

BY-LAW TO ESTABLISH BILLERICA HISTORIC DISTRICTS COMMISSION

Section 1: Purpose

The purpose of this By-Law is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history and architectural heritage of the Town of Billerica, through the maintenance and improvement of settings for such buildings and places, through the encouragement of design compatible therewith, and through the prevention of development which would impair or be unduly detrimental to the locally or nationally significant structures of the districts.

Therefore, there is hereby established under Chapter 40C of the General Laws of the Commonwealth of Massachusetts a Billerica Historic Districts Commission.

Section 2: Definitions

Altered: Includes the words “rebuilt”, “reconstructed” “restored”, “removed” and “demolished”.

Application: Application for a certificate of appropriateness, a certificate of hardship or a certificate of non-applicability.

Building: A combination of materials forming a shelter for persons, animals, or property.

Commission: Billerica Historic Districts Commission.

Constructed: Includes the words “built”, “erected”, “installed”, “enlarged”, and “moved”.

Development: The erection, demolition, reconstruction, or alteration of any exterior architectural features of any building or structure, including, but not limited to, alteration of the site topography or general architectural arrangement of such portion of the exterior of any building or structure as is designed to be open view from any street, canal or way open to public or private vehicular or pedestrian travel. The use or change of use of any building or structure shall not be considered “development”.

Exterior Architectural Feature: Such portion of the exterior of a building or structure as is open to view from a public street, public way, public park, or public body of water, including but not limited to the architectural style and general arrangement and setting thereof: the kind, color and texture of exterior building materials; the color of the paint or other materials applied to exterior surfaces; and the type and style of windows, doors, lights, signs, and other appurtenant exterior features, but does not include items excluded under Section 8 of this by-law.

Minor Development: Shall be defined in the Commission’s regulations, and shall include, but not be limited to: cleaning of a building, repairing or replacing architectural elements according to historically compatible plans, placement or removal of signs, and reconstruction in kind of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

Major Development: Shall be defined in the Commission’s regulations, and shall include, but not be limited to: alterations to exterior facades, construction of additions to existing buildings, new construction and demolition of any structure or building.

Person: Natural person, corporation, trust, partnership, incorporated or unincorporated association, town, department, officer, employee, or agency thereof, and any other legal entity.

Person Aggrieved: The applicant, an owner of adjoining property, an owner of property within the same historic district or property within one hundred feet of said district, or any charitable corporation in which one of its purposes is the preservation of historic structures or districts.

Standards: Historic preservation standards applicable to the historic districts and promulgated by the Commission as part of its regulations.

Structure: Combination of materials other than a building, including but not limited to a sign, fence, wall, terrace, walk or driveway.

Section 3: Membership

The Billerica Historic Districts Commission shall consist of seven (7) Members and such alternate members as shall be deemed necessary, all of whom shall be appointed by the Board of Selectmen within 60 days after the effective date of this act as follows:

- (a) Two of the regular members shall be residents of, or owners of property in, the historic districts administered by the Commission.
- (b) One of the regular members shall be an attorney.
- (c) One of the regular members shall be chosen from two nominees submitted by the Billerica Historical Society.
- (d) One of the regular members shall be chosen from two nominees submitted by the Board of Realtors.
- (e) Two of the regular members shall be chosen from at least three nominees submitted by the local chapter of the American Institute of Architects.
- (f) The Town Planner shall also serve as a non-voting ex officio member.

If nominees are not submitted or available for any of the above categories, the Selectmen may appoint other Billerica residents to the remaining vacancies.

The initial appointments to the Commission shall be as follows: Two members appointed for a one-year term each; two members appointed for a two-year term each; three members appointed for a three-year term each; and the terms of the alternate members shall be staggered in a similar manner. The successors of members and alternate members shall be appointed for terms of three years.

In the case of the absence, inability to act or unwillingness to act because of self-interest on the part of a member of the Commission, such member's place shall be taken by an alternate member to be chosen by the chairperson from among the appointed alternate members.

Vacancies shall be filled in the same manner as the original appointment within sixty days after creation of the vacancy. Any Commission member, who fails to attend three consecutive regular or special meetings of the Commission, without good cause approved by the chairman of the Commission, shall be subject to dismissal by a vote of five members of the Commission. The chairman shall give written notice to such Commission member at least ten days prior to the meeting at which said vote is to be taken, and said Commission shall meet, upon the Commission member's request, within said ten day period, to consider any relevant information justifying such failure to attend.

The members of the Commission shall serve without compensation. Members of the Commission are hereby deemed special municipal employees for purposes of chapter two hundred and sixty-eight A of the General Laws.

Section 4: Boundaries of Local Historic Districts

There are hereby established the Town Center Historic District, the Billerica Mills Historic District and the Corner Historic District which shall initially consist of that property and buildings thereon located in the Town of Billerica, being shown on a map on file with the Town Clerk's Office and attached herein.

An historic district may be enlarged or reduced or an additional historic district created by adoption of a by-law on a two-thirds vote of a town meeting subject to the requirements of section 3 of Chapter 40C of the Massachusetts General Laws, as amended. No by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change on the boundaries thereof, has been filed with the town clerk and has been recorded in the registry of deed for Middlesex County.

Section 5: Powers and Duties of the Commission

Subject to such appropriations as are necessary, the Commission shall have such powers and duties as are reasonably necessary to carry out the purposes of this By-Law, including the following and those provided under chapter 40C of the Massachusetts General Laws, as amended:

- (1) To promulgate, amend, and enforce the standards, which shall apply to all development, by any person, within the historic districts and to promulgate and enforce any interim standards. The Commission may amend such standards as may be necessary, which amendment shall be in the same manner as original adoption. The Commission shall provide in its regulations for modification of the otherwise applicable standards in certain hardship cases.
- (2) To promulgate and enforce any other rules and regulations to carry out the purpose of this By-Law and Chapter 40C of the Massachusetts General Laws.
- (3) To grant, grant with conditions, or deny certificates of appropriateness or hardship or certificates of nonapplicability for development within the districts. Conditions to the grant of such certificates may include, without limitation, imposition of perpetual historic preservation restrictions or easements.
- (4) To determine an amount reasonable for application fees and to collect such fees, to accept gifts, appropriations and grants, and to disburse all such monies in order to further the purposes of this By-Law.
- (5) To propose to the Town Meeting of Billerica changes in the boundaries of the districts and to propose new districts.
- (6) To sue or be sued.
- (7) To publish in cooperation with other interested agencies, guides, maps and other materials to document and highlight the historic resources of the Town of Billerica and to explain the standards and procedures for development within the districts.
- (8) To accept, purchase, or require, as a condition to the grant of a certificate, historic preservation restrictions or easements.
- (9) To conduct studies of the historic and archaeological assets of said town.
- (10) To conduct training sessions for the Commission members on technical subjects related to their duties as Commission members.

(11) To serve in an advisory capacity to the Selectmen of said town, planning board of said town, director of planning of said town, Massachusetts Historical Commission, and other public agencies, in matters pertaining to or affecting any historical structures, sites, or areas or assets of archaeological interest in said town.

(12) To hire such technical staff or consultants as may be required to carry out its responsibilities, subject to appropriation. Such technical and consulting services may include, but are not limited to, experts in the fields of architecture, planning, law, engineering and historical or archaeological research. Administrative, clerical, and other necessary support staff may also be hired by the Commission. The director of the Town's planning department shall, whenever possible, provide assistance to the Commission.

(13) To delegate authority to such members, subcommittees, or staff as it deems necessary to carry out the purpose of this By-Law.

(14) Such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the Board of Selectmen or Town Meeting.

Section 6: Standards

Standards applicable to development within the districts shall be adopted by two-thirds majority vote of the Commission, after notice and public hearing as provided in section ten. Until the final standards are adopted, the Commission may adopt and use interim standards, after notice and hearing as provided in section ten, except that no notice is required to abutters.

Specific standards may be adopted to apply only to certain districts or portions of districts, such as commercial streets, major thoroughfares, or buffer zones to historic buildings.

The standards shall set forth, at minimum: acceptable materials, techniques, height, massing, setback, and architectural detailing for the exteriors of buildings; standards for signage, design of open spaces and parking areas. The Commission may amend the standards as it deems necessary. Any such amendments shall be made in the same manner as original adoption of the standards.

Section 7: Alteration, etc. Forbidden in Absence of Certificate of Appropriateness, Non-Applicability, or Hardship; No Permit to be issued without Certificate.

Except as this By-Law may otherwise provide, no person shall alter or construct any building or structure within an historic district in any way that affects exterior architectural features unless the Commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by any Town department until the certificate required by this section has been issued by the Commission.

Section 8: Exclusion of Certain Structures from Review by Commission

The authority of the Commission shall not extend to the review of the following categories of treatments to buildings, structures or exterior architectural features located within the historic district:

(a) Storm windows, window screens and window air conditioners.

(b) The color of paint on buildings used exclusively as residences (but not the color of roofing materials.)

(c) Signs of not more than one square foot in connection with use of a residence for a customary home occupation or for more professional purposes, provided only one such sign is displayed in connection with each residence, and if illuminated, is illuminated only indirectly.

Section 9: Ordinary Maintenance Exemption

Nothing in this By-Law shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, subject to the application requirements of Section 12(c) of this By-Law, nor to prevent landscaping with plants, trees or shrubs, nor to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of this By-Law.

Section 10: Public Hearings

All hearings required by this By-Law shall be held by the Commission only after notice of the time, place and sufficient identification of the subject matter of such hearing shall have been given by the Commission by advertisement in a newspaper of general circulation in the Town of Billerica not less than fourteen days before the day of such hearing, and by posting such notice in a conspicuous place in the office of the town clerk of said Town and the office of the director of the planning department for a period of not less than fourteen days before the day of such hearing. Notice for a hearing on an application shall be given at the expense of the applicant and shall also require mailing a copy of such notice to the applicant and to all owners of land abutting the land included in the application as appear on the most recent town tax list.

Section 11: Factors to Be Considered in Making Determination Upon Application for Certificate

In passing upon matters before it the Commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangements, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the Commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the Commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable by-laws. The Commission shall not consider interior arrangements or architectural features not subject to public view.

Section 12: Certificates

(a) Applications

Any person may apply for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, by filing with the Commission in such form as the Commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

Within fourteen days after receipt of an application, the Commission, its chairman or staff to whom such duty is delegated, shall render a determination, based upon the standards, whether the development proposed by the application is a major development or minor development. If the Commission or its designee determines that a proposed development is a minor development, it shall grant, grant with conditions or deny a certificate within the same fourteen days after receipt of the application. If the Commission or its designee determines that a proposed development is a major development, the application for such development shall be placed on the agenda and discussed at a meeting of the Commission. A proposed development will be deemed minor, and to have been granted a certificate of appropriateness, unless the Commission sends the applicant its written decision to the contrary, within twenty-one days of receipt of the completed application.

Certificates for major developments shall be issued by the Commission by a majority vote of those members or alternates present at a meeting of the Commission where a quorum is present.

Within thirty days after receipt by the Commission of a completed application for a major development, the Commission shall conduct a public hearing on the application after providing notice pursuant to section ten. A written decision on the application, granting, granting with conditions, or denying a certificate and setting forth the reasons for the Commission's decision, shall be rendered by the Commission and filed with the town clerk of said Town within sixty days after such hearing. Failure by the Commission to file its decision with said town clerk within sixty days after the hearing on the application shall be deemed to be approval of the application. A copy of the decision shall also be mailed to the applicant by certified mail within sixty days after such hearing. All certificates for major development (including any certificate of compliance) shall be recorded by the applicant in the registry of deeds within ten days after the expiration of the period of appeal provided in section fourteen.

All time requirements contained within this section, except the requirements of section ten referred to herein; may be modified by written agreement of the Commission and an applicant for a certificate of appropriateness or hardship or certificate of non-applicability.

(b) Certificate of Appropriateness

If the Commission determines that the construction or alteration for which an application has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the Commission shall issue a Certificate of Appropriateness.

If the Commission disapproves an application for a certificate of appropriateness, it shall state the reasons for such determination and shall send a notice of determination, which will include the reasons for its decision, to the applicant.

(1) Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action and may make recommendations of changes in the proposal which, if made, would make the application acceptable to the Commission. The recommendations may include appropriateness of design, arrangement, texture, material and similar features.

(2) If within fourteen (14) days of the receipt of such notice, the applicant files a written modification of the application in conformity with the recommended changes of the Commission, the Commission shall promptly issue a Certificate of Appropriateness.

(c) Certificate of Non-applicability

Within fourteen (14) days of the filing of an application to the Commission, the Commission or its designee shall determine whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that the application does not involve any exterior feature, or involves an exterior architectural feature which is not subject to review by the Commission in accordance with Section 8, the Commission shall issue a Certificate of Non-Applicability.

(d) Certificates of Hardship

If the Commission determines that, owing to conditions specific to a particular building or structure, failure to approve an application will result in substantial hardship, whether financial or otherwise, to the applicant, and that granting the application will not involve substantial detriment to the public welfare or substantial derogation from the intent and purpose of this By-Law, the Commission shall grant a Certificate of Hardship.

(e) Recordkeeping

(1) Each certificate issued by the Commission shall be dated and signed by either its chairperson, vice-chairperson, secretary or such other person designated by the Commission.

(2) The Commission shall file notice of all certificates and determinations of disapproval with the Town Clerk and the Building Department.

(3) The Commission shall keep a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein.

(f) Certificates of Compliance

The Commission shall issue a certificate of compliance in recordable form upon determination that the development has been completed in accordance with the certificate of appropriateness, non-applicability or hardship.

Section 13: Officers, Meetings, Quorum, Majority Vote

(a) Officers:

The Commission shall elect annually a chairperson and a vice-chairperson from its own number and a secretary from within or without its number.

(b) Meetings:

Meetings of the Commission shall be held at the call of the chairman and shall be called at the request of two members of the Commission and in such a manner as the Commission shall determine in its rules.

(c) Quorum:

A majority of the members of a Commission shall constitute a quorum.

(d) Majority Vote:

The concurring vote of a majority of the members of the Commission shall be necessary to issue:

1. A certificate of appropriateness
2. A certificate of non-applicability
3. A certificate of hardship, or
4. To take any other action on the business properly before the Commission

(e) Two- thirds Vote

A two-thirds concurring vote of the Commission members shall be necessary to adopt standards under Section 6.

Section 14: Appeals

Any person aggrieved by a determination of the Commission may, within twenty days after the filing of the notice of such determination with the town clerk, file a written request with the Commission for a review by a person or persons of competence and experience in such matters, designated by the Northern Middlesex Area Commission.

The finding of the person or persons making such review shall be filed with the town clerk within forty five days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the superior court.

Any person aggrieved by a determination of the Commission or by the finding of a person or persons making a review, may, within twenty days after the filing of the notice of such determination or such finding with the town clerk, appeal to the superior court sitting in equity for Middlesex County. In accordance with Chapter 40C, Section 12A, the court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the decision of the Commission to be unsupported by the evidence or to exceed the authority of the Commission, or may remand the case for further action by the Commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive but the parties shall have all rights of appeal and exception as in other equity cases. In accordance with Chapter 40C, Section 12A, costs shall not be allowed against the Commission unless it shall appear to the court that the Commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the Commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

Section 15: Enforcement, Jurisdiction of Superior Court: Injunction, Violations, Penalties

Upon determination by the Commission that any person is in violation of this act or regulations promulgated hereunder, the Commission shall issue an order requiring that such violation be corrected and that any development in violation of this act cease and desist.

In accordance with Chapter 40C, Section 13, the superior court sitting in equity for Middlesex County shall have jurisdiction to enforce the provisions of this by-law and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the board of Selectmen or of the Commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this by-law shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

Section 16: Severability

If any section, paragraph or part of this By-Law be for any reason determined invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph or part shall continue in full force and effect.

June 7, 1990