson, may administer oaths and compel the attendance of witnesses.

- (b) Secretary: The Board of Trustees shall appoint a secretary to serve as secretary to the commission. At the time of service, the secretary shall not also serve as member of the commission. The secretary shall keep a record of all resolutions proceedings, and actions of the commission, as well as attendance of commission members.
- (c) Quorum: A simple majority of the commission members shall constitute a quorum for the transaction of business. An affirmative majority vote of the full commission is required to approve any resolution, motion or other matter before the commission.

Section 6. Records and Annual Report.

- (a) Records: The commission shall be subject to the provisions of the Public Officers Law, including Article 7 related to the Open Meetings Law. The commission records shall be readily available to the public. The vote or failure to vote of each commission member shall be recorded. If any commission member abstains from voting based on a conflict of interest or otherwise, the member must also state his or her reason(s) or ground(s) for doing so on the record.
- (b) Annual Reports: The commission shall submit an annual report of its activities to the Board of Trustees and make such recommendations to the board as the commission deems necessary to carry out the purposes of this local law.

Section 7. Promulgation of Regulations; Meetings.

- (a) Regulations: The commission may recommend to the Board of Trustees regulations relating to any subject matter over which the commission has jurisdiction under this local law. Any such recommendation may be adopted by local law of the Village.
- (b) By-Laws; meetings: The commission may approve by-laws that are consistent with the regulations adopted by the Board of Trustees. Such by-laws shall provide for the time and place of holding regular meetings; and may provide for the calling of special meetings by the chairperson or by written request of at least two members of the commission. Regular meetings shall be held at least once a month. All regular or special meetings of the commission shall be consistent with the notice provisions of the New York Open Meetings Law and shall be open to the public.

Section 8. Committees.

The commission may, in its by-laws, establish permanent or ad hoc committees consisting current members of the commission for assignments assigned to it by the full commission.

Section 9. Powers and Duties of the Historic Preservation Commission.

- (a) General and Advisory Powers. The commission shall, from time to time:
- i. Review any local laws or regulations, including existing landmarks or historic preservation laws or regulations in the Village, and recommend to the Board of Trustees any changes and amendments thereto;
 - ii. Recommend to the Board of Trustees additional regulations to be adopted by local law that may be necessary for the commission to conduct its business, consistent with the scope and intent of this local law;
 - iii. Recommend to the Board of Trustees specific criteria for regulations to be adopted by local law that identify and catalogue significant historic landmarks, and the designation of landmarks and historic districts to be adopted by local law, and from time to time changes to the above;
 - iv. Maintain an inventory of locally-designated historic resources or districts within the Village and publicize the inventory;
 - v. Recommend to the Board of Trustees additional criteria to be adopted in local law to be used when evaluating applications for a certificate of appropriateness;
 - vi. Recommend to the Board of Trustees proposals for the acquisition of preservation easements or other interests in real property;
 - vii. Conduct investigations, prepare maps, reports and recommendations in connection with its advisory authority relating to the planning, development and administration of the Village landmarks preservation policies, regulations and local law as needed, provided the total expenditures of said commission shall not exceed the appropriation provided by the Board of Trustees together with any public or private grant funding received by the Village for the commission to undertake its landmarks preservation powers and duties.
 - viii. The Board of Trustees may by resolution provide for the referral to the commission for a report on any matter or class of matters that impact the municipality's landmarks preservation local law, policies, regulations or administrative processes before final action is taken thereon by the Board or other office of said Village having final authority over said matter. The Board may further stipulate that final action thereon shall not be taken until the commission has submitted its report thereon, or has had a reasonable time, to be fixed by the Board in said resolution, to submit the report.

(b) Administrative Reviews. In accordance with Section 14 below and any regulations adopted by the Board of Trustees for landmarks and historic preservation purposes, the commission shall:

- i. Evaluate an application for a certificate of appropriateness; approve, approve with modifications, or deny any proposal for exterior changes to a designated individual landmark or property within a designated historic district resulting from any such application;
- ii. Evaluate an application for a certificate of economic hardship; approve, approve with modifications, or deny any such application;
- iii. Evaluate an application for a certificate of appropriateness for demolition, removal or relocation; approve, approve with modifications, or deny any such application;
- iv. Evaluate, without public hearing, an application for ordinary maintenance and repair of historic resources, properties or landmarks; approve, approve with modifications, or deny any such applications;
- v. Perform other functions that the Board of Trustees may designate by local law.

(c) A commission may designate or advise designation of a historic district under this historic preservation local law and that historic district is not to be construed as a zoning district under the Village local law. Nothing contained in this historic preservation local law shall be construed as authorizing the commission to adopt a law, by-law or regulation that regulates or limits the height and bulk of buildings, regulates and determines the area of yards, courts and other open spaces, regulates density of population or regulates or restricts the locations of trades and industries or creates zoning districts for any such purpose. A certificate of appropriateness may regulate height and bulk of a specific structure in determining compatibility with surrounding structures.

Section 10. Cooperation of Village Departments.

All Village departments shall, upon request of the commission, assist and furnish available permits, plans, reports, maps and statistical and other information which the commission may require for its work.

Section 11. Criteria and Designation of Landmarks or Historic Districts.

The South End Historic District shall include all parcels of land which abut East and West High Streets from the intersection of East High Street with Eastern Avenue westerly to the creek which flows under West High Street into the Gordon Creek (including the continuation of Charlton Street south of West High Street); Beach Street; Pleasant Street from its intersection with the easterly line of Beach Street westerly to Milton Avenue; Milton Avenue from its intersection with Pleasant Street southerly to its intersection with East and West High Streets; Church Avenue from its intersection with East and West High Streets southerly to and including 20 Church Avenue, commonly known as the "Verbeck House." Parcels of land abutting the above streets shall include all adjoining parcels under common ownership as of May 24, 1999. The commission shall delineate landmarks or additional historic districts and recommend them to the Board of Trustees for designation under local law.

(a) Individual Landmark: The commission may delineate an individual property as an individual landmark if it:

- i. exemplifies or possesses special character, or historic or aesthetic interest of value as part of the political, economic, or social history of the Village;
- ii. is identified with persons or events significant in local, state, or national history;
- iii. embodies the distinguishing characteristics of a type, period or method of construction or design style, or is a valuable example of the use of indigenous materials or craftsmanship; or is representative of the work of a designer, architect or builder;
- iv. represents an established and familiar visual feature of the community by virtue of its unique location or singular physical characteristic, represents an established and familiar visual feature of the community; or
- v. has yielded or may be likely to yield information important in prehistory or history.

(b) Historic District: The commission may delineate a group of properties within the Village as an historic district if a majority of properties therein:

- i. contain properties which meet one or more of the criteria for designation as a landmark and which may have within its boundaries other properties or structures that, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual

characteristics of the landmark or landmarks located within the historic district; and

ii. constitute a unique section of the Village by reason of possessing those qualities that would satisfy such criteria.

(c) Scenic Landmark: The commission may delineate a landscape feature or group of features. Recommendations for designation must be accompanied by such historical and architectural information as is required by the commission to make an informed recommendation concerning the application, together with any fee set by the Board of Trustees

(d) The boundaries of each landmark, scenic landmark or historic district shall be specified in detail with reference to the tax map identification and/or street number and shall be filed, in writing, in the Village Clerk's office and there made available for review by the public.

(e) Ordinarily, properties that have achieved significance within the past fifty (50) years are not considered eligible for delineation under this landmarks preservation local law or local law adopted by the Board of Trustees. However, such properties will qualify if they are:

i. Integral parts of historic districts that meet the criteria for designation; or

ii. If they are properties of exceptional importance.

Section 12. Notice and Hearing Requirements for Proposed Designation.

The commission shall delineate individual landmarks or historic districts in the following manner:

(a) Initiation of Proposed Designation. Designation of an individual historic landmark or historic district may be proposed by the commission, by the owner of the property, or by any resident of the Village.

(b) Public Hearing; general notice.

i. Within a reasonable time after receipt of a full application or other matter referred to it, the commission shall schedule a public hearing on all proposed resource, individual, landmark or historic district designations. Public notice of any such hearing shall be given by publication in a newspaper of general circulation within the Village at least 15 days prior to the public hearing date.

ii. The commission shall require submission of written comments on the application prior to designation of any landmark, scenic landmark or historic district.

- iii. The commission, property owners, and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed resource, individual, landmark or historic district.

(c) Notice of Public Hearing; multiple properties proposed for designation.

- i. Ten properties or less: Notice of public hearing for a proposed designation involving no more than ten properties shall be sent by certified mail/return receipt requested or courier service with proof of delivery or personal service with proof of delivery to the owners of properties located within the area of the proposed historic district at least 15 days prior to the date of the public hearing. Such notice shall include a description of the properties proposed for designation and state the time and place where any public hearing to consider such designation will be held by the commission.
- ii. More than ten properties: Where the proposed designation of an historic district includes more than ten properties and the commission deems individual notice infeasible, notice may instead be published at least once in newspaper of general circulation in the Village 15 days prior to the date of the public hearing. The notice shall specify the time and place of the public hearing, a brief description of the proposed designation, and the location where the proposal may be reviewed prior the hearing.
- iii. The notice provisions are in addition to the general notice requirements under (b) of this Section.

(d) Work Moratorium: Once the commission has issued notice of a proposed designation it may recommend to the Board of Trustees that a moratorium be put in place, prohibiting any work relating to the individual landmark or district proposed for designation as long as the proposed designation is under active consideration by the commission and until the commission has made its decision on designation.

(e) Commission Record: The commission shall compile a public record in support of its delineation of a resource, landmark or historic district. In addition to testimony or documentary evidence received at any public hearing, the record may also contain reports, public comments, expert testimony, or other evidence offered outside of the hearing, but submitted for the commission's consideration by the date of the hearing. At a minimum, the record of the delineation shall contain the application, commission and/or staff reports, any comments made on the application at the public hearing, and the commission's recommendation to the Board of Trustees to approve, approve with modifications, or deny the application requesting designation.

- (f) Village Decision: Within 62 days after the close of the public hearing, the Board of Trustees shall by resolution undertake a designation in whole or in part, or shall disapprove in entirety, setting forth in writing the reasons for the decision. Notice of the board designation shall be sent by the commission to the applicants and owners of a designated property by certified mail return receipt requested or in the case of an approved historic district, notice shall be sent by the commission to the applicants and owners of all properties within the approved district by certified mail return receipt requested.
- (g) The commission may agree with the applicant in writing to extend the time period within which a recommendation will be made.
- (h) The commission shall forward notice of each property designated as an individual landmark and the boundaries of each designated historic district to the building department and planning department and Village Clerk and County Clerk for recordation.
- (i) Failure to Send Notice. Failure to send any notice by mail to any property owners where the address of such owner is not a matter of property tax records shall not invalidate any proceedings in connection with the proposed designation.
- (j) Amendment or Rescission. The commission may amend or rescind any designation of an individual landmark or historic district in the same manner and procedure as followed for designation.

Section 13. Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Individual Landmarks or Historic Districts.

- (a) The Historic Preservation Commission is responsible for the approval or disapproval of proposals for exterior changes to a historic property designated under this local law. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or move of a designated historic landmark or property within a designated historic district without first obtaining a Certificate of Appropriateness that authorizes such work from the Historic Preservation Commission.
- (b) All changes to Village owned property affecting an individual landmark or within a historic district shall be subject to the provisions of this local law.
- (c) The building department shall receive and file all applications issued for any individual landmark, or landmarks or historic district to which this local law applies. The building department shall transmit a copy of any such application to the commission.

- (d) The commission may require that the application for certificate of appropriateness be supplemented by such additional information or materials as may be necessary for a complete review by the commission. The commission may impose such reasonable conditions or restrictions as it deems necessary or appropriate on a case-by-case basis to promote or achieve the purpose of this local law.

Section 14. Criteria for Issuing a Certificate of Appropriateness.

- (a) Certificate of appropriateness; general criteria: The commission shall approve the issuance of a certificate of appropriateness only if it determines that the proposed work will not have a substantial adverse effect on the aesthetic, historical, or architectural significance and value of the individual landmark or if the proposed work is within a historic district, proposed work will not have a substantial adverse effect on the aesthetic, historical, or architectural significance of the property itself, the district or neighboring properties in such district.
- (b) In making this determination, the commission's decision to approve, approve with modification(s) or deny an application for a certificate of appropriateness for an individual landmark, scenic landmark will be guided by the Secretary of the Interior's Standards for Rehabilitation and by the following principles:
 - i. the commission's decision to approve, approve with modification(s) or deny an application for a certificate of appropriateness for an improvement to property located within a historic district shall be based on the following principles:
 - 1. properties which contribute to the character of the historic district shall be retained, with their historic features altered as little as possible;
 - 2. any alteration of existing properties shall be compatible with the surrounding historic district; and
 - 3. new construction shall be compatible with the historic district in which it is located;
- (c) In applying the principle of compatibility set forth in paragraph (b) of this Section, the commission shall consider the following factors:
 - i. the general design and character of the proposed alteration or new construction relative to existing features of the property or improvement;
 - ii. the scale and visual compatibility of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - iii. texture and materials, and their relation to similar features of the property and other properties in the neighborhood;

- iv. visual compatibility with surrounding properties, including proportion of the property's 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 physical and visual features to the significance of the property.
- (d) In approving an application for a certificate of appropriateness, the commission shall find that the building or structure for which the permit was requested, if erected or altered in accordance with the submitted plan or with stated modifications, would be consistent with the spirit and intent of this local law, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or visual discord in relation to the sites or surroundings, would not mar the appearance of the area, would not impair the use, enjoyment and desirability or reduce the values of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent an appropriate development and utilization of the site or of adjacent lands and would not adversely affect the functioning, economic stability, prosperity, health, safety and general welfare of the community.
- (e) Where the commission grants a certificate of appropriateness under circumstances where the permitted activity is likely to uncover or affect archaeological resources, the commission shall require reasonable efforts to protect and preserve such resources. Where such protection and preservation are not feasible, the commission shall nonetheless impose appropriate and reasonable conditions to insure that the archaeological resource is made accessible for a reasonable period to qualified persons.
- (f) In approving an application for a certificate of appropriateness, the commission shall not review changes to exterior paint colors.

Section 15. Certificate of Appropriateness Application Procedure.

- (a) Prior to the commencement of any work requiring a certificate of appropriateness, the property owner shall file an application for a building permit with the Village Building Inspector and an application for such certificate with the commission.
- (b) The application for certificate of appropriateness shall contain:
- i. name, address, and telephone number of applicant;
 - ii. building permit application number as assigned by the building department, 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 building materials to be used, including their proposed color;
 - 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 any other information which the commission may deem necessary in order to visualize the proposed work.

- (c) Upon receipt of all the information required herein, the commission shall deem the application complete and shall place the application on the agenda of the next meeting of the commission.
- (d) Upon submission of a complete application, the commission shall have the authority to, without public hearing and notice:
 - i. determine whether the proposed work constitutes ordinary maintenance and repair for which a certificate of appropriateness is not required;
 - ii. approve work which is considered replacement-in-kind;
 - iii. approve work that is of any other type that has been previously determined by the commission to be appropriate for delegation to staff.
- (e) The commission is required to report on all activities to the Board of Trustees within the next month after an application is submitted and decisions were made without any public hearing and notice.

Section 16. Certificate of Appropriateness Public Notice Requirements.

- (a) Upon application for a certificate of appropriateness, public notice of the proposal shall be posted by the owner or owner's representative on the property for a minimum of ten days. This notice must remain in place until a decision to approve or deny the certificate of appropriateness has been made. The notice shall specify the proposed work, the time and place of the public hearing, and to whom and by when any public comments are to be communicated. The notice must be placed at or near the property line in the front yard so that it will be plainly visible from the street, and, in cases where a property has frontage on more than one street, an additional sign must be placed at or near the property line on any additional street frontage so that the sign will be plainly visible from the street on which it has such additional frontage.
- (b) The commission shall hold a public hearing prior to rendering a decision on any application for a certificate of appropriateness. Notice of the public hearing shall be posted in five conspicuous locations in the village and on the village web site at least 5 calendar days prior to the public hearing date. The notice shall specify the time and place of the public hearing, a brief description of the proposal, and the location where the proposal may be reviewed prior to the hearing. The property owner and any interested party may present testimony or documentary evidence regarding the proposal at the hearing, which will become a part of the record. The record may also contain staff reports, public comments, and other evidence offered outside of the hearing, but presented by the hearing date.

- (c) Within 30 days after the close of the public hearing, the commission shall approve, approve with conditions or modifications, request additional information, or deny the certificate of appropriateness.
- (d) In the event, however, that the commission shall make a finding of fact that the circumstances of a particular application require further time for additional study and information than can be obtained within the aforesaid 30-day period after close of the public hearing, then the commission shall have a period of up to one additional 30-day period from the date of any such finding within which to act upon such an applications.
- (e) All decisions of the commission shall be in writing. A copy shall be sent to the applicant by certified mail or courier service with proof of delivery or personal service with proof of delivery, and a copy filed with the Building Inspector and Village clerk for public inspection, within ten days of the date of the decision. The commission's decision shall state the reasons for denying or modifying any application.

Section 17. Recommendation on a Temporary Moratorium on Land Use Approvals.

- (a) Once the commission has received a complete application requesting a certificate of appropriateness it may request the Board of Trustees to adopt a temporary moratorium prohibiting the issuance of any building permits or demolition permits, relating to any property or resource that is the subject of the application, by the Building Inspector as long as the application is under active consideration by the commission and until the commission has made its decision.
- (b) The commission's request for a temporary moratorium shall include the reasons the commission deems the imposition of such a temporary moratorium is in the best interest of the public or to preserve the historic landmark or district. Copies of the commission's request for imposition of a temporary moratorium shall be sent to the applicant by certified mail or hand delivered to the applicant's representative of record.
- (c) An applicant for a certificate of appropriateness may petition the municipal governing board for the lifting of any temporary moratorium to allow certain work to proceed pending the commission's determination to approve, approve with modification(s) or to deny the application, if such work would not affect the historic features under consideration. The applicant shall send a copy of the petition with all supporting documents to the commission. Before the Board of Trustees renders a decision on the applicant's petition, it shall hold a hearing if requested by the commission or member of the public.
- (d) The certificate of appropriateness required by this local law shall be in addition to and not in lieu of any building permit or other land use approval that may be required by any other local law or regulation of the Village.

Section 18. Expiration of Approval; Extension of Approval

Certificates of appropriateness shall be valid for twenty-four months, after which time the owner shall apply for a new certificate if he/she still wishes to undertake work on the property. At least two months prior to expiration of the twenty-four-month period the owner may apply, in writing, for an extension and shall explain the reasons for the extension request. The commission may grant up to two extensions of six months each. A written application for an extension of a certificate of appropriateness approval shall not be considered an application for a new certificate of appropriateness.

Section 19. Alteration Hardship Process and Criteria.

- (a) An applicant whose certificate of appropriateness for a proposed alteration of a landmark property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship related to a proposed alteration, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible.
- (b) As promptly as is practicable after making a preliminary determination of hardship as provided in this local law, the commission, with the aid of such experts as it deems necessary, shall, in consultation with the applicant, endeavor to develop a plan whereby the improvement may be preserved and perpetuated in such manner as to effectuate the purpose of this local law, and also rendered capable of earning a reasonable return.
- (c) Consultation; The applicant shall consult in good faith with the commission, local preservation groups, and other interested parties in a diligent effort to seek an alternative that will result in appropriate preservation of the property. The consulting parties may include interested purchasers, as well as preservation and other interested organizations, public agencies, developers, real estate agents and individuals who may be instrumental in developing an economically feasible solution.
- (d) Economic Hardship; criteria. Following the denial of a certificate of appropriateness, the applicant may request a certificate of economic hardship. In all cases other than a proposed demolition, removal or relocation, the applicant shall prove the existence of economic hardship by demonstrating to the commission that: (1) the applicant cannot realize a reasonable return if compliance with the commission's decision is required, provided, however, that the lack of reasonable return is proven by the applicant to be substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested relief, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(e) The commission, in the granting of a certificate of economic hardship, shall grant the minimum terms deemed necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(f) Public hearing.

i. The commission may hold a public hearing on the hardship application at which an opportunity will be provided for the applicant and public to present their views on the hardship application.

ii. If no public hearing is held, the commission must render a decision on the hardship application within 30 days following its receipt of a complete application.

1. A complete application includes the conclusion of all activities under (c) initiated to consult with necessary parties to determine whether the property may be preserved or rehabilitated in a manner that alleviates the hardship that would otherwise result while substantially accomplishing the goals of this local law.

2. A complete application also includes receipt by the commission of all submissions necessary to meet the applicant's burden of proof.

iii. Following the submission of a complete application, the commission may schedule a public hearing within a reasonable time and determine within 30 days following to the close of any public hearing held on the application whether the applicant has met his or her burden of proof.

(g) Commission decision.

i. If the commission finds that the applicant's burden of proof has not been met, the commission shall deny the application for a certificate of economic hardship.

ii. If the commission finds that the applicant's burden of proof has been met, the commission shall issue a preliminary determination of landmarks or economic hardship within 15 days of the close of any public hearing held on the application or within 62 days after the commission has received a complete application, whichever is earlier.

iii. Within 30 calendar days following the commission's preliminary determination of economic hardship the commission must make a final determination.

- iv. A decision of the commission on the hardship application shall be in writing and shall state the reasons for granting or denying it. A copy shall be sent to the applicant by certified mail/return receipt requested or courier service with proof of delivery or personal service with proof of delivery and a copy filed with the Village/Town/City clerk's office for public inspection.
- (h) No building permit or other land use approvals shall be issued unless the commission grants the hardship application. If the hardship application is granted, the commission shall approve only such work as is necessary to alleviate the hardship.

Section 20. Demolition, Removal, or Relocation of Landmark Buildings.

- (a) Demolition of an individual landmark or of a structure located in and contributing to the significance of a historic district shall be allowed only in case of economic hardship, unless the building department, upon due deliberation has made an express written finding that the structure presents an imminent threat to the public health, safety and welfare.
- (b) Any person desiring to demolish a designated historic building shall first file an application for a historic building demolition permit with the building department and an application for such certificate with the commission. An applicant must submit the following items:
 - i. Current level of economic return;
 - ii. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
 - iii. Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
 - iv. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years;
 - v. Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations;
 - vi. All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - vii. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
 - viii. Any state or federal income tax returns relating to the property for the last two years;
 - ix. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents

regarding: (a) any real estate broker or firm engaged to sell or lease the property, (b) reasonableness of price or rent sought by the applicant, or (c) any advertisements placed for the sale or rent of the property;

- x. Feasibility of alternative uses for the property that could earn a reasonable economic return;
- xi. Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation;
- xii. Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness;
- xiii. Estimated market value of the property: (a) in its current condition; (b) after completion of the proposed alteration or demolition; and (c) after renovation of the existing property for continued use;
- xiv. Expert testimony or opinion on the feasibility of rehabilitation or reuse of the existing structure by an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties and rehabilitation;
- xv. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property; and
- xvi. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

(c) Demolition of any such building may be approved only in connection with approval of a replacement project.

(d) The commission shall hold a public hearing and shall take one of the following actions:

- i. Approve the demolition permit in conformance with the provisions of Section 21 of this local law;
- ii. Approve the demolition hardship permit subject to a waiting period of up to one hundred twenty days to consider relocation/documentation;
- iii. Deny the permit.

(e) During the continuance period, the commission may investigate relocation of the building (on site) or modification of the building for future uses in a way which preserves the architectural and historical integrity of the building.

Section 21. Demolition, Removal or Relocation Hardship Criteria

(a) Certificate of appropriateness for demolition, removal or relocation. An applicant whose certificate of appropriateness for a proposed demolition, removal or relocation of a

landmark, resource or property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship sufficient to justify demolition, removal, or relocation, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible.

(b) Certificate of Appropriateness for demolition. The applicant for a certificate of appropriateness for demolition must establish to the commission's satisfaction, an imminent plan of reuse or redevelopment of the affected property. The applicant for an income-producing property shall establish that:

- i. the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and,
- 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.
- iv. In deciding upon such application for removal, relocation or demolition, the commission may consider whether the owner has created his own hardship through waste and neglect, thereby permitting the property to fall into a serious state of disrepair.

(c) Before approving the removal, relocation or demolition of an individual landmark or structure within a historic district, the commission may suspend the application for up to one hundred and eighty (180) days to allow the applicant to consult in good faith with the commission, local preservation groups, and the public in a diligent effort to seek a less intrusive alternative to demolition.

Section 22. Affirmative Maintenance and Repair Requirement

(a) Ordinary maintenance; repair.

- i. Nothing in this local law shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a historic landmark or property within a historic district that does not involve a change in design, building materials, color or outward appearance.
- ii. The commission may evaluate and decide, without public hearing, whether or not proposed work constitutes ordinary maintenance and repair or requires a certificate of appropriateness.

(b) No owner or person with an interest in real property designated as an individual landmark or included with an historic district shall permit the property to fall into a serious state of

disrepair. Maintenance shall be required, consistent with the Property Maintenance Code of New York State Uniform Fire Prevention and Building Code and all other applicable local regulations.

(c) Every owner or person in charge of an improvement on a landmark site or in an historic district shall keep in good repair:

- i. all of the exterior portions of such improvements and
- ii. all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay or become damaged or otherwise to fall into a serious state of disrepair. Examples of types of prohibited disrepair include, but are not limited to:
 1. deteriorated or crumbling exterior plasters, mortar or facades;
 2. deteriorated or inadequate foundation;
 3. defective or deteriorated flooring or floor supports or any structural floor members of insufficient size to carry imposed loads with safety;
 4. deteriorated walls or other vertical structural supports that split, lean, list or buckle due to defective material or deterioration;
 5. members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration or are of insufficient size to carry imposed loads;
 6. ineffective or inadequate waterproofing of exterior walls, exterior chimneys, roofs, foundations or floors, including windows or doors, which may cause or tend to cause deterioration, decay or damage;
 7. defective or insufficient weather protection for roofs, foundation or exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering, which may cause or tend to cause deterioration, decay or damage;
 8. fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety;
 9. any fault or defect in the building or structure which renders it not properly watertight or otherwise compromises the life and character of the building or structure.

(d) Every owner or person in charge of a scenic landmark shall keep in good repair all portions thereof.

Section 23. Enforcement and Violations; Penalties

- (a) All work performed pursuant to a certificate of appropriateness issued under this local law shall conform to the requirements expressly stated in the certificate or reasonably implied therefrom. It shall be the duty of the building inspector to periodically inspect any such work to assure compliance with the certificate and all applicable law. In the event any requirement included in the certificate of appropriateness has not been met, or upon notification of that fact by the historic preservation 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.
- (b) Any owner or person in charge of a property who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this local law in the absence of a certificate of appropriateness, a finding of economic hardship, or other approval by the commission, may be required by the Board of Trustees to restore the property and its site to its appearance prior to the violation.
- (c) If, in the judgment of the commission, a violation of this local law exists that will result in a detrimental effect upon the life and character of a designated historic resource, landmark, property or on the character of a historic district as a whole, the commission shall notify the building inspector. If, upon investigation, the building inspector finds non-compliance with the requirements of the Property Maintenance Code of the New York State Fire Prevention and Building Code, or any other applicable law or regulation, the building inspector shall order such remedies as are necessary and consistent with this local law and shall provide written notice thereof to the secretary of the commission.
- (d) Penalties. A violation of this local law is deemed an offense punishable by a fine as follows:
 - i. First Offense: A first conviction for violation of this local law may result in a fine not exceeding \$350;
 - ii. Second Offense: A second conviction for violation of this local law, if the occurrence that leads to conviction began within a period of five years from the date of first conviction, may result in a fine not less than \$350 nor more than \$700;
 - iii. Third Offense: A conviction for a third or subsequent offense all of which were committed within a period of five years from when the occurrence leading to the first conviction began, shall include a fine of not less than \$700 nor more than \$1000.
 - iv. In addition to any penalties imposed under this local law, continued violations of this local law shall be punishable in any other manner provided under other local regulations, and state and federal law.
- (e) The commission shall notify the Board of Trustees of an enforcement matter arising under this local law and shall refer it to the Village Attorney. Action to enforce this local law shall

be brought by the Village Attorney or other attorney designated by the Board of Trustees. Civil remedies authorized under Section 23 of this local law shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 24. Appeals.

Any person aggrieved by a decision of the commission relating to a certificate of economic hardship or a certificate of appropriateness may, within 15 days of the decision, file a written appeal to the Board of Trustees for review of the decision. The Board may appoint a Master to hear and decide the matter and report back to the Board. Appellate review shall be based on the same record that was before the commission and using the same criteria in this local law.

Section 25. Definitions

As used in this local law, the following words and phrases have the following meaning:

Acquisition: The act or process of acquiring fee title or other interest in real property, including acquisition of development rights or remainder interest.

Addition: Any act or process that changes one or more of the exterior architectural features of a building or structure by adding to, joining with or increasing the size or capacity of the building or structure.

Alteration: Any act or process, other than demolition or preventative maintenance, that changes the exterior appearance of significant historical or architectural features, or the historic context of a designated landmark, including, but not limited to, exterior changes, additions, new construction, erection, reconstruction, or removal of the building or structure, or grading.

Appropriate: Especially suitable or compatible.

Architectural Significance: The quality of a building or structure based on its date of erection, style and scarcity of same, quality of design, present condition and appearance or other characteristics that embody the distinctive characteristics of a type, period or method of construction.

Building: Any construction created to shelter any form of human use, such as a house, garage or barn, and which is permanently affixed to the land. Building may also refer to a historically related complex, such as a house and a barn.

Building Official: The person, or his or her designee, authorized to grant permits for construction, alteration, and demolition pursuant to the codes adopted by the Village.

Building Inspector: The person, or his or her designee, authorized and certified to enforce the New York State Fire Prevention and Building Code. The person, or his or her designee, who is also authorized by the Board of Trustees to enforce this local law, except where another official is expressly authorized.

Certificate of Appropriateness: An official form issued by the Village commission stating that the proposed work on an designated historic landmark is compatible with the historic character of the property and thus in accordance with the provisions of this local law and therefore: (1) the proposed work may be completed as specified in the certificate; and (2) the Village's departments may issue any permits needed to do the work specified in the certificate.

Certificate of Economic Hardship: An official form issued by the commission when the denial of a certificate of appropriateness has deprived, or will deprive, the owner of the property of all reasonable use of, or economic return on, the property.

Change: Any alteration, demolition, removal or construction involving any property subject to the provisions of this local law.

Character: Defined by form, proportion, structure, plan, style or material. General character refers to ideas of design and construction such as basic plan or form. Specific character refers to precise ways of combining particular kinds of materials.

Compatible: In harmony with location, context, setting, and historic character.

Commission: The historic preservation commission established pursuant to section 4 of this article.

Construction: The act of constructing an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property.

Demolish: Any act or process that removes or destroys in whole or in part a building, structure, or resource.

Demolition Permit: A permit issued by the building official allowing the applicant to demolish a building or structure, after having received a certificate of demolition approval from the commission.

Evaluation: The process by which the significance and integrity of a building, structure, object, or site is judged by an individual who meets the professional qualification standards published by the National Park Service at 36 CFR Part 61 as determined by the State Historic Preservation Office, using the designation criteria outlined in Article 11 of this local law.

Exterior Architectural Features: The architectural style, design, general arrangement and components of all of the outer surfaces of any building or structure.

Feature: Elements embodying the historical significance or architectural style, design, general arrangement and components of all of the exterior surfaces of any landmark or historic resource, including, but not limited to, the type of building materials, and type and style of windows, doors, or other elements related to such landmark or historic resource.

Governing board or municipal governing board: The law making or legislative body of a city, town, village or county. In towns, the governing board is the town board; in villages, the village board of trustees; in cities, the common council or the city council; and, in counties, the county legislature or the board of supervisors.

Historic Context: A unit created for planning purposes that groups information about historic properties based on a shared theme, specific time period and geographical area.

Historic District - Local: An area designated as a historic district by this historic preservation local law, and which contains within definable geographic boundaries a significant concentration, linkage or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. An historic district designated under this local law shall not to be construed as a zoning district of the Village, and nothing contained herein shall be construed as authorizing the commission to adopt a law, by-law or regulation that regulates or limit the height and bulk of buildings, regulates and determine the area of yards, courts and other open spaces, regulates density of population or regulates or restricts the locations of trades and industries or creates zoning districts for any such purpose.

Historic Fabric: Original or old building materials (masonry, wood, metals, marble) or construction.

Historic Integrity: The retention of sufficient aspects of location, design, setting, workmanship, materials, feeling or association for a property to convey its historic significance.

Historic Landmark: A building, district, site, structure or object significant in American history, architecture, engineering, archeology or culture at the national, State, or local level.

Historic Resource: Any evaluated building, structure, object, or site that potentially meets the designation criteria outlined in Section 11.

Historic Preservation Commission: The Historic Preservation Commission appointed by the Board of Trustees of the Village of Ballston Spa.

Historic Property: A district, site, building, structure, or object significant in American history, architecture, engineering, archeology, or culture at the national, state, or local level.

Historic Resources Survey: a) the process of systematically identifying, researching, photographing, and documenting historic resources within a defined geographic area, and b) the resulting list of evaluated properties that may be consulted for future designation. For the purpose of this local law, all surveys shall be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation, as may be amended.

Historic Significance: The quality of a place, site, building, district or structure based upon its identification with historic persons or events in the Village of Ballston Spa.

Integrity: The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Inventory: A list of historic properties determined to meet specified criteria of significance.

Landmark: Any building, structure or site that has been designated as a "landmark" by the Board of Trustees, pursuant to procedures described in Section 11 that is worthy of preservation, restoration or rehabilitation because of its historic or architectural significance.

Landmark Alteration Permit: A permit approving an alteration to or demolition of a landmark, or demolition of a historic resource listed in the historic resource inventory pursuant to the provisions of this local law.

Listing: The formal entry or registration of a property.

Maintain: to keep in an existing state of preservation or repair.

Minor work: Any change, modification, restoration, rehabilitation, or renovation of the features of an historic resource that does not materially change the historic characteristics of the property.

Move: Any relocation of a building or structure on its site or to another site.

National Register Criteria: The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

National Register of Historic Places: The official inventory of the nation's historic properties, districts, sites, districts, structures, objects and landmarks which are significant in American history, architecture, archaeology, and culture, maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 USC. 470 et seq., 36 CFR Sections 60, 63, as may be amended).

Non-contributing: A feature, addition or building, structure, object or site which does not add to the sense of historical authenticity or evolution of an historic resource or landmark or where the location, design, setting, materials, workmanship, history, and/or association of the feature, addition or building, structure, object or site has been so altered or deteriorated that the overall integrity of that historic resource or landmark has been irretrievably lost.

Object: Constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be moveable by nature or design, an object is associated with a specific setting or environment. Examples include boundary markers, mileposts, fountains, monuments, and sculpture. This term may include landscape features.

Owner: Those individuals, partnerships, corporations, or public agencies holding fee simple title to property, as shown on the real property tax records of the Village of Ballston Spa and/or the Towns of Milton and Ballston.

Period of Significance: The length of time when a property was associated with important events, activities, or persons, or attained characteristics which qualify it for landmark status. Period of significance usually begins with a date when significant activities or

events began giving the property its historic significance; this is often a date of construction.

Preservation: The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

Preventative maintenance: Any work to prevent deterioration or damage to the structural integrity or any exterior feature of a landmark or historic resource that does not involve a change in design, material or exterior appearance. Such work includes, but is not limited to, painting, roof repair, foundation or chimney work, or landscape maintenance.

Property Type: A grouping of individual properties based on a set of shared physical or associative characteristics.

Rehabilitation: The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features of the property which convey its historical, architectural and cultural values.

Repair: Acts of ordinary maintenance that do not include a change in the design, material, form, or outer appearance of a resource, such as repainting. This includes methods of stabilizing and preventing further decay, and may incorporate replacement in-kind or refurbishment of materials on a building or structure.

Restoration: The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

Retain: The act of keeping an element, detail or structure and continuing the same level of repair to aid in the preservation of elements, sites, and structures.

Reversible: An addition which is made without damage to the project's original condition.

Scenic Landmark: Scenic landmarks encompass structures that are not buildings, such as bridges, piers, parks, cemeteries, sidewalks, clocks, and trees.

Secretary of the Interior's Standards for the Treatment of Historic Properties: Principles developed by the National Park Service (36 CFR 68.3, as may be amended) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior Standards for the Treatment of Historic Properties may also be referred to in this local law as "Secretary of the Interior's Standards."

Significant: Having particularly important associations with the contexts of architecture, history and culture.

Site: The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing buildings, structures or other objects. Examples of a site are a battlefield, designed landscape, trail, or camp site.

Stabilization: The act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

Structure: Any assemblage of materials forming a construction framed of component structural parts for occupancy or use, including buildings.

Style: A type of architecture distinguished by special characteristics of structure or ornament and often related in time; also a general quality of distinctive character.

Undertaking: Any project or other action involving the expansion, modification, development or disposition of the physical plant or any site or building.

Section 26. Severability

If any section, subsection, subdivision, paragraph, clause or phrase in this local law, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this local law, or any part thereof. The Village

Board of Trustees hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this local law, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases may be declared invalid or unconstitutional.