

**BOROUGH OF EMERSON  
COUNTY OF BERGEN  
NOTICE OF ADOPTION**

**ORDINANCE 1536-17**

Introduced: January 17, 2017

Adopted: February 7, 2017

**NOTICE IS HEREBY GIVEN** that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 7th day of February, 2017. A copy of Ordinance 1536-17 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 163 HISTORIC PRESERVATION, ARTICLE I HISTORIC PRESERVATION COMMITTEE, OF THE CODE OF THE BOROUGH OF EMERSON**

**WHEREAS**, the Mayor and Council of the Borough of Emerson recognize the Borough of Emerson has a rich history, the preservation of which is a matter of vital public interest; and

**WHEREAS**, the governing body has the ultimate responsibility to protect the rich history of the Borough; and

**WHEREAS**, the establishment of a Historic Committee will enable the Borough of Emerson to recognize, catalog, and preserve people, places, object and events of historic interest to the Borough, and to provide an historic context within which the Borough may conduct its affairs.

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Emerson, County of Bergen and State of New Jersey, that Chapter 163 Historic Preservation, Article I Historic Preservation Commission of the Code of the Borough of Emerson, is hereby amended as follows:

**SECTION 1. Chapter 163 Historic Preservation, Article I: Historic Preservation Committee.** Is hereby repealed and replaced as follows:

**§ 163-1 Establishment, Purpose.**

The provisions of this article are intended to effect and accomplish the protection, enhancement, and perpetuation of especially noteworthy examples and elements of the Borough of Emerson's environment in order to:

- A. Safeguard the heritage of Emerson by preserving resources within the Borough which reflect elements of its cultural, social, economic and architectural history;
- B. Encourage the continued use of historic and/or noteworthy buildings, structures, objects and sites and to facilitate their appropriate reuse;
- C. Maintain and develop an appropriate and harmonious setting for the historic and architecturally significant buildings, structures, sites and districts within the Borough;
- D. Stabilize and improve property values within the Borough;
- E. Foster civic pride in the history and architecture of the Borough;
- F. Encourage proper maintenance of and reinvestment in the buildings and structures within the Borough;
- G. Regulate appropriate alteration of historic sites as well as new construction within or near historic districts to ensure compatibility with the existing environment and the Master Plan of the Borough;
- H. Discourage the unnecessary demolition or other destruction of historic resources;
- I. Further the public's knowledge of the history and development of the Borough as well as its appreciation of the Borough's historic sites;
- J. Enhance the visual and aesthetic character, diversity, and continuity, and interest in the Borough and its neighborhoods;
- K. Encourage beautification and private investment in the Borough;
- L. Promote the economic welfare of the Borough through the preservation of its historic sites and landscapes.

**§ 163-2 Creation of Committee.**

There is hereby created in and for the Borough of Emerson a Committee to be known as the “Historic Preservation Committee of the Borough of Emerson”, the creation of which shall void and supersede the Historic Preservation Commission (Ord. No. 1344).

**§ 163-3 Definitions.**

As used in this article:

ADDITION

An extension or increase in building size, floor area or height.

ADMINISTRATIVE OFFICER

The Construction Code Official.

ALTERATION

Any change in the exterior of architectural features or of any improvement or addition.

APPLICATION

A request to the Committee made pursuant to this article for the purposes of obtaining an approval or other action by the Committee hereunder specified.

APPLICATION FOR DEVELOPMENT

The application to the Land Use Board of the Borough for the approval of a major or minor subdivision plat, site plan, planned development, conditional use, zoning variance, or the direction of the issuance of a permit pursuant to Section 25 or 27 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-34 or 40:55D-36).

BUILDING

Any man-made structure, its site and appurtenances created to shelter any form of human activity.

COMMITTEE

The Historic Preservation Committee pursuant to the provisions of this article.

CONSTRUCTION OFFICIAL

The officer in charge in the granting of building or construction permits in the Borough.

DEMOLITION

The partial or total razing, dismantling or destruction, whether entirely or in significant part, of any building, structure, object or site. Demolition includes the removal of a building, structure or object from its site or the removal or destruction of a facade or surface.

### DESIGNATED PROPERTY OR DISTRICT

An individual building, structure, site, object or district which has been designated as having historical, architectural, cultural, aesthetic or other significance pursuant to the provisions of this article.

### DEVELOPMENT

The division of a parcel of land into two or more parcels, construction, reconstruction, conversion, structural alterations, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure or land or extension of use of land for which permission may be required pursuant to the Municipal Land Use Law.

### DISTRICT

See "landmark district."

### EVALUATION

The process of determining whether identified properties meet defined criteria of historical, architectural, archeological or cultural significance.

### HISTORICAL DISTRICT

One or more historic sites and certain intervening or surrounding property significantly affecting or affected by the quality and character of an historic site or sites as specifically designated herein.

### HISTORIC RESOURCE

Any prehistoric or historic district, site, building, structure or object included in the Borough Historic Site's Survey, or eligible for inclusion in the National Register (of Historic Places); such term includes artifacts, records and remains which are related to such a district, site, building, structure or object.

### HISTORIC SITE

Any real property, man-made structure, natural object or configuration of any portion or group of the foregoing which has been designated in the Master Plan as being of historic, archeological, cultural, scenic or architectural significance at the national, state or local level, as specifically designated herein, or any property which is located in an historic district. The designation of an historic site or landmark shall be deemed to include the Tax Map lot on which it is located as well as the right-of-way contiguous thereto.

### IMPROVEMENT

Any structure or any part thereof installed upon real property by human endeavor and intended to be kept at the location of such construction or installation.

## INTEGRITY

The ability of a property or element to convey its historic significance; the retention of those essential characteristics and features that enable a property to effectively convey its significance.

## INVENTORY

A list of historic properties determined to meet criteria of significance specified herein.

## LANDMARK

A building, structure, site or object which has a special character or special historical or aesthetic interest as part of the development, heritage or cultural characteristics of the Borough, state or nation and which has been designated as a landmark pursuant to the provisions of this article.

## LANDMARK DISTRICT or DISTRICT

A geographic area with distinctly definable boundaries composed of several buildings or sites which:

- A. Has acquired a unity of character through the interrelationships of the component buildings and sites; and
- B. Has been designated as having historical, archeological, cultural, scenic, architectural or other significance pursuant to the provisions of this article.

## MASTER PLAN

The Master Plan of the Borough of Emerson, as amended from time to time, compiled pursuant to the Municipal Land Use Law.

## MINOR APPLICATION

Any application for certificate of appropriateness which:

- A. Does not involve demolition, relocation or removal of an historic site;
- B. Does not involve an addition to an individual property or a property in an historic district or new construction in an historic district;
- C. Is a request for approval of fences, signs, lighting, paving or streetscape work which will comply with the adopted design guidelines for the improvement proposed and which will not substantially affect the characteristics of the historic site or the historic district.

## MUNICIPAL LAND USE LAW

The Municipal Land Use Law of the State of New Jersey, P.L. 1975, c. 291 (N.J.S.A. 40:55D et seq.), as amended from time to time.

## NATIONAL REGISTER CRITERIA

The established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

## NONCONTRIBUTING BUILDINGS

A building, site, structure or object that does not add to the historic or architectural qualities, historic associations or archaeological values for which a property is significant because: it was not present during the period of significance; due to alterations, disturbances, additions or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period.

## OBJECT

A material thing of functional, aesthetic, cultural, historic, scenic or scientific value that may be, by nature or design, movable, yet related to a specific setting or environment.

## ORDINANCE

A legislative act of the governing body of a municipality adopted in accordance with statutory requirements as to notice, publicity and public hearing as required by law.

## ORDINARY MAINTENANCE AND REPAIR

The repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly practicable to its original condition prior to the occurrence or such deterioration, wear or damage with in-kind material and replacement of exterior elements or accessory hardware, including signs, using the same materials and workmanship and having the same appearance.

## OWNER

Any person having a right, title or interest in any property so as to be legally entitled, upon obtaining such permits and other authorizations as may be required pursuant to law, to perform construction, alteration, removal, demolition or other work with respect to such property.

## PERMIT

Any required approval for exterior work to any improvement or property in an historic district or on an historic site. Permit shall include, but is not limited to, a building permit, a demolition permit, a permit to move, convert, relocate or remodel or to change the use or type of occupancy of any improvement or property in an historic district which involves exterior changes to the structure or the property on which it is located.

## PRESERVATION

The act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form of vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

## PROTECTION

The act or process of applying measures designed to preserve the physical condition of a property by guarding it from deterioration or loss.

## RECONSTRUCTION

The act or process of reproducing by new construction the exact same form and detail of a vanished or non-surviving building, structure or object, or any part thereof, as it appeared at a specific period of time when documentary and visible evidence is available to permit accurate reconstruction.

## REHABILITATION

The act or process of returning a property to its state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

## REPAIR

Any work done on an improvement that is not an addition and does not change the exterior appearance of any improvement; provided, however, that any such repairs must be done with materials and workmanship of the same quality as the existing materials and workmanship of the improvement.

## RESTORATION

The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of a later work or by the replacement of missing earlier work.

## SITE

Any real property, whether public or private, with or without improvements, which is the location of a significant event or series of events, a prehistoric or historic occupation or activity, or a building, structure or object, or any configuration, portion or group of forgoing, which has been designated by the Committee as having historical, archeological, cultural, scenic or architectural significance pursuant to the provisions of this article.

## STREETSCAPE

The visual character of the street, including, but not limited to, the architecture, building setbacks and height, fences, storefronts, signs, lighting, parking areas, materials, sidewalks, curbing and landscaping.

## STRUCTURE

A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land. The word "structure" shall also include any building or improvement with a roof.

## SURVEY

A process of identifying and gathering data on a community's historic resources. It includes a field survey which is the physical search for and recording of historic resources on the ground, preliminary planning and background research before the field survey begins, organization and presentation of survey data as the survey proceeds, and the development of inventories.

## SURVEY DATA

The raw data produced by the survey; that is, all the information gathered on each property and area investigated.

## VIEW or PUBLIC VIEW

The view by the public of a building, structure, object or site from any point on a street or walkway which is used as a public thoroughfare, either vehicular and/or pedestrian.

### **§ 163-4      Composition; terms; organization; rules; powers and duties.**

A. Composition. The Historic Preservation Committee shall consist of seven regular members appointed by the Mayor.

(1) The seven members of the Historic Preservation Committee shall fall within three classes as follows:

- (a) Class A: a person who is knowledgeable in building design and construction or architectural history.
- (b) Class B: a person who is knowledgeable of the local history or has demonstrated interest in local history.
- (c) Class C: a citizen of the municipality who shall hold no other municipal office, position or employment except for membership on the Land Use Board.

(2) Class C members are regular members who are not designated as Class A or B.

(3) Class A and Class B members may reside outside the Borough, with preference given to residents of the Borough.

(4) There shall be at least one Class A and at least one Class B member.

B. Alternate members. There shall be two alternate members who shall be appointed by the Mayor and shall be designated at the time of the appointment as "Alternate No.1" and "Alternate No. 2." Alternate members shall meet the qualification of Class C members.

C. Terms.

- (1) The initial terms of the regular members first appointed under this article shall be determined to the greatest practicable extent so that the expiration of the terms shall be distributed evenly over the first four years of their appointment, provided that the initial term of no regular member shall exceed four years. Thereafter, the term of a regular member shall be for four years. Notwithstanding any other provisions, the term of any member common to the Historic Preservation Committee and the Land Use Board shall be for the terms of the membership on the Land Use Board.
- (2) In the case of alternate members, the initial terms shall be distributed evenly over the first two years after their initial appointment, provided that the initial term of no alternate member shall exceed two years. Thereafter, the term of an alternate member shall be two years.

D. Vacancies. Vacancies in any class, including alternate members, occurring otherwise than by an expiration of term, shall be filled in the same manner in which the previous incumbent was appointed; and such vacancy appointment shall be only for the balance of such incumbent's unexpired term.

E. Liaisons. A member of the Borough Council and a member of the Land Use Board shall be designated as liaisons between those bodies and the Committee. The role of such liaisons should be informational only, and they shall possess no voting rights with regard to action taken by the Committee.

F. Organization; officers.

- (1) The Historic Preservation Committee shall elect a Chairperson and a Vice Chairperson from its members and shall select a Secretary who may or may not be a member of the Historic Preservation Committee or a municipal employee.
- (2) Alternate members may participate in discussions of the proceedings. They may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

G. Funding; staff.

- (1) The Borough Council shall, in its sole discretion, make provisions in its budget and appropriate funds for the expenses of the Historic Preservation Committee.
- (2) The Historic Preservation Committee may employ, contract for and affix the compensation of experts and other staff and services as it shall deem necessary within its budget. The Committee shall obtain its legal counsel from the Municipal Attorney at the rate of compensation to be determined by the governing body. Expenditures pursuant to this section shall not exceed, exclusive of gifts or grants, the amount appropriated by the governing body for the Committee.

H. Rules and organization of the Committee. The Committee shall have the authority to adopt all rules and regulations necessary to carry out its functions under the provisions of this article, including, but not limited to, maintenance of records and procedures subject to the following:

- (1) A quorum for the transaction of all business shall be four members. A majority vote of those present and voting shall prevail.
- (2) All Committee minutes and records as kept and maintained by the Committee's Secretary shall be public records, and all Committee meetings shall comply with the Open Public Meeting Act (N.J.S.A. 10:4-7 et seq.).
- (3) Committee meetings shall be scheduled at least once every other month (six (6) times annually) or as often as required to fulfill its obligations. The Committee shall post in Borough Hall its schedule of meetings
- (4) No Committee member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Mere ownership of and occupation of an historic residence shall not be deemed a personal or financial interest.
- (5) When the Land Use Board refers an application to the Historic Preservation Committee, then the referring Board shall receive a copy of the Committee's Report.
- (6) The Construction Official shall maintain and display an up-to-date map showing the historic districts, as well as a current listing of historic sites.
- (7) A member of the Committee may, after a public hearing, if requested, be removed by the governing body for cause.

I. Powers and duties. The power and duties of the Committee shall be as follows:

- (1) Identifying, surveying, and recording historic and architectural buildings, structures, sites and objects and evaluating these resources. The survey material shall be reviewed and, if necessary, updated at least every other year to incorporate any newly acquired historical documentation and to reflect changes to a resource's integrity or condition.
- (2) Conducting research on and nominating significant resources to the State and National Registers of Historic Places.
- (3) Assisting other public bodies in aiding the public in understanding historic resource significance and methods of preservation.
- (4) Advising the Mayor and Council on the relative merits of proposals involving public funds to restore and protect historical buildings, resources, places and structures. Including the preparation of a long-range plan, thereby securing state, federal and other grants and aid to assist therein and monitoring such projects once underway.
- (5) To make recommendations to the Land Use Board and Borough Council in the preparation and periodic updating of the Historic Preservation Element of the Master Plan for the Borough, including, but not limited to, the addition or deletion of historic sites and districts identified in the Borough's Master Plan;
- (6) To make recommendations to the Land Use Board and Borough Council on the historic preservation implications of any proposed or adopted zoning or development ordinance(s) or proposed or adopted elements of the Borough's Master Plan;
- (7) To advise and assist Borough officers, employees, boards and other bodies, including those at the county, state or federal levels, on all matters which have potential impact on the historic buildings, structures, objects, sites or districts in the Borough or on the physical character and ambience of any portion of the Borough or region;
- (8) To increase public awareness to the value of historic, architectural and cultural preservation by developing and participating in public information programs;
- (9) To cooperate with local, county, state or national historical societies, governmental bodies and organizations to maximize the contributions of the Committee in accordance with the intent and purposes of historic preservation;
- (10) To make information available to residents of historic buildings or districts concerning guidelines for rehabilitations and design criteria for new construction established under this article;

- (11) To seek any benefits which may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including, but not limited to, the benefits which flow to communities under the Certified Local Government Program with regard to training, grant funding and technical assistance; and, in furtherance thereof, to take any steps necessary to assist the Borough of Emerson in the preparation and submission of any documents needed for certification of the Borough as a Certified Local Government under the National Historic Preservation Act.
- (12) The Committee shall also have incorporated into its powers and duties those duties and responsibilities of a Local Historian as set forth in N.J.S.A. 40:10A-7, specifically:
  - (a) To carry out an historical program, including but not restricted to collecting, preserving and making available materials relating to the history of the local unit. Store such materials in such manner as to insure their preservation, and shall notify the State Archivist, New Jersey Historical Commission, county local historian and local governing body of any materials which should be acquired for preservation;
  - (b) Make an annual report to the chief executive officer and governing body of the local unit stating all the work performed and accomplished during that year. Transmit a copy of such report to the New Jersey Historical Commission. The New Jersey Historical Commission may advise each county historian and municipal historian of general guidelines along which their historical program may be implemented;
  - (c) May research, write and cause to have published a county or municipal history, and may recommend appropriate historical materials for publication;
  - (d) May assist a landmark commission, as well as advise the governing body, concerning the acquisition, administration, use and disposition of any landmark or historic site, including such places in its jurisdiction included on the New Jersey Register of Historic Places. Such advice may be furnished to the Historic Sites Section, Department of Environmental Protection;
  - (e) Assist in projects of commemoration, including the erection of monuments, historic markers and guide signs.
  - (f) Store all materials in a municipally approved location.
- (13) Carrying out such other advisory, educational, and informational functions as may be requested by the governing body, or any other board or committee.

**§ 163-5            Designation of buildings, structures, objects, sites and districts as historic.**

A.     Criteria for designation. The Committee shall consider as worthy of designation those buildings, structures, objects, sites and districts that have integrity of location, design, setting, materials, workmanship, feeling and association, and that meet one or more of the following criteria:

- (1) That are associated with events that have made a significant contribution to the Borough of Emerson by reflecting or exemplifying the broad cultural, political, economic or social history of the nation, state or community;
- (2) That are associated with an historic event which had a significant effect on the development of the nation, state or community;
- (3) That is the site of an historic event which had a significant effect on the development of the nation, state or community;
- (4) That embody distinctive characteristics of a type, period or method of construction; that represent the work of a master; that possess high artistic values; or that represent a significant distinguishable entity whose components may lack individual distinction;
- (5) That are otherwise of particular historic significance to the Borough of Emerson by reflecting or exemplifying the broad cultural, political, economic or social history of the nation, state or community.

B.     Procedures for designation. Proposals to designate a property as historic pursuant to this article may be made by the Borough Council, the Committee, the Land Use Board or by the verified (sworn) application of the owner(s) or authorized agent(s) of the individual property to be designated or, in the case of a proposed district, by the verified (sworn) application of 10% of the owners of record or persons residing within the district, or by a verified (sworn) application of any organization with a recognized interest in historic preservation, in accordance with the following procedures:

- (1) Nomination proposals. The party proposing property for designation under this section shall prepare and submit to the Committee a nomination report for each proposed property, site or district. For historic district designations, the report shall include a building-by-building inventory of all properties within the district; photographs of representative properties within the districts; a property map of the district showing boundaries and a physical description and statement of significance for the district. For individual landmark designations, the report shall include one or more photographs; the tax lot and block number of the property as designated on the official Tax Map of the Borough; and a physical description and statement of significance and proposed utilization of the site.

- (2) Moratorium on applications for alteration or demolition during pendency of designation action. No applications for a permit to construct, alter or demolish any structure or any feature of a proposed landmark or property located within a proposed landmark district, filed subsequent to the date that an application has been filed or a resolution adopted to initiate designation of a proposed landmark or landmark district, shall be approved by the administrative officer or other municipal agency without review by the Committee of such applications. Committee review of such applications shall be conducted as if the property related to such applications had already been designated as a landmark property or district and are thereby subject to the same criteria, standards and procedures which govern similar applications concerning properties designated as landmarks or properties within a landmark district. After the expiration of 180 days from the date of the initial filing of the designation proposal with the Committee, the permit application may be approved without Committee review in accordance with the relevant provisions of the Municipal Code of the Borough.
- (3) Notice. The Committee shall schedule a public hearing on the proposed designation of a landmark or landmark district at least 20 days prior to the hearing and the Committee shall, by personal service or by certified mail:
  - (a) Notify the owner(s) of record of a property that has been proposed for designation, or of a property within a district that has been proposed for designation, that the property is being considered for such designation and the reason therefor;
  - (b) Advise the owner(s) of record of the significance and consequences of such designation and the rights of the owner(s) of record to contest such designation under the provisions of this article;
  - (c) Notify the owner(s) of record of the date, time and location of the hearing concerning the proposed designation of the property; and
  - (d) Serve any notices further required under the provisions of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).
- (4) Public notice of hearing. Public notice of hearing shall be given at least 20 days prior to the hearing by publication in the official newspaper of the Borough. A copy of the nomination report shall also be made available for public inspection in the Borough Clerk's office at least 20 days prior to the hearing.
- (5) Hearing. At a public hearing scheduled in accordance with this article, the Committee shall review the nomination report and accompanying documents. Interested persons shall be entitled to comment on the proposed nominations for designation. Those persons who intend to file a formal protest against the proposed designation under § **163-5B(6)** of this article must submit their protest, in writing, to the Committee in accordance with the provisions of that section of this article.

- (6) Protests. A protest against landmark designation signed by the owners of record of more than 50% of the properties within a proposed landmark district, or by the owner(s) of record of a proposed landmark, may be filed with the Committee 10 days prior to the scheduled hearing date of the proposed designation before the Committee. Protests must be in writing, must contain the reason(s) for the protest and must bear the verified (sworn) signatures of the owner(s) joining in such protest.
- (7) Committee report. Upon Committee review and public hearing, the Committee shall forward the Borough Council its report, which shall contain a statement of its recommendations and the reasons therefor with regard to proposed designations considered at the hearing, including a list and map of properties approved for designation.
- (8) Referral to the Land Use Board. The Borough Council shall refer the report to the Land Use Board, which in turn shall report to the Borough Council as soon as possible, but within 60 days. Failure of the Land Use Board to transmit its report within the sixty-day period provided herein shall relieve the Borough Council of its obligations relating to the referral of such a report to the Land Use Board. Borough Council action on a landmark or landmark district designations shall be otherwise subject to those procedures and statutes that apply to a change of a zoning designation and the adoption, revision or amendment of any development regulation.
- (9) Final designation. As soon as possible after its receipt of the report of the Land Use Board or the expiration of the period allowed for the Land Use Board comment on designations pursuant to this article, the Borough Council shall act upon the proposed designation list and map and may approve, reject or modify by ordinance any designation recommendations made by the Land Use Board. In the event that the Borough Council votes to reject or modify any Land Use Board recommendations for a proposed designation, the Borough Council shall record in its minutes the reasons for not following such recommendation. All action taken by the Borough Council on proposed designations shall become effective upon a favorable vote of a majority of full membership of the governing body.
- (10) Public notice of designation. Notice of designation shall be made public by publication in the official newspaper of the Borough and by distribution to the municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to the owner(s) of record.
- (11) Incorporation of designated landmarks into Borough records. Upon adoption, the designation list and map shall be incorporated by reference into the Master Plan and Zoning Ordinance [1] of the Borough as required by the provisions of the Municipal Land Use Law. [2] Designated properties shall also be noted as such on the records for those properties maintained by the offices of the Borough Tax Assessor and the Borough Clerk.

[1]

Editor's Note: See Ch. 290, Zoning.

[2]

Editor's Note: See N.J.S.A. 40:55D-1 et seq.

- (12) Amendments. Landmark and landmark district designations may be amended in the same manner as they were adopted in accordance with the provisions of this article.

**§ 163-6      Review of applications; informal review of concept plans.**

A.      Actions requiring review.

- (1) All permits and development applications involving the development activities that affect an historic landmark or an improvement within an historic district shall be reviewed by the Committee. Such review shall be required for the following actions:
- (a) Demolition of an historic landmark or an improvement within an historic district.
  - (b) Relocation of any structure within an historic district or of any historic landmark.
  - (c) All changes in the exterior architectural appearance of any improvement within an historic district or of any historic landmark by addition, alteration or replacement.
  - (d) Any new construction of an improvement in an historic district.
  - (e) Site plans or subdivisions affecting an historic landmark or any improvement within an historic district.
  - (f) Zoning variances affecting an historic landmark or an improvement within an historic district.
- (2) Within 60 days of receiving an application for review, the Committee shall submit, in writing, to the Land Use Board its recommendation with respect to the application. The report shall include findings and conclusions which are based on evidence in the record. Determination of the appropriateness of the application shall be made by the Committee, which decision shall be forwarded to the Land Use Board.

B.      Actions not requiring review.

- (1) When an historic landmark requires immediate emergency repair to preserve the continued habitability of the landmark and/or health and safety of its occupants or others. Emergency repairs shall be performed only in accordance with the following procedure:

- (a) When an historic landmark or key or contributing historic district resource requires immediate repair to preserve its continued habitability and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with the applicable construction codes immediately upon approval of the Construction Official, who shall certify that a bona fide emergency of the type described herein exists, without first obtaining a determination of appropriateness from the Committee. Under such circumstances, the repairs performed shall be only such as are necessary to preserve the continued habitability of the building or structure and/or health and safety of its occupants or others. Where feasible, temporary measures to prevent further damage shall be used, provided these measures are reversible without damage to the building or structure.
  - (b) Simultaneously, with the approval of the emergency work, the Construction Official shall notify the Committee of said emergency work.
  - (c) The procedures outlined in this section should be strictly limited to those circumstances which, in the opinion of the Construction Official, rise to the level of a bona fide emergency of the type referenced above. No work in addition to the emergency repairs shall be performed pursuant to this section.
- (2) Changes to the interior of structures.
- (3) For ordinary repairs and maintenance which do not constitute a change to the appearance of the structure. The following are the only activities which do not require Committee review according to this criteria:
- (a) Repair of existing windows and doors using the same material. Installation of storm windows that is compatible with the architectural period or design of the subject structure.
  - (b) Maintenance and repair of existing roof material, involving no change in the design, scale, material or appearance of the structure.
  - (c) Repair of existing roof structures such as dormers and chimneys using the same materials which will not alter the exterior architectural appearance of the structure.
  - (d) Replacement in kind of existing shingles, clapboards or other siding maintaining the architectural integrity of the structure.
  - (e) Maintenance and repair of existing shingles, clapboards or other siding using the same materials that are being repaired or maintained.
  - (f) Repairs to existing signs, shutters, outdoor displays, fences, hedges, street furniture, awnings, off-street driveway and parking material and sidewalks using the same material for those items noted above being repaired.

**§ 163-7 Standards for review.**

A. General criteria for review. In reviewing an application for its effect on a landmark or a building, structure or site located within the landmark district, the following criteria shall be used by the Committee, the Land Use Board, the Borough Council and all other officials and agencies of the Borough responsible for the administration of this article. The criteria set forth in this subsection relate to all projects affecting landmarks and any buildings, structures, objects and sites located within landmark districts; and, with regard to such proposed projects, the following factors shall be considered:

- (1) The impact of the proposed change on the historic, architectural and/or cultural significance of the landmark district;
- (2) The importance of the landmark or the building, structure, object or site to the nation, state, region or municipality and the extent to which its historic or architectural interest would be adversely affected to the detriment of public interest;
- (3) The use of any landmark or landmark district involved in the proposed change;
- (4) The extent to which the proposed action would adversely affect the public's view from the street of a landmark, building, structure, object or site located within a landmark district;
- (5) The impact that the proposed change would have on the architectural or historic significance of the landmark or landmark district and the visual compatibility of the proposed change with adjacent buildings, structures, objects and sites in accordance with the requirements for design compatibility set forth herein.

B. Rehabilitation of existing buildings, structures, objects and sites. In reviewing any application, the Committee shall make its recommendation as to whether any application should be approved, approved with conditions or denied on the basis of the purposes and the provisions of this article and the following standards for review, which are identical to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings:

- (1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, object or site and its environment, or to use a property for its originally intended purpose.
- (2) The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (3) All buildings, structures, objects and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

- (4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object or site shall be treated with sensitivity.
- (6) Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (8) Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project.
- (9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- (10) Whenever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

C. Design criteria: new construction.

- (1) In assessing the design of any proposed addition or new construction, the Committee shall consider the following design criteria in conjunction with the standards of rehabilitation and review criteria set forth above. These design criteria shall be used to analyze the appropriateness of new construction in the form of additions and alterations to the landmarks or new construction, additions or alterations to buildings, structures, objects or sites located within landmark districts.
  - (a) Height. The height of the proposed structure shall be visually compatible with adjacent buildings.
  - (b) Proportion of facade. The relationship of the width of the building to the height of the front elevation shall be visually compatible with buildings and places to which it is visually related.

- (c) Proportion of the openings. The relationship of the width of windows to the height of windows in a building shall be visually compatible with buildings and places to which it is visually related.
- (d) Rhythm of solids. The relationship of solids to voids in the facade of the building shall be visually compatible with buildings and places to which it is visually related.
- (e) Rhythm of spacing. The relationship of the building to the open space between it and adjoining buildings shall be visually compatible with buildings and places to which it is visually related.
- (f) Rhythm of entrances. The relationship of entrances and porches to the street shall be visually compatible to buildings and places to which it is visually related.
- (g) Relationship of materials. The relationship of materials, texture and tone to the facade and roof of a building shall be visually compatible with the predominant materials used in buildings to which it is visually related.
- (h) Roof. The roof shape of a building shall be visually compatible with buildings to which it is visually related.
- (i) Continuity of walls. Walls and open fencing shall maintain visual compatibility with buildings and places to which it is visually related.
- (j) Scale. The size of a building mass in relation to open spaces, window and door openings, porches and balconies shall be visually compatible with buildings and places to which it is visually related.
- (k) Exterior features. A structure's related exterior features, such as lighting, fences, sidewalks, driveways and parking areas, shall be compatible with the features of those structures to which it is visually related and shall be appropriate for the historic period for which the structure is significant. New signage shall also abide by any supplemental historic design or graphic standards that may be developed by the Committee for the district.

- (2) It is not the intent of this article to discourage contemporary architectural expression or to encourage new construction which emulates existing buildings or an historical architectural interest or of a certain period's architectural style, but rather to preserve the integrity and authenticity of an historic preservation district and to ensure the compatibility of new structures therein.

D. Review criteria for demolition. With regard to applications to demolish a landmark or any building, structure, object or site located within a landmark district, the following matters shall be considered:

- (1) Its historical, architectural, cultural and aesthetic significance in relation to the criteria set forth in this article.
- (2) Its use, its intended use and/or the use for which the building, structure, object or site was originally designed and the feasibility of the continuation of its designed use.

- (3) Its importance to the Borough and the extent to which its historical or architectural value is such that its removal would be detrimental to the landmark district and/or to the public interest.
- (4) The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty.
- (5) The extent to which its retention would promote business, create new positions, attract tourists, students, writers, historians, artists or artisans, encourage study and interest in American history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage or make the Borough a more attractive and desirable place in which to live.
- (6) The probable impact of its removal upon the ambience of the landmark district.
- (7) The structural soundness and integrity of the building, structure, object or site and the economic feasibility for its restoration or rehabilitation so as to allow for its reasonable use.
- (8) The threat to the public health and safety as a result of deterioration or disrepair of the building, structure, object or site.
- (9) The technological feasibility of structural rehabilitation.
- (10) The interference with the charitable purposes of any nonprofit or charitable organization if demolition is not permitted.

E. Criteria regarding the relocation of historic buildings or structures. The following factors shall be considered with regard to an application to move to a new location or site any landmark or any building, structure or object located within a landmark district:

- (1) The impact of the loss of integrity suffered as a result of the removal from the original and/or historic location and, if located within an historic district, the impact of that loss of integrity upon the district as a whole.
- (2) The reasons for not retaining the landmark or structure at its present site.
- (3) The compatibility, nature and character of the areas adjacent to both the present site and the proposed site as they relate to the protection of historic properties and districts as regulated by this article.
- (4) In the event that a proposed new location is in an historic district, the impact on the visual compatibility of adjacent buildings, structures, objects or sites as set forth herein.

- (5) The likelihood of significant damage to the physical integrity of the building, structure or object itself.

**§ 163-8 Referral of application to Committee.**

The Land Use Board shall refer to the Committee every application submitted to the Board for development in historic zoning districts or on historic sites designated on the Zoning Map or Official Map, or identified in any component element of the Master Plan. The referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The Committee may provide its advice, which shall be conveyed through its delegated members or staff, who shall testify orally at the hearing and explain any written report which may have been submitted by the Committee regarding the application. The Committee shall make available to the applicant a copy of its written report concerning said application for development.

**§ 163-9 Violations and penalties; enforcement.**

A. Violations defined. Any person violating any of the provisions of this article shall, upon conviction thereof, be subject to the penalties herein. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Any person who shall undertake an activity without approvals required by this article shall be deemed to be in violation hereof.

B. Notice of violations. Upon learning of the violation, the Construction Official shall personally serve upon the owner of the property whereon the violation is occurring a notice describing the violation in detail and giving the owner 10 days to abate the violation by restoring the building, structure or site to its condition prior to the violation. If the owner cannot personally be served within the Borough with said notice, a copy shall be posted on the property and a copy shall be sent to the owner at his or her last known address.

C. Injunctive relief. In the event that the violation is not abated within 10 days of service or posting on site, whichever is earlier, the administrative officer shall cause to be instituted any appropriate action or proceeding to prevent such unlawful activity, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or site, or to prevent any illegal act, conduct, business or use in or about such premises as follows:

- (1) If any person shall undertake any activity requiring permit and report of the Committee without first having obtained approval, he or she shall be required to immediately stop the activity, apply for approval and take any necessary measures to preserve the affected premises pending such approval. If the work is denied, he or she shall immediately restore the building, structure, object or site to its condition prior to any such activity. The Construction Official is hereby authorized to seek injunctive relief regarding a stop action or restoration in the Superior Court not less than 10 days after the delivery of notice pursuant to Subsection **B** hereof.

(2) In the event of the threat of imminent action for which the necessary approvals have not been granted, and which action would permanently and adversely change a landmark or any building, structure, object or site located within a landmark district, the Construction Official is empowered to apply to the Superior Court of New Jersey for injunctive relief as is necessary to prevent such actions.

D. Penalties. In addition to the remedies provided above, a person convicted of a violation of this article before a court of competent jurisdiction shall be subject to penalties as follows:

(1) For each day up to 10 days: not more than \$100 per day.

(2) For each day between 11 days and 25 days: not more than \$250 per day.

(3) For each day beyond 25 days: not more than \$500 per day.

(4) For each day beyond 25 days, a jail term not to exceed 90 days may be imposed.

**§ 163-10 Preventative maintenance; notice of violations.**

A. Priority. Recognizing the need for preventive maintenance to insure the continued useful life of historic buildings, structures, objects and sites, the Borough Council hereby declares that code enforcement for such designated properties is a high municipal priority.

B. Notice of violation. In the event that any landmark or any building, structure, object or site located within a landmark district deteriorates to the point that, in the best estimate of the Administrative Officer, the cost of correcting the outstanding code violations equals more than 10% of the cost of replacing the entire building, structure, object or site on which the violation occurs, the administrative officer shall serve personally or by certified mail, return receipt requested, a notice on the owner of the property listing the violations, the estimate for their abatement and the replacement costs of the improvements and stating that if the owner does not take all necessary remedial action within 60 days, enter upon the property and abate such violations and cause the cost thereof to become a lien on the property.

C. Hearing. Upon receipt of such notice, the owner may, within 20 days after such receipt, notify the Administrative Officer of his or her intentions to have a hearing as to the allegations and estimates set forth in the notice. Such a hearing shall be conducted by the Committee and shall, so far as possible, be a formal adversary proceeding in which the administrative officer shall establish matters alleged in the notice by the preponderance of the evidence. If a hearing is requested, the administrative officer will, within 10 days following the hearing, serve on the owner an opinion, in writing, setting forth his or her conclusions and the reasons therefor.

D. Action without a hearing. If the owner does not request a hearing, the findings of the Administrative Officer set forth in the notice issued in Subsection **B** shall be binding, and the Administrative Officer may take such necessary action as granted by the provisions of this article.

E. Right of abatement. If the owner does not comply with the findings of the Administrative Officer, the Administrative Officer may enter onto the premises and, by use of municipal labor or outside contractors, or both, perform such work as is necessary to abate all violations.

F. Costs. The Administrative Officer shall then certify to the Borough Council the cost of such work performed, plus all administrative, clerical and legal costs and overhead attributable thereto and shall present the same to the Borough Council.

G. Lien. The Borough Council may, by resolution, vote to cause the sum so certified to become a lien upon the property, payable with the next quarter's property taxes and, if not then paid, bearing interest at the same rate as delinquent taxes.

**§ 163-11 Municipal responsibility.**

It shall be the duty of all municipal officials of the Borough of Emerson reviewing all permit applications involving any real property or improvements thereon to determine whether such application involved any activity which should also be the subject of an application for a permit and if it should be, to inform the Secretary of the Committee, the Administrative Officer and the applicant of the same.

**SECTION 2. Severability and Repealer.**

A. If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

B. All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

**Section 3. Effective Date.**

This ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

Attest:

\_\_\_\_\_  
Jane Dietsche, RMC  
Clerk

\_\_\_\_\_  
Louis Lamatina  
Mayor