

CHAPTER 46

LANDMARK PRESERVATION

§ 46-1. Legislative intent 4601

§ 46-2. Definitions 4601

§ 46-3. Creation and organization of Landmark and Preservation Board 4602

§ 46-4. Procedures, powers and duties of Landmark and Preservation Board 4603

§ 46-5. Designation of local landmarks..... 4604

§ 46-6. Criteria for designation 4605

§ 46-7. Certificate of appropriateness..... 4606

§ 46-8. Controls on designated structures and districts 4607

§ 46-9. Purpose; severability 4608

§ 46-10. Conflict with other provisions 4608

§ 46-11. Penalties for offenses 4608

§ 46-12. When effective 4608

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-3-1979. Amendments noted where applicable.]

§ 46-1. Legislative intent.

The intent of this chapter is to promote the public welfare, to preserve the historical and architectural character of designated structures or districts within the City of Dunkirk; to prevent the impairment of or injury to their historical, architectural and cultural value to the community; and to these ends to provide that a reasonable degree of control may be exercised over the situation of designated buildings and over the alteration, architectural design and construction of structures already erected or to be erected in any designated district.

§ 46-2. Definitions.

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

ALTERATIONS - Any act or process which changes one (1) or more of the exterior architectural features of a structure designated for preservation or of any structure in a district designated for preservation.

BOARD - The Dunkirk Landmark and Preservation Board.

CERTIFICATE OF APPROPRIATENESS - A certificate from the Preservation Board authorizing plans for alterations, construction, removal or demolition of a designated landmark, landmark site or structure within a landmark district.

EXTERIOR ARCHITECTURAL FEATURE - The architectural style, design, general arrangement and components of all the outer surfaces as distinguished from the interior surfaces enclosed by said exterior surfaces, including but not limited to the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures attached thereto.

LANDMARK - Any structure which has been designated a "landmark" pursuant to the provisions of this chapter.

LANDMARK SITE - A parcel or part thereof:

- A. On which is situated a landmark, and any abutting parcel or part thereof used and constituting part of the premises on which the landmark is situated; or
- B. Which has been designated as a "landmark site" pursuant to the provisions of this chapter.

PRESERVATION DISTRICT - Any area which has been designated as a "preservation district" pursuant to this chapter.

PRESERVATION SITE - Any parcel within a preservation district or upon which a landmark structure is situated.

§ 46-3. Creation and organization of Landmark and Preservation Board.

- A. The Board shall consist of five (5) voting members. The Mayor shall appoint one (1) member from among the membership of the Board of Trustees of the Dunkirk Historical Society as recommended by the Society, one (1) member from the Common Council, one (1) member representing the local business community, one (1) member who is an architect, and one (1) member from the public at large. The Mayor shall designate one (1) of the five (5) members of the Board to serve as Chairman of the Board. The Board shall also include the following ex officio nonvoting members: the City Historian, City Attorney, a member of the Zoning Board of Appeals, a member from the Citizens' Advisory Commission and a member of the City Planning Commission.

- B. The Common Council shall provide for any compensation to Board members as it deems proper. Nothing in this chapter shall require any Board member to be compensated.
- C. The terms of members appointed shall be on a rotating basis, each one to hold office for a three-year period. Rotation shall be provided by the original appointments being made as follows: two (2) for three (3) years, two (2) for two (2) years, and one (1) for one (1) year. Thereafter, all appointments shall be for three (3) years. Members shall be eligible for reappointment. If a vacancy occurs other than by expiration of a term, it shall be filled by appointment of the Mayor for the remainder of the term.

§ 46-4. Procedures, powers and duties of Landmark and Preservation Board.

- A. A quorum shall consist of four (4) voting members of the Board. Three (3) concurring votes shall be necessary for the Board to take any official action.
- B. Meetings shall be held at such times as a majority of the Board may determine or at the call of the Chairman, but a meeting must be held within thirty (30) days' receipt of a written application for a certificate of appropriateness or within sixty (60) days of receiving written application to designate a structure or district as one covered by this chapter. Said meetings shall be open to the public, and notice of such meetings shall be given in the official City newspaper five (5) days prior to the date of the meeting.
- C. Minutes shall be kept of all proceedings. A record shall be kept of all official actions, including the vote of each member upon any question.
- D. The Board may call upon such outside experts as it deems advisable: provided, however, that no such expert may be retained requiring the expenditure of City funds without prior approval of the Common Council.
- E. Appropriate markers may be designed and supplied to the owners of designated structures by the Board as it, in its discretion, deems proper; provided, however that no City funds may be expended for such markers without prior Common Council approval.
- F. Bounds of historic districts shall be noted on all official City maps, including zoning maps.

- G. A current inventory of all designated historic structures and districts within the City of Dunkirk shall be supplied to the Building Inspector, City Clerk, City Historian, Clerk of the Department of Assessment, and the Dunkirk Historical Society.
- H. Pursuant to §§ 46-1 and 46-6 of this chapter, the Board shall have the power to designate a structure or district as a local landmark.
- I. Pursuant to § 46-7 of this chapter, the Board shall have the power to grant a certificate of appropriateness.

§ 46-5. Designation of local landmark.

- A. Any person, group of persons or association may request the designation of a landmark structure or a landmark district by submitting to the City Clerk of Dunkirk a written request for such designation and the reasons therefor. Such request will then be forwarded to the Board for its consideration. In addition, the Board may initiate such proceedings on its own motion.
- B. Notice that an application for designation has been received and is being considered shall be given to the owner of the parcel on which the proposed landmark is situated or which is part of the proposed landmark site. Such notice shall be served by the Board by certified mail, addressed to the owner or owners at his or their last known address as it appears in the records of the City's Department of Assessment, or, if there is no name on such records, such notice may be served by regular mail, addressed to "owner" at the street address of the property in question.
- C. Notice shall be given by regular mail to surround property owners owning property within two hundred (200) feet of the property being considered for designation.
- D. Upon request of the owner of the property being considered for designation, the Board may hold informal meetings with said owner and other interested persons, in addition to its formal meetings.
- E. Any application for designation shall be approved or disapproved in writing within forty-five (45) days of the public meetings having been conducted by the Board to consider such application. Written notice of the Board's decision shall be sent to the initiating person, group of persons or association. Such notice shall include the Board's findings of fact and their reasons for the decision.

- F. Notwithstanding the time limit provided in Subsection E above, should the particular circumstances of an application warrant it, the Board may reserve decision without prejudice until such time as a decision may be rendered.
- G. A decision of the Board may be appealed from, within fifteen (15) days in writing, to the Common Council. The Common Council shall make its determination within thirty (30) days of receiving said appeal. All proceedings shall be stayed during the appeal period.

§ 46-6. Criteria for designation.

- A. Criteria for evaluation of historical significance shall be based on its particular importance to the nation, state, City and neighborhood, its identification with historic persons and/or its identification with historic events.
- B. Criteria for evaluation of architectural significance shall be based on its date of erection, style of building and scarcity of same, quality of design and its scale, fenestration, trim and manner and materials of construction, and also the alteration and desecration of original design and its present condition and appearance.
- C. Evaluation of districts shall be made using the same criteria and review as for individual buildings, but, in addition, a consideration of the collective merits of all structures within a district's boundaries and their interrelationship shall be reviewed by the Board in consultation with architects and historians and recommendations made by said Board to the Common Council. A public hearing advertised in the official City paper five (5) days prior to the meeting shall be held by the Common Council before it designates an historic district in the City of Dunkirk.

§ 46-7. Certificate of appropriateness.

- A. A certificate of appropriateness shall be granted by the Board upon a majority vote of its total members on an application for alteration or for demolition of a designated structure or for alteration, demolition or new construction of structures within a designated district.
- B. In considering whether a certificate of appropriateness shall be granted, the Board shall consider:
 - (1) The applicant's reasons for the request for a certificate of appropriateness.
 - (2) Historical significance.

- (3) Architectural significance.
 - (4) The site in relation to its surroundings.
 - (5) The aesthetic and cultural value to the community.
 - (6) The condition of the structure at the time of application.
 - (7) Whether the denial of the certificate of appropriateness will cause economic hardship to the applicant and, if so, to what extent.
- C. A decision of the Board may be appealed from, within fifteen (15) days in writing, to the Common Council. The Common Council shall make its determination within thirty (30) days of receiving said appeal. All proceedings shall be stayed during the appeal period.
- D. No building permit to alter an existing designated structure or structure within a designated district or a building permit for a new structure within such district may be granted prior to obtaining a certificate of appropriateness. Should the approval of the City's Zoning Board of Appeals be required for any designated structure or structure within a designated district, said approval shall not be given prior to a certificate of appropriateness being granted.

§ 46-8. Controls on designated structures and districts.

- A. Any owner of a designated structure or of a structure within a designated district who desires to repair the exterior of an existing building or structure has the right to repair with the same material without a certificate of appropriateness. The Board shall have no control over interior changes in any building or structure as long as no evidence of such change appears on the exterior.
- B. All other changes in the exterior architectural features or appearance of a designated structure or of any existing structure or new construction in a designated district shall require a certificate of appropriateness. All applications for a certificate of appropriateness shall be sufficiently detailed to show that the proposed changes, additions, removals or new construction will be in harmony with the existing designated building, structure or district.
- C. Owners desiring to make alterations to designated structures or to existing structures within a designated district shall design such

alterations only in a manner consistent with the exterior style of the structure, the design, scale, fenestration, trim, manner and materials of construction.

- D. New structures in a designated district shall harmonize with the general character of the entire designated district. Notwithstanding the above, no new structure shall be required to be a copy of any particular style or architectural period.
- E. Nothing herein contained shall be construed to require the owner of any presently existing designated structure or a structure within a designated district, which is otherwise maintained in conformity with the law, to make any change in the exterior design or appearance of such structure, nor shall it be construed to prohibit the use of modern materials, techniques or methods of construction in the erection of new structures.
- F. Owners who desire to demolish a designated structure or a structure in a designated district shall obtain a certificate of appropriateness from the Board. After the granting of such certificate, a period of ninety (90) days must elapse before a demolition permit can be issued. Anyone who desires to save the structure by suitable means may have this time to determine a fair price by appraisal and to locate a purchaser who will agree not to raze the structure.
- G. Consideration of tax abatement or reduction in assessment may be recommended to the City's Department of Assessment and used to promote preservation when justified in the opinion of the Landmark and Preservation Board.

§ 46-9. Purpose; severability.

Each of the foregoing provisions of this chapter has been adopted in an endeavor to preserve and extend the public welfare by preserving the characteristics or historic and/or architecturally significant structures or districts. In the event that any portion of this chapter shall be determined invalid, such determination shall not affect or result in the invalidity of any other provision contained in this chapter.

§ 46-10. Conflict with other provisions.

In the event that any of the provisions of this chapter shall be in conflict with the provisions of any other ordinance in the City of Dunkirk, the provisions of this chapter shall control.

§ 46-11. Penalties for offenses.

The violation of any provisions of this chapter shall be an offense, and any person, corporation, association, agent, contractor or engineer, upon being convicted of such violation, shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or by imprisonment not exceeding fifteen (15) days. Each week that a violation is continued shall be deemed a separate offense.

§ 46-12. When effective.

This chapter shall take effect upon publication in the official City newspaper.