



CITY OF NEWBURYPORT
FRUIT STREET HISTORIC DISTRICT COMMISSION
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Rules and Regulations

1. GENERAL RULES: JURISDICTION

The Newburyport Fruit Street Historic District Commission shall be governed by the Newburyport Local Historic District Ordinance, Chapter 16 of the City of Newburyport Ordinances, and by Chapter 40C of the General Laws of Massachusetts, as amended. The City's jurisdiction in regard to the Local Historic District Ordinance shall be delineated on the official Fruit Street Local Historic District Map of the City of Newburyport on file in the city Planning Office and at the Essex County Registry of Deeds.

Section 1.1: Members and Officers

The Fruit Street Historic District Commission shall consist of five members appointed by the Mayor. At the meeting in January, the regular members of the Commission shall elect all officers of the Commission to include a Chairperson, Vice- Chairperson, and Clerk. In the event an elected member vacates their position, an election shall be held within 60 days of receipt of written notification by the Commission.

Section 1.2: Rules of Order

The Fruit Street Historic District Commission shall be governed by the Chapter 40C and all other applicable laws of the Commonwealth of Massachusetts and Chapter 16 of the Code of Ordinances of the City of Newburyport. Robert's Rules of Order as revised shall serve as the parliamentary guidelines.

Section 1.3: The Chairperson Powers and Duties

The Chairperson shall vote and be recorded on all matters coming before the Commission. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Commission in session at the time. He/She shall appoint such committees as may be found necessary or desirable.

In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Chapter 16 of the Code of Ordinances of the City of Newburyport and subject to these rules and further instructions of the Commission, the Chairperson shall transact the official business of the Commission, supervise the work of the Clerk, request necessary help, direct the general work of the Commission, and exercise general supervisory authority. He/She shall at each meeting report the official transactions that have not otherwise come to the attention of the Commission.

Section 1.4: The Vice-Chairperson Powers and Duties

The Vice-Chairperson shall act as Chairperson in the case the Chairperson is absent, is disabled, or otherwise unable to perform his/her duties. If both the Chairperson and the Vice-Chairperson are absent, the Clerk shall act as Chairperson and appoint an Acting Clerk.

Section 1.5: Clerk Powers and Duties

The Clerk shall be a member of the Commission, and shall with assistance from the Office of

Planning and Development, subject to review by the Commission and its Chairperson, supervise all of the clerical work of the Commission including: all correspondence of the Commission, sending of all notices required by law, preparation of rules and orders of the Commission, receive and scrutinize all applications for compliance with the rules of the Commission, keep dockets and minutes of the Commission's proceedings, compile all required records, maintain necessary files and indices. If the Clerk is absent, the Chairperson shall appoint an Acting Clerk.

2. MEETINGS OF THE COMMISSION

Regular Meetings of the Commission generally will be held on the 2nd Thursday of each month at 7:00 pm in City Hall. Notice of the date, time, agenda, and location of all meetings shall be posted in the City Hall at least 48 hours prior to their scheduled time. A quorum of three members is required for the Commission to conduct any business and to vote on applications for certificates. Special Meetings of the Commission may be held at the call of the Chairperson or at the request of two members. Special Meetings shall follow all the notification and procedural rules as Regular Meetings.

Cancellation of Meetings. If there is no Commission business to conduct, the Chairperson may dispense with a meeting by giving notice to all members and posting a notice of the cancellation in City Hall at least 48 hours prior to the scheduled time.

3. COMMISSION REVIEW OF CHANGES TO PROPERTIES IN HISTORIC DISTRICTS

3.1 Changes not requiring Commission approval.

Applicants with minor projects or repairs may call the Chairperson or email for guidance or advice as to whether their anticipated project might require Commission approval. A designated Commission member will return the call within 72 hours and advise the applicant whether the anticipated work would not be subject to Commission review due to:

- being invisible from the public way;
- being one of the specific categories designated as non-applicable in Section 9 of the Ordinance;
- being considered normal maintenance or repair;
- the applicant needed to further clarify the anticipated work to determine if Commission approval might be required; or
- that the work would require Commission review and approval.

A record of all such advisory communications, in the form of e-mail print-outs or brief written descriptions of telephone conversations, will be kept on file in the City Planning office and recorded in the minutes of the following regular Commission Meeting.

3.2 Procedures regarding changes which require Commission approval and certification.

Some changes in the exterior appearance of a building or site located within a LHD shall require formal Commission approval, in the form of Certificates of Appropriateness, Non- Applicability, or Hardship, issued by the Commission before the work begins. In order to obtain a Certificate, a property owner must submit an Application for Certificate and present their proposal.

3.2.1 Filing an application.

Anyone seeking a Certificate from the Commission for changes to a Historic District property shall file an application for certificate with the Commission. The application must be filed no more than fourteen (14) days and no less than three (3) days prior to the next Regular Meeting of the Commission. The application shall be accompanied by such plans and information as required. The requirements for information shall be set so as to not require the applicant to provide significantly more than would be needed to otherwise accomplish the project. Drawings or other documentation which would be needed

for presentation to other Commissions or commissions with required review of a given project must also be provided to the LHD Commission. Special Meetings should be requested only by applicants who have secured all necessary waivers from abutters, and, have a reasonably certain knowledge that their project meets all LHD guidelines.

An application fee of \$25, payable to the City of Newburyport and collected by the Office of Planning & Development, is required for all complete applications except those for work which the Commission determines is not within its jurisdiction. The fee covers the costs of processing the application, and does not guarantee that a Certificate will be issued.

The Commission may appoint one or more of its members to initially screen applications to determine whether they include sufficient information upon which the Commission may conduct its review. Within 14 days following the first filing of an application, the Commission or its appointee/s may determine that insufficient information has been provided, in which case the application may be returned to the applicant, with written or oral advice (minutes required) as to what was considered to be lacking.

3.2.2 Applications requiring public hearing.

If the Commission determines that an application is of significant impact to the overall district, and as such requires a public hearing under the provisions of Ch. 16, the Fruit Street Historic District Ordinance, it shall hold such a hearing within 45 days of the date of the filing of the application. The Commission will obtain a certified list of abutters (homeowners of any properties within 100 feet of that for which the application is submitted, and all owners in the district any property located directly adjoining or facing the applicant's property) and all property owners in the district. At least 7 days before the hearing, the Commission shall give public notice of the time, place, and purpose of the hearing by posting a notice in City Hall. Concurrently, the Commission shall mail a copy of the public notice to the applicant, to the owners of all abutting properties, to all property owners in the district, and to all other properties deemed by the Commission to be materially affected thereby. The Commission shall distribute copies of the public notice to the Newburyport Building Department, Planning Board, Historical Commission, and to any person filing a written request for notice of hearings, such request to be renewed yearly in December.

3.2.3 Review and hearing procedures.

The Commission will consider applications in the order of their receipt. An applicant may appear in person or by agent at the Commission meeting. Review of an application will generally be conducted according to the following procedure:

1. The Chairperson shall give a preliminary statement concerning the application,
2. The applicant or representative shall present the application,
3. Commission members may discuss the application, followed by comments by anyone else with an interest in the proposal,
4. Commission members may ask clarifying questions after each speaker,
5. The Chairperson shall summarize the information, giving all parties a chance to make additional comments,
6. The Commission shall deliberate the application,
7. After adequate discussion, or by the end of the time allotted to the application on the meeting agenda, the Commission shall either vote on the application, postpone further consideration until the next meeting, or request the application's withdrawal and/or revision.

3.2.4 Site visits; additional information.

The Commission may view the premises and obtain additional information concerning any application before arriving at a decision. If the Commission holds a public hearing on an application, it will disclose any such additional information on which it may rely at the hearing, and give the parties an opportunity to comment on that information.

3.2.5 Review criteria.

In reviewing applications for Certificates, the Commission shall take into account the historic and architectural significance of the building or structure. The Commission shall not consider interior arrangements, nor architectural features not subject to view from the public way, nor make any requirement except for the purpose of preventing developments incongruous to the historic aspects or architectural characteristics of the surroundings and the District, and shall use the Design Guidelines as its guide.

3.2.6 Commission decisions.

In all its decisions on applications the Commission shall state its reasons for the decision, supported by appropriate Findings of Fact. A decision on an application may be accompanied by conditions and/or recommendations. In the case of a disapproval of an application, the Commission may include recommendations for changes in the proposal which, if made, would make the application acceptable to the Commission. If the Commission finds that some aspects of the proposed changes described in an application are incompatible with the character of the property or the district, it will suggest ways in which the application may be amended so that approval may be granted. Such discussion among Commission members and the applicant, if present, shall focus on arriving at a solution satisfying all concerned while still abiding by the terms and spirit of the Local Historic District Ordinance. If changes suggested by the Commission are acceptable to the applicant, provisions as specified in Section 3:1 regarding Special Meetings are applicable, i.e. reapplication for a Certificate of Appropriateness will not be required.

Within 60 days after the filing of an application for a Certificate, or within such further time as the applicant may allow in writing, the Commission shall issue a Certificate or a disapproval. The Commission shall send a copy of its Certificate or disapproval to the applicant and to the Building Commissioner, and shall file a copy of all Certificates and disapprovals with the City Clerk. If the Commission should fail to issue a Certificate or disapproval within 60 days of the filing of an application, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Hardship Due to Failure to Act.

4. TERMS OF CERTIFICATES

After approving an application, the Commission shall issue a Certificate of Appropriateness, Non-Applicability, or Hardship for the work proposed in the application. A Certificate is valid for work commenced within a period of two years from the date on which it is stamped by the City Clerk, and shall remain in effect until such work is completed. If by the end of two years the authorized work has not been commenced and prosecuted with due diligence, or if such work is suspended in significant part for a period of two years after the time the work is begun, the Certificate shall expire. However, the applicant may request an extension or renewal of the Certificate, and at its discretion the Commission may grant, in writing, an extension or renewal of the Certificate for a period not to exceed one year. If a property changes ownership during the time the Certificate of Appropriateness is in force, a new owner who wishes to continue the authorized work must apply to the Commission for a transfer of the Certificate to his or her own name.

5. THE CERTIFICATE OF HARDSHIP

In the case of either a disapproval or in the event of an application for a Certificate of Hardship, the Commission shall determine whether failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant. It shall also determine whether the application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purpose of Ch. 16., the Local Historic District Ordinance. If it finds that both these conditions are met, the Commission shall, on a concurring vote of a majority of the members present, issue a Certificate of Hardship.

6. APPEAL AND AGGRIEVEMENT PROCEDURES

A person aggrieved by a determination of the Commission may, within twenty days of the issuance of a Certificate or disapproval, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the Merrimack Valley Planning Commission. The arbitrator's finding shall be filed with the City Clerk within 45 days of the request, and shall be binding on the applicant and the Commission unless a further appeal is sought in Superior Court as provided in Chapter 40C, Section 12A. Such further appeal must be filed within 20 days after the finding of the arbitrator has been filed with the office of the City Clerk.

7. ENFORCEMENT AND PENALTIES

The Commission shall determine whether a particular activity is in violation of the terms of the Fruit Street Local Historic District Ordinance. Upon a written complaint of any Newburyport resident or property owner, or upon its own initiative, the Commission may institute any appropriate action or proceedings in the name of the City of Newburyport to prevent, correct, restrain, or abate violation of the Ordinance. There will be a 60 day period after the issuance of a notification of noncompliance to allow for securing materials, contractors, and reasonable construction delays. After 60 days the Commission, if no progress is evident, may contact the offending party to determine whether or not they are working towards a resolution. The Commission could then extend a further grace period at its discretion. After exhausting said grace period, and determining that an activity is in violation of the ordinance, these rules and regulations, or a final order, the Commission may direct the Building Commissioner to begin enforcement procedures as follows:

1. Issuance of First Notice Violation directing owner to take corrective action to bring into compliance;
2. Issuance of Second Notice of Violation if corrective action is not taken within 7 calendar days of First Notice; and
3. Initiation of non-criminal disposition and imposition of fine penalties if corrective action is not undertaken within 10 calendar days of this third notice.

Violations include, but are not limited to:

1. Failure to comply with a Certificate, such as failure to observe a particular condition or time period specified in the Certificate;
2. Failure to complete work described in the final order; and
3. Failure to obtain a valid Certificate or extension permit prior to conducting an activity subject to the ordinance or regulations.

If, in response to a written request to enforce the Ordinance the Commission declines to act, it shall so notify, in writing, the party requesting such enforcement within 21 days of receipt of such request.

The penalty for violation of the Local Historic District Ordinance will be not less than \$50 nor more than \$300 per offense. Each day during any portion of which such violation continues to exist constitutes a separate offense. An Enforcement Order issued by the Commission shall be signed by at least three members of the Commission, provided however, that in a situation requiring immediate action, an Enforcement Order may be signed by a single member or its designated agent if said order is ratified by a majority of the members at the next scheduled meeting of the Commission. If an owner, owner's agent, or lessee continues to violate the provisions of the Fruit Street Local Historic District Ordinance, Chapter 40C of the Massachusetts General Laws, these Rules and Regulations, or the decisions of the Commission, the Commission shall have recourse to the enforcement provisions of Section 13 of Chapter 40C of the Massachusetts General Laws.

8. AMENDMENTS

The Rules and Regulations of the Fruit Street Historic District Commission may be amended after public meeting by an affirmative vote of a majority of the members present, provided that such amendment shall first have been presented in writing at a public meeting preceding that at which the vote is taken. The Commission shall file a copy of any such amendments with the Office of the City Clerk.

Rev. July 14, 2011