

STATE OF WISCONSIN : MILWAUKEE COUNTY : VILLAGE OF WHITEFISH BAY

ORDINANCE NO. 1686

An Ordinance to Repeal and Recreate Sec. 16.25 of the
Municipal Code With Regard to Historic Preservation

The Village Board of the Village of Whitefish Bay, Wisconsin do ordain as follows:

Section One: Section 16.25 of the Municipal Code is hereby repealed and recreated to read as follows:

16.25 Historic Preservation

- (1) Purpose and Intent. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements or sites of historic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the Village. The purpose of this section is to:
 - (a) Effect and accomplish the protection, enhancement, and preservation of such improvements and sites which represent or reflect elements of the Village's cultural, social, economic, political and architectural history.
 - (b) Safeguard the Village's historic, prehistoric and cultural heritage, as embodied and reflected in such historic structures and sites.
 - (c) Stabilize and improve property values, and enhance the visual and aesthetic character of the Village.
 - (d) Protect and enhance the Village's attraction to residents, tourists and visitors, and serve as a support and stimulus to business.
- (2) Definitions. The following definitions shall apply to this Section:
 - (a) "Architectural Review Commission" means the Architectural Review Commission of the Village of Whitefish Bay.
 - (b) "Certificate of Appropriateness" means the certificate issued by the Architectural Review Commission or Community Development Authority approving alteration, rehabilitation, construction, reconstruction or demolition of an Historic Structure or Historic Site.
 - (c) "Commission" means the Historic Preservation Commission created under this Section.
 - (d) "CDA" means the Community Development Authority of the Village of Whitefish Bay.

(e) “Demolition” means the razing or other intentional destruction of greater than fifty percent (50%) of the value (as determined by the Village Assessor), volume, mass, or footprint of any single structure.

(f) “Historic Site” means any parcel of land of historic significance due to a substantial value in tracing the history or prehistory of man, or upon which an historic event has occurred, and which has, with an Owner’s consent, been designated as an Historic Site under this Section, or an improvement, parcel, or part thereof, on which is situated an Historic Structure and any abutting improvement, parcel, or part thereof, used as and constituting part of the premises on which the Historic Structure is situated.

(g) “Historic Structure” means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the Village, state or nation and which has, with an owner’s consent, been designated as an Historic Structure pursuant to the provisions of this chapter.

(h) “Improvement” means any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment, including streets, alleys, sidewalks, curbs, lighting fixtures, signs and the like.

(i) “Plan Commission” means the Plan Commission of the Village of Whitefish Bay.

(3) Historic Preservation Commission Composition. An Historic Preservation Commission is hereby created, consisting of seven (7) members, to serve in three (3) year staggered terms, with an acknowledged interest in historic preservation. If available in the community, one member should be a registered architect; one should be an historian; one should be a licensed real estate broker; one should be a member of the Whitefish Bay Historical Society; one shall be a Village Trustee and the remainder shall be citizen members. The Village President shall appoint the commissioners subject to confirmation by Village Board.

(4) Historic Structure and Historic Site Designation Criteria

(a) For purposes of this Section, an Historic Structure, or Historic Site, designation may be placed on any natural or improved site, including any building, improvement or structure located thereon, or any area of particular historic significance to the Village such as historic structures, or sites, which:

i. Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or

ii. Are identified with historic personages or with important events in national, state or local history; or

- iii. Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or
- iv. Are representative of the notable work of a master builder, designer or architect who influenced his or her age; or
- v. Have yielded, or may be likely to yield, information important to prehistory or history.

(b) The Commission shall adopt specific operating guidelines for Historic Structure, and Historic Site designation providing such are in conformance with the provisions of the Municipal Code and approved by the Village Board.

(5) Powers and Duties of the Architectural Review Commission, CDA, Commission, Plan Commission, and Village Board.

(a) Designation. The Commission shall have the authority to designate Historic Structures, and Historic Sites within the Village limits. All such designations shall be made based on the criteria in this section. No designation process may proceed without the submittal to the Commission of a written consent to designation from any owner of such site or structure. Once designated, such Historic Structures, and Sites shall be subject to all of the provisions of this Section.

(b) Regulation of Construction, Reconstruction, Alteration and Demolition

1. The Architectural Review Commission shall review all applications for certificates of appropriateness for all properties in the Village not subject to CDA jurisdiction with regard to design review and building permits. Where the CDA has such jurisdiction, the CDA shall review all applications for a certificate of appropriateness. No owner or person in charge of an Historic Structure, or Historic Site shall reconstruct, alter or demolish all or any part of the exterior of such property or construct any improvement upon such designated property or properties or cause or permit any such work to be performed upon such property to demolish such property unless a Certificate of Appropriateness has been granted by the Architectural Review Commission (or CDA where appropriate). Unless the Architectural Review Commission (or CDA where appropriate) has granted such certificate, the building inspector shall not issue a permit for any such work on a property unless and until a Certificate of Appropriateness is issued for the work. There shall be no requirement for a Certificate of Appropriateness, nor shall the requirements of this Section apply, to any action under Section 66.0413 Wis. Stat. to raze or rehabilitate the property or otherwise act pursuant to that statutory section.

i. All construction, alteration, or demolition with regard to an Historic Structure shall comply with the Building Code and Design Guidelines of the Municipal Code. In the event of conflicts between this section and the Design Guidelines, this section shall control.

2. Upon filing of any application for a Certificate of Appropriateness for activities other than demolition, the Architectural Review Commission (or CDA where appropriate) shall approve the application unless any of the following conditions exist:

i. In the case of a designated Historic Structure or Historic Site, the proposed work (other than demolition) would detrimentally change, destroy or adversely affect any exterior feature of the improvement or site upon which said work is to be done and available options to satisfy the requirements of this subparagraph do not constitute an undue burden on the applicant;

ii. In the case of the construction of a new improvement upon an Historic Site, the exterior of such improvement would adversely affect or not harmonize with the external appearance of neighboring improvements on such site and available options to satisfy the requirements of this subparagraph do not constitute an undue burden on the applicant;

3. The Architectural Review Commission (or CDA where appropriate) shall not issue a Certificate of Appropriateness for demolition unless the applicant has shown that it has made good faith efforts for a period of at least sixty (60) days to secure a buyer who agrees to, or otherwise secures a means to, preserve, relocate, reuse, or otherwise rehabilitate the Historic Site or Structure utilizing a reasonable level of resources available to the owner or buyer. The Architectural Review Commission (or CDA where appropriate) may impose such additional restrictions or requirements in the demolition permit as it deems reasonably necessary, including, but not limited to: the imposition of waiting or negotiation periods of up to sixty (60) days, the requirement of additional efforts to preserve or sell the property for periods of up to sixty (60) days, the salvage or recycling of historic artifacts, the donation or sale of all or portions of the Historic Site or Structure for removal, or the measurement, recording, and photographing of the structure so as to make an historic record.

4. The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the Village. A building permit or other municipal permit shall be invalid if it is obtained without the presentation of a Certificate of Appropriateness required for the proposed work.

5. Ordinary maintenance and repairs may be undertaken without a Certificate of Appropriateness provided that the work involves repairs to existing features of an Historic Structure or Site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the Historic Structure or Site and does not require the issuance of a building permit.

6. In addition, in determining whether to issue a Certificate of Appropriateness for activities other than demolition, the Architectural Review Commission (or CDA where appropriate) shall consider and may give decisive weight to any or all of the following standards:

i. A property should be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment;

ii. The historic character of a property should be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property should be avoided.

iii. Each property should be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, should not be undertaken.

iv. Most properties change over time. Those changes that have acquired historic significance in their own right should be retained and preserved.

v. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property should be preserved.

vi. Deteriorated historic features should be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features should be substantiated by documentary, physical, or pictorial evidence.

vii. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials should not be used. The surface cleaning of structures, if appropriate, should be undertaken using the gentlest means possible.

viii. Significant archeological resources affected by a project should be protected and preserved. If such resources must be disturbed, mitigation measures should be undertaken.

ix. New additions, exterior alterations, or related new construction should not destroy historic materials that characterize the property. The new work shall not be differentiated from the old and should be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

x. New additions and adjacent or related new construction should be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

7. The Architectural Review Commission (or CDA where appropriate) shall make its decision regarding a Certificate of Appropriateness within thirty (30) days of the filing of the application. If the Architectural Review Commission (or CDA where appropriate) denies a Certificate of Appropriateness, the Architectural Review Commission (or CDA where appropriate) shall, with the cooperation of the applicant, work with the applicant in an attempt to issue a Certificate of Appropriateness within the terms of this Section. Failure of the Architectural Review Commission (or CDA where appropriate) to act on the application within thirty (30) days shall constitute an approval of the application entitling the applicant to proceed under the terms of the application for a Certificate of Appropriateness.

(c) Appeals

1. Demolition Permits. Any aggrieved person, including the owner or applicant, may appeal a decision regarding a Certificate of Appropriateness for demolition to the Village Board within thirty (30) days. The Village Board shall render its decision based on the record and any additional evidence presented to it by the aggrieved person and the owner or applicant.

2. All Other Permits. Any aggrieved person, including the owner or applicant may appeal such decision to the Board of Appeals within thirty (30) days.

(d) Recognition of Historic Structures, and Sites. At such time as an Historic Structure or Site has been properly designated, the Commission, in cooperation with the property owner, may cause to be prepared and erected on such property, utilizing funds as made available by the Village, a suitable plaque declaring that such property is an Historic Structure.

(6) Procedures.

(a) Designation of Historic Structures and Historic Sites

1. The Commission may, after notice and public hearing, designate or rescind (in whole or in part) Historic Structures or Historic Sites after application of the criteria in Section (4) above. No Historic Site or Historic Structure may be designated, without consent from an owner of the Site or Structure to such designation. At least thirty (30) days prior to such hearing, the Commission shall publish a Class I notice pursuant to Wisconsin statutes and shall notify the owner(s) of record, as listed in the office of the Village Assessor.

2. The Commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses and hear such witnesses and review records as might be presented. The Commission may conduct an independent investigation into the proposed designation or rescission. After the public hearing, the Commission may designate or rescind (in whole or in part) the property or properties as either an Historic Structure or Historic Site. If the Commission fails to take action within ninety (90) days of the first meeting at which nomination of the Structure or Site appears on the Commission's agenda, such nomination will be deemed rejected in full. After any designation or rescission has been made by the Commission, notification shall be sent to the property owner or owners. Notification shall also be given to the Building Inspector, Village Clerk, and Village Assessor. The Commission shall cause the designation or rescission to be recorded, at Village expense, at the County Register of Deeds office.

3. Any aggrieved person, including the owner or applicant, may appeal a decision regarding Historic Structure or Site designation to the Village Board within thirty (30) days. The Village Board shall consider the record and may hear additional evidence at its discretion. The Village Board shall render its decision within ninety (90) days of the appeal. Failure to take action within ninety (90) days shall constitute affirmance of the Commission's decision. Any designation shall not take effect until completion of the appeal.

(7) Interim Control. No building permit shall be issued by the building inspector for alteration, construction, demolition, or removal of a nominated Historic Structure or Historic Site, the date of the meeting of the Commission at which nomination for historic designation of the structure or site is first presented as an agenda item until the final disposition of nomination by the actions or failure to act of the Commission or the Village Board unless such alteration, removal or demolition authorized by formal resolution of the Village Board as necessary for public health, welfare or safety or pursuant to Section 66.0413 Wis. Stats.

(8) Educational Function of Commission. It shall be the responsibility of the Commission to gather information regarding funding, tax treatment and legal and contractual methods of historic preservation and to endeavor to keep the Architectural Review Commission and CDA apprised of current information regarding those subjects.

(9) Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

(10) In cases of hardship, a special exception pursuant to Section 16.20 of the Zoning Code may be granted with regard to any of the requirements of this Ordinance.

Section Two: This Ordinance shall take effect and be in force the day after its publication in the Whitefish Bay Herald.

PASSED AND ADOPTED by the Village Board of Trustees of the Village of Whitefish Bay this 24TH Day of October, 2005.

VILLAGE OF WHITEFISH BAY

Kathleen J. Pritchard, Village President

Barbara C. Patin, Clerk-Treasurer