

## 154.11. HISTORIC PRESERVATION OVERLAYS AND CERTIFICATES OF APPROPRIATENESS

### 154.11.01 Purpose and Intent

The intent of this Section 154.11 is to provide for the implementation of a plan to preserve, protect and to encourage rehabilitation and preservation of sites, structures and districts of historic interest within the Town of Pendleton, Indiana; and to thereby promote the cultural, economic and general welfare of the public.

### 154.11.02 Authority

The Design Review Committee may oversee all matters pertaining to the Historic Overlay District, and may make recommendation to the Plan Commission and Board of Zoning Appeals on such matters.

### 154.11.03 Establishment of Historic Overlay Districts

**A. Initiating an Historic Overlay District Recommendation** A recommendation for the establishment of an Historic Overlay District may be initiated from either of the following two (2) sources:

1. The Design Review Committee may draw and submit Historic Overlay District maps, in accordance with subsection (B) below, for consideration as an Amendment pursuant to Section 154.10.
2. Owners of property in fee simple wishing to establish an Historic Overlay District which includes their property may petition the Design Review Committee to consider drawing and submitting a map of said property, in accordance with subsection (B) below, for consideration as an Amendment pursuant to Section 154.10.

**B. Preparation of Historic Overlay District Maps** In order to establish an Historic Overlay District, the Design Review Committee shall first prepare a map describing said district in accordance with the following:

1. The map shall be based on a survey conducted or adopted by the Design Review Committee which identifies historic buildings, structures, and places within Pendleton;
2. A district may be limited to the boundaries of a property containing a single building, structure, or site;
3. The map may divide the district into primary and secondary areas as follows:
  - a. **Primary Area** The principal area of historic and architectural significance.
  - b. **Secondary Area** An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with any adjacent primary area.

4. The Design Review Committee shall also classify and designate on the map all buildings and structures within each Historic Overlay District described on the map as follows:
  - a. **Contributing** Such buildings and structures must possess identified historic and/or architectural merit of a degree warranting their protection.
  - b. **Noncontributing** Buildings and structures not classified on the map as historic.
- C. **Approval of maps of Historic Overlay Districts** Before an Historic Overlay District is established and the boundary classifications take effect, the map setting forth its boundaries and building classifications must be submitted to, and approved in an Amendment by, the Town Council in accordance with Section 154.10, Amendments.

#### 154.11.04 Relationships to Zoning Districts

The Historic Overlay District regulation provided in this Code is for the preservation and protection of historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares and neighborhoods of the Historic Overlay Districts. Zoning districts lying within the boundaries of the Historic Overlay District are subject to the regulations for both the zoning district and the Historic Overlay District. If there is a conflict between the requirements of the Historic Overlay District and other zoning district, the more restrictive requirement shall apply.

#### 154.11.05 Certificate of Appropriateness Required

A Certificate of Appropriateness must be issued by the Design Review Committee before a permit is issued for, or work is begun on, any of the following:

##### A. Within all Areas of the Historic Overlay District:

1. The demolition of any building;
2. The moving of any building;
3. A conspicuous change in the exterior appearance of any contributing historic building; or
4. Any new construction of a principal building subject to view from a public way.

#### 154.11.06 Application for Certificate of Appropriateness

An application for Certificate of Appropriateness may be made in the office of the Planning Director of the Town of Pendleton, Indiana, on forms provided by that office and shall be subject to the following:

- A. The Review Committee may adopt, as a part of its rules, filing requirements which it finds reasonable and necessary to expedite the business of the Review Committee. These rules may include, but are not limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the Review Committee requires to make a decision. However, detailed architectural drawings, plans or specifications are not required.
- B. A fee shall be charged for such application .

- C. Applications for Certificates of Appropriateness must be received not later than fifteen (15) days prior to the regularly scheduled Design Review Committee meetings.

#### **154.11.07 Action on Certificates of Appropriateness**

- A. The Design Review Committee may advise and make recommendations to the applicant before acting on an application for a Certificate of Appropriateness.
- B. If an application for a Certificate of Appropriateness is approved by the Design Review Committee; or if it is not acted on by the Committee within (45) days, a Certificate of Appropriateness shall be issued. If the Certificate is issued, the applications shall be processed in the same manner as applications for building or demolition permits required by the Town of Pendleton, Indiana are processed.
- C. If the Design Review Committee denies an application for a Certificate of Appropriateness within (45) days after it is filed, the Certificate may not be issued. The Committee must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied may not be processed as an application for a building or demolition permit and does not authorize any work by the applicant.
- D. In making its determination, the Review Committee shall consider the potential hardship that approval or denial would create for the applicant. It is the responsibility of the applicant to demonstrate, and provide reasonable documentation of, incident of hardship that might arise from the Committee's determination.
- E. The Review Committee may grant an extension of the (45) day limit prescribed by subsection (B) and (C) if the applicant agrees to it.

#### **154.11.08 Development Standards**

##### **A. New Construction, Contemporary Design, and Nonhistoric Buildings**

The construction of a new building or structure, and the moving, reconstruction, alteration, or major maintenance conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area, must be generally of a design, form, proportion, mass, configuration, building material, texture and location on a lot compatible with buildings in the Historic Overlay District (particularly with buildings designated as historic) and with places to which it is visually related.

It is not the intent of this Code to limit or discourage new construction or other development, nor to limit it to any one period or architectural style, nor to discourage contemporary architectural expression, but rather to preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work.

##### **B. Criteria for Considering Effect of Actions on Historic Buildings**

The Design Review Committee, in considering the appropriateness of any reconstruction, alteration, maintenance, and moving of an historic building or structure, or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs, shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure or appurtenance. In considering historic and architectural character, the Design Review Committee shall consider, among other things, the following:

1. Purpose of this Section 154.11;
2. Historical and architectural value and significance of the building, structure or appurtenance;
3. Compatibility and significance of additions, alterations, details, materials or other nonoriginal elements which may be of a different style and construction date than the original;
4. The texture, material, style, and detailing of the building, structure and appurtenance;
5. The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;
6. The relationship of buildings, structures, appurtenances, or architectural features to similar ones within the same Historic Overlay District, including primary areas, visual compatibility as defined in subsection (D) below; and
7. The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

#### C. Criteria for Moving Historic Buildings

An historic building or structure may be relocated to another site if it is shown that preservation on its current site is inconsistent with subsection (B).

#### D. Criteria for Considering Visual Compatibility within Historic Primary Areas

Within the primary area of the Historic Overlay District, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, or repaired, must be compatible with buildings, squares, and places to which they are visually related generally in terms of the following compatibility factors:

1. **Height** The height of proposed buildings must be visually compatible to that of adjacent historic buildings
2. **Proportion of Building's Front Facade** The relationship of the width of a building to the height of the front elevation must be visually compatible to historic buildings, squares, and places to which it is visually related.
3. **Proportion of Openings within the Facility** The relationship of the width of the windows to the height of windows in a building must be visually compatible to historic buildings, squares, and places to which it is visually related.
4. **Relationship of Solids to Voids in Front Facades** The relationship of solids to voids in the front facade of a building must be visually compatible with historic buildings, squares, and places to which it is visually related.
5. **Relationship of Spacing of Buildings on Street** The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the historic buildings, squares, and place to which it is visually related.
6. **Relationship of Entrances and Porch Projections** The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the historic buildings, squares, and places to which it is visually related.

7. **Relationship of Material and Textures** The relationship of the material and texture of the facade of a building must be visually compatible with the predominant materials used in the historic buildings to which it is visually related.
8. **Roof Shapes** The roof shape of a building must be visually compatible with the historic buildings to which it is visually related.
9. **Walls of Continuity** Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure  
  
along the street, if necessary to ensure visual compatibility of the building to the historic buildings, squares and places to which it is visually related.
10. **Directional Expression of Front Elevation** A building must be visually compatible with the historic buildings to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.
11. **Relationship Buildings Mass to Building Openings** The size of the building, and the building mass in relation to open spaces, window, door openings, porches and balconies; must be visually compatible with the historic buildings, squares and places to which it is visually related.

**154.11.09 Demolition of Buildings Within an Historic Overlay District after Denial of a Certificate of Appropriateness**

- A. The purpose of this Section is to preserve Historic Overlay Districts that are important to the education, culture, traditions, and economic values of the Town of Pendleton, Indiana, and to afford the Town of Pendleton, Indiana, historical organizations, and other interested person the opportunity to acquire or to arrange for the preservation of these buildings.
- B. If the Review Committee denies the issuance of a Certificate of Appropriateness for the demolition of a building or structure, a demolition permit may be issued by other agencies and a building may be demolished, but only after establishing all of the following:
  1. The property owner must demonstrate to the Review Committee that an historic building or structure is incapable of earning an economic return of its value, as appraised by a licensed real estate appraiser.
  2. The property owner shall file with the Planning Director documented evidence that a good faith effort is being made to sell or otherwise dispose of such property at fair market value to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore such property. Such documented evidence shall be provided at the property owner's expense and shall include:
    - a. Offering price;
    - b. Date the offer of sale is to begin;
    - c. Name and address of listing real estate agent, if any;

- d. A copy of an advertisement to run in at least one (1) publications in one (1) or more newspapers of general circulation in the Pendleton jurisdictional area which offers the property for sale
  - e. An appraisal of the property's fair market value by a licensed real estate appraiser.
- C. Notice of the proposed demolition must be given for a period fixed by the Review Committee, based on the Review Committee's classification on the approved map, but not less than sixty (60) days nor more than one (1) year. Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three (3) times before demolition with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) before the date of the permit at the expense of the property owner.
- D. The Review Committee may approve a Certificate of Appropriateness at any time during the notice period under subsection (C). If the Certificate is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

#### **154.11.10 Rule Making Authority**

##### **A. Creation of Rules Applicable to an Historic Overlay District**

In conjunction with the submission of a proposed Historic Overlay District to the Town Council of the Town of Pendleton, the Review Committee may also submit proposed rules to be applicable to construction, reconstruction, design, visual compatibility and development standards within the proposed district. Such rules shall be incorporated into any ordinance creating an Historic Overlay District.

##### **B. Amendment of Rules Applicable to an Historic Overlay District**

The Review Committee may, from time to time, propose amendments to any rules applicable to an existing Historic Overlay District. Such amended rules become effective only upon approval of the Town Council of the Town of Pendleton, by code.

##### **C. Procedures for Submission of Proposed Rules**

Prior to the submission of any proposed rule affecting an Historic Overlay District to the Town Council of the Town of Pendleton, the Review Committee shall hold a public hearing to receive comments from the public upon said proposed rules. Notice of said public hearing shall be published in a newspaper of general circulation within the Town not less than ten (10) days prior to said public hearing. The Review Committee shall make a written report to the Town Council summarizing all comments received at said hearing at the time the proposed rules are submitted to the Town Council.

#### **154.11.11 Enforcement, Penalties And Judicial Review**

- A. Any person or entity, whether as principal agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise, who violates this Code shall be subject to a fine as follows
  - 1. Not less than ten dollars (\$10.00) nor more than two thousand five hundred dollars (\$2,500.00) for demolition.

2. Not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00) for all other violations.
  3. Each day of the existence of a violation shall be a separate offense.
- B.** Any violation of this Code is hereby declared to be nuisance and unlawful. The Town of Pendleton may institute a suit for injunction in the Circuit Court or Superior Courts of Madison County to enjoin and restrain further violation of this Code. Such action may also be instituted by any property owner within the Historic Overlay District the violation of this Code.
- C.** The remedies herein provided are cumulative and not exclusive and shall be in addition to any other remedy provided by law.
- D.** Any petitioner for a Certificate of Appropriateness who is aggrieved by a decision or action of the Review Committee shall be entitled to appeal the decision of the Review Committee to the Town Council and the Town Council may affirm the decision of the Review Committee, or modify such decision as they deem appropriate, or reject the said decision as they deem appropriate, by resolution duly adopted, and acting in their legislative capacity. A petitioner who is aggrieved by the decision of the Town Council shall be entitled to a judicial review of the decision of the Review Committee in accordance with the provisions of I.C. 4-21-5-5.