CHAPTER 1115. HISTORIC DISTRICT OVERLAY

1115.01. Purpose.

Whereas the City declares as a matter of policy that the preservation, protection and use of areas, buildings, structures, and works of art in national and local registered historic districts is in the public interest and vital to maintaining the community's well-being, the purpose of this chapter is to:

(a) Promote appreciation for the history and the traditions of the City.

(b) Foster civic pride in the beauty and notable contributions of the past.

(c) Preserve and protect the unique identity of the City's special interest areas.

(d) Promote the use and preservation of the historic sites and structures for the economic, cultural, and aesthetic benefit of its residents.

(e) Safeguard the heritage of the City for the education and the general welfare of the City.

1115.02. Identification, review, and designation.

(a) Criteria. In considering the designation of any area, property or site in the City as a historic district or landmark, the Historic Preservation Commission (HPC) shall apply the following criteria:

(1) The character, interest or value of the area, property or site as part of the development, heritage, or cultural characteristics of the City, County, State, or the United States.

(2) The location as a site of a significant prehistoric or historic event.

(3) The identification with a person or persons who significantly contributed to the culture and development of the City.

(4) The exemplification by the area, property or site of the cultural, economic, social, or historic heritage of the City.

(5) The embodiment of distinguishing characteristics of an architectural type or specimen.

(6) Identification as the work of an architect or notable builder whose individual work has influenced the development of the City.

(7) The embodiment of elements of architectural design, detail, materials, or craftsmanship which represent architecture of significant character.

(b) Initiation. Proposals to designate or expand historic districts or designate historic landmarks may be initiated by the HPC, a property owner or by motion of Planning Commission, or Council. Proposals initiated by property owners, Planning Commission, or Council shall be referred to the HPC for recommendation and initiation of the formal designation process.

(1) At the time a proposal is submitted, the HPC shall have previously established development regulations guiding future environmental changes within a historic district or on a landmark property. Such regulations may include architectural standards, site development regulations and sign regulations, and shall take effect immediately upon designation of a historic district or landmark property.

(c) Proposal. Proposals to designate or expand a historic district shall be submitted with a rezoning application as well as the information listed below. Proposals to designate a historic landmark shall include, at a minimum, the following additional information

(1) Evidence of landmark property owner interest or property owner interest within the proposed historic district.

(2) A boundary description.

(3) An inventory of historic resources.

(4) A description of the architectural and historical significance of properties within the proposed boundaries.

(5) A map or description of existing zoning.

(d) Study and Determination of Applicability. When a proposal to establish or expand a preservation district or to designate an individual property or site as a landmark for protection is received by HPC, the owner or owners shall be notified by the Director of Planning and Community Development, and the owner(s)' written comments requested.

(1) For an individual structure or site, notice shall be given by mail to the owner of the real property on which the structure or site is located.

(2) For the purpose of designation or expansion of a group or district, notice shall be published once on the City website and shall be mailed or otherwise distributed to each owner of real property located within such group or district.

(3) The Historic Preservation Commission shall review the proposal in terms of the following critical provisions as well as the criteria set forth in Section 1116.02(a):

A. Structural proportion

B. Foundation and structures

C. Exterior walls

D. Building height

E. Building width

F. Roof type

G. Building material

H. Paving or walkways

I. Significant landscaping fixtures

J. Color or colors of the exterior as related to color or colors of surrounding buildings

(e) Public Hearing. Once the proposal to establish or expand a preservation district or to designate an individual property or structure as a historic landmark has been reviewed by the HPC, the Historic Preservation Commission shall schedule a public hearing. The public hearing shall not be more than thirty (30) days after such a proposal is submitted. Notice of the public hearing shall be given according to the following:

(1) The HPC shall give the owner(s) not less than fourteen (14) days' written notice of the date, time, and place of such hearing.

(2) Notice of the public hearing shall be published at least ten (10) days before the date of the hearing on the City’s website.

(3) The Director of Planning and Community Development shall send a notice to all record title holders within 200 feet of the property to which such application relates at the time the application is filed. "Record title holder" shall mean the title holder of such property as disclosed by the records of the County Auditor as the “owner address”. Historic designations of greater than ten parcels shall not require mailed notification.

(4) Notice shall include the time and place of the public hearing, a summary of the proposal and a statement that opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.

(5) The original application, all comments and additional considerations presented at the public hearing, and the recommendation of the HPC shall be forwarded to the Planning Commission for its consideration.

(f) Recommendation by Planning Commission. Within thirty (30) days from receipt of the application from the HPC, and after the conclusion of the public hearing required in subsection (3) above, the Planning Commission shall recommend one of the following to Council:

(1) That the proposal be approved as requested;

(2) That the proposal be approved as modified by the Planning Commission; or

(3) That the proposal be denied.

(g) If the Planning Commission does not make a recommendation on the proposal within the thirty (30) days, or an extended period as may be agreed upon by the applicant or City Council, it shall be deemed that the recommendation of the Planning Commission is that the amendment be denied.

(h) The Secretary of the Planning Commission shall file with the Clerk of Council a report of the Planning Commission's action.

(i) Final Review and Action by Council. Council shall give due consideration to the findings and recommendations of the HPC and the Planning Commission and shall make a final determination. Within thirty (30) days from receipt of the Planning Commission's recommendation, City Council shall:

(1) Approve the proposal as requested and designate the structure, site, group or district as a historic property. Approval shall require at least five (5) members of Council to override a proposal previously denied by the Planning Commission.

(2) Deny the proposal.

(j) Designation. Immediately upon the designation of any structure, site, group, or district as a historic district or landmark, the Clerk of the Council shall promptly notify the Chief Building Official, the Historic Preservation Commission, the Director of Planning and Community Development, and other affected departments.

(1) The Director of Planning and Community Development shall give written notice of the designation to the owner(s).

(2) The Director of Planning and Community Development shall cause the historic district or historic landmark designation to be shown upon the official zoning maps as an overlay without changing the underlying zoning. Whenever there is conflict between regulation of the zoning district and the regulations of the historic district, the regulations of the Historic District shall apply.

1115.03. Applications for Certificate of Appropriateness.

Property owners and occupants are required to obtain a certificate of appropriateness (COA) before undertaking any environmental changes to any property within a historic district or to any individual historic

landmark. A COA may be obtained through a Historic Preservation Commission (HPC) hearing or through an administrative COA review by the City of Delaware.

(a) Upon receipt of all pertinent documents, including the payment of any fees set forth by City Council, the Planning and Community Development Director shall inform the applicant of the review process (administrative COA review or HPC hearing) and application requirements, and shall have the authority to request additional pertinent information regarding the proposed environmental change.

(b) Level of COA Review. The table below lists the criteria used to determine if the COA requires an administrative review or a HPC hearing.

Applicability	**Evaluation Criteria**	**Level of Review**
Minor projects:	Approve minor changes when proposed work meets the Downtown Historic District architectural standards, including: • Painting using the existing or original color scheme or follows the color guidelines in the architectural standards, • Addition of landscape features that do not physically impact the historic building or adversely impact the district, • Routine maintenance and repairs using the same materials and design as the existing structures, or re-roofing using the same shape, type and color of materials, • Signage, provided that the installation of the sign does not damage historic building features, • Any other architectural standards requirements that allow for administrative COA approval, and • Temporary outdoor sales and displays in conformance with the requirements of the Planning and Zoning Code, and • Any other request determined by the Director of Planning & Community Development and the chairperson of HPC to have a minor impact or no potential detriment on the structure or Historic District.	Administrative or HPC hearing
Major projects:	• Major exterior improvements/alterations or proposed demolitions that have major impact or potential detriment as a result of the proposed action. • Any other request determined by the Director of Planning and Community Development and the chairperson of HPC to not have a minor impact or has potential detriment on the structure or Historic District.	HPC hearing

(c) Administrative Review.

(1) A notice and public hearing at the HPC is not required for an administrative review.

(2) For each administrative review, the Director of Planning and Community Development will consult the HPC chairperson in making an approval determination.

A. Both the Director of Planning and Community Development and the chairperson shall agree as to either approve, approve with conditions, or deny the administrative review.

B. Should the Director of Planning and Community Development and the chairperson not be in agreement, or the administrative review is denied, the application shall be scheduled at the next available HPC meeting, for review and hearing as a major project.

C. In the event the chairperson is not available, the Director of Planning and Community Development shall consult the HPC vice-chairperson. If both the chairperson and vice-chairperson are not available for a period exceeding seven (7) business days from the date of application, the Director of Planning and Community Development shall make the determination as prescribed and notify the chairperson in writing of such decision.

(d) HPC Review.

(1) Procedure: In processing applications before the Commission, the following shall apply:

A. The HPC shall approve, conditionally approve, or deny an application within sixty (60) days from the meeting date on winch the application was first reviewed, unless an extended period of time is agreed to by the applicant.

i. If an applicant or their designated representative fails to appear before the Commission at a designated meeting for any reason, the sixty (60) day time period shall be automatically extended until the next regular meeting of the Commission and thereafter until such time as the applicant or designated representative appears.

ii. If within the prescribed time period or as automatically extended above, the HPC fails to table or take an action on an application at a meeting in which there was a quorum, the application shall, upon written request by the applicant to the Planning and Community Development Director, be considered denied by the HPC and may be appealed as regulated elsewhere in this Chapter.

iii. At the end of the sixty (60) day time period, or as extended automatically by this code or as agreed to by the applicant, failure of the HPC to take an action as described shall result in the application being considered denied by the HPC and may be appealed as regulated elsewhere in this code.

B. At the hearing, the HPC shall issue an oral decision followed by a written decision within seven (7) days after the date of the hearing. The written notice shall include specific findings and comments.

(2) In ruling upon a COA application, the HPC shall consider the following:

A. The adherence of the environmental change to the historic district's adopted standards and guidelines; and

B. The effect of the HPC 's decision upon the applicant. The following criteria shall be used for all applicants to determine the existence of a substantial economic hardship or unusual and compelling circumstances:

i. Substantial economic hardship:

a. Denial of a certificate shall result in a substantial reduction in the economic value of the property.

b. Denial of certificate shall result in a substantial economic burden on the applicant because the applicant cannot reasonably maintain the property in its current form.

c. No reasonable alternative exists consistent with the architectural standards and guidelines for the property.

ii. Unusual and compelling circumstances:

a. The property has little or no historical or architectural significance.

b. The property cannot be reasonably maintained in a manner consistent with the pertinent architectural standards and guidelines.

c. No reasonable means of saving the property from deterioration, demolition or collapse other than applicant's proposal exists.

(e) Expiration of Certificate of Appropriateness. Unless the work described in the certificate is commenced within one year and continued progress is made and is completed within two years, the certificate shall expire. Upon written request, the HPC shall grant an extension of time for good cause.

1115.04. Demolition.

(a) In cases where an applicant applies for a certificate to demolish a structure within a designated historic district or to demolish a historic landmark, the Historic Preservation Commission shall grant demolition and issue a certificate when one or both of the following conditions prevail:

(1) The structure contains no features of architectural and historic significance.

(2) There exists no reasonable economic use for the structure as it exists or as it might be restored, and that there exists no feasible and prudent alternatives to demolition, or that deterioration has progressed to the point where it is not economically feasible to restore the structure.

(b) The HPC may delay the determination of the application for demolition for a period of 180 days upon a finding that the structure is of such importance that alternatives to demolition may be feasible and should be actively pursued by both the applicant and the HPC. In the event that action on an application is delayed as provided herein, the HPC may take such steps as it deems necessary to preserve the structure concerned, including mothballing, in accordance with the purposes of this Zoning Ordinance. Such steps may include but shall not be limited to:

(1) Consultation with civic groups, public agencies, and interested residents.

(2) Recommendations for acquisition of property by public or private bodies or agencies.

(3) Exploration of the possibility of moving one or more structures or other features.

(4) Under no circumstances can the HPC commit the use of public funds.

(c) No building or portion of any building within the Historic District shall be permitted to be demolished without prior approval from the HPC.

1115.05. Appeals.

(a) Administrative COA Review Decisions: Administrative COA review decisions may be appealed to the HPC. Notice of appeal shall be made within thirty (30) calendar days of the decision date. The appeal shall be heard at the next available HPC meeting that occurs after receipt of a written request to appeal the administrative COA review decision. A simple majority vote of HPC shall be required to overturn a decision of an administrative review.

(b) Historic Preservation Commission Decisions. A decision made by the HPC to approve, conditionally approve, or deny an application may be appealed to the City Council by the applicant, property owner, or any adjoining property owner, including those property owners directly across any public right-of-way. Notice of appeal shall

be made within thirty (30) calendar days of the decision to approve, conditionally approve, or deny an application. The appeal shall be heard at the next available Delaware City Council meeting. A simple majority vote of City Council shall be required to overturn a decision of the Commission.

(c) No building permit or other permit requested shall be issued while the appeal is pending.

1115.06. Exclusions.

(a) Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any architectural feature of any property that does not involve a change in design, material or other appearance thereof covered by the Historic Preservation Commission's standards and guidelines.

(b) Nothing in this chapter shall be construed to prevent the authorized municipal officers from abating public nuisances.

(1) Whenever the Chief Building Official receives a public nuisance complaint involving structures within an historic district, they shall notify the Director of Planning and Community Development who shall notify the chairperson of the Historic Preservation Commission within two (2) working days after receipt of such nuisance complaint.

1115.07. Correlation of City programs.

(a) The City shall consider its improvement programs, land purchased, and other plans in or proximate to an historic district, with respect to the purpose and the requirements of this Zoning Ordinance and shall, whenever feasible, support and conform thereto.

(b) The Director of Planning and Community Development shall notify the Historic Preservation Commission of any activity requiring Department review that is within a historic district boundary. Notification shall be given to the HPC at least ten (10) business days prior to the Department hearing. Said project shall also comply with the historic district standards and guidelines and a certificate of appropriateness secured from the Historic Preservation Commission as warranted prior to commencement.

(c) At the discretion of the Director of Planning and Community Development, the zoning review process engaged to secure a certificate of appropriateness from the Historic Preservation Commission may be utilized to fulfill the development review requirements of the Board of Zoning Appeals and/or the Planning Commission as warranted should said project be located within the Historic District Overlay.

1115.08. Conformance with existing laws.

(a) This section shall not be construed to repeal the provisions of any existing laws and ordinances establishing housing, building, and zoning requirements for the City generally or any other section of this chapter, except such as may directly conflict herewith.

(b) The Director of Planning and Community Development shall have the authority to enforce the provisions of Chapter 1199 where alterations, construction, demolition, rehabilitation, or any other exterior modifications are being undertaken in a recognized historic district in the absence of an approved certificate of appropriateness.

1115.09. Historic district(s).

The Historic District Overlay, and the boundaries thereof, is hereby adopted and established as shown on the Historic District Overlay Map. Said Map, together with all notations, references, data, and adopted standards, district boundaries, historic landmark designations, and other information shown thereon, is hereby made part of this Zoning Ordinance. The official Historic District Overlay Map, properly attested, shall be and remain on file in the office of the City Clerk of Council.

1115.10. Administration, powers, and duties.

Chapter 1103 sets forth the powers and duties of the Director of Planning and Community Development, the Historic Preservation Commission, and City Council with respect to the provisions of this Zoning Ordinance.