

**CITY OF CAPE MAY  
COUNTY OF CAPE MAY  
NEW JERSEY**

**ORD. NO. 1197-99**

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 32 ZONING, SECTION 32-33 HPD HISTORIC PRESERVATION DISTRICTS OF THE REVISED GENERAL ORDINANCES OF THE CITY OF CAPE MAY.

**PREAMBLE**

Whereas, the historical, cultural, architectural, economic, and social heritage of the City of Cape May is entrusted from generation to generation, enriched and then passed on; and

Whereas, the character and quality of life in the City depends in great measure on the ability to protect this heritage; and

Whereas, Cape May is a unique City since the entire City contains historically significant architecture and the entire City is designated on the State and National Registers of Historic Places and as a National Historic Landmark.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, THAT CHAPTER 32 ZONING, SECTION 32-33 HPD HISTORIC PRESERVATION DISTRICTS, SHALL BE AMENDED AND SUPPLEMENTED TO READ AS FOLLOWS:

**32-33.1 PURPOSE AND OBJECTIVES**

The purpose of this Ordinance is to implement the historic preservation element of the Master Plan, to provide guidance to property owners in achieving preservation of historic resources and to advance the following public purposes:

- (A) To preserve and protect historic, architectural, cultural, archaeological, and aesthetic resources for the general welfare of the public;
- (B) To identify, designate, and regulate Historic Districts and Historic Sites to preserve their historic, architectural, cultural, archeological, and aesthetic significance;
- (C) To preserve and enhance the environmental quality of neighborhoods;
- (D) To strengthen the City's economic base by the stimulation of the tourist industry;
- (E) To foster economic development and manage growth;
- (F) To foster civic pride in the beauty and accomplishments of the City's past.

### **32-33.2 DEFINITIONS**

- (A) **Addition** - An extension or increase in building size, floor area or height.
- (B) **Administrative Officer** - For purposes of this Historic Preservation Ordinance, the City Construction Code Official shall be the Administrative Officer.
- (C) **Alteration** - As applied to a building or structure, a change or rearrangement in the structural parts or in the means of egress or an enlargement, whether by extending on a side or by increasing in height or the moving from one location or position to another, or the change in appearance of the exterior surface of any improvement.
- (D) **Certificate of Appropriateness** - A document issued by the Historic Preservation Commission demonstrating their review of any alteration, addition to or demolition of a designated historic site, or to a property within a historic district. Such review is based upon the application and representations of the applicant and the approved plans presented for the preservation, restoration, rehabilitation or alteration of an existing property, or the demolition, addition, removal, repair or remodeling of any feature on an existing building within the historic district, or for any new construction within the historic district.
- (E) **Demolition** - Demolition is the partial or total razing, dismantling or destruction of any historic site or any improvement within a historic district.
- (F) **Evaluation** - The process of determining whether identified properties meet defined criteria of historical, architectural, archeological or cultural significance.
- (G) **Historic District** - One or more historic sites and certain intervening or surrounding property significantly affecting or affected by the quality and character of historic site or sites, as specifically designated herein.
- (H) **Historic Resource** - Any prehistoric or historic district, site, building, structure, or object included in, 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.
- (I) **Historic Site** - Any real property, manmade structure, natural object or configuration or any portion or group of the foregoing which has been designated in the Master Plan as being of historic, archaeological, cultural, scenic or architectural significance at the national, State or local

level, as specifically designated herein or any property which is located in a historic district. The designation of a 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.

(J) **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.

(K) **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.

(L) **Inventory** - a list of historic properties determined to meet criteria of significance specified herein.

(M) **Minor Application** - Any application for a Certificate of Appropriateness which

(1) Does not involve demolition, relocation or removal of a historic site;

(2) Does not involve an addition to a property in a historic district or new construction in a historic district;

(3) Is a request for approval of fences, signs, lighting, doors, windows, roofs, paving, exterior sheathing or streetscape work which will comply with the adopted design guidelines for the improvement proposed where a specific guideline applies and which will not substantially affect the characteristics of the historic site or the historic district. If the design guidelines contain a discretionary standard, the Chairperson shall refer the request for approval to the complete Board.

(4) Is a request for a field change for a Certificate of Appropriateness which has already been issued and which meets the criteria of subparagraph (3) above.

(N) **National Register Criteria** - the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

(O) **Non-Contributing Buildings** - A building, site, structure or object that does not add to the historic 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; it does not independently meet the National Register criteria.

(P) **Ordinary Maintenance and Repair** - Repair of any deterioration, wear or damage to a structure or any part thereof in order to return the same as nearly as practicable to its condition prior to the occurrence of such deterioration, wear, or damage with inkind material and quality workmanship. Ordinary maintenance shall further include inkind replacement of exterior elements or accessory hardware including signs, using the same materials and workmanship and having the same appearance.

(Q) **Permit** - Any required approval for exterior work to any improvement or property in a historic district or on a historic site. Permit shall include, but is not limited to a building permit, a City window replacement 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 a historic district which involves exterior changes to the structure or the property on which it is located.

(R) **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 and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

(S) **Protection** - the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.

(T) **Reconstruction** - the act or process of reproducing by new construction the exact 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 physical evidence is available to permit accurate reconstruction.

(U) **Rehabilitation** - the act or process of returning a property to a 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.

(V) **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.

(W) **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 later work or by the replacement of missing earlier work.

(X) **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, color, sidewalks, curbing and landscaping.

(Y) **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.

(Z) **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.

(AA) **Survey Data** - The raw data produced by the survey; that is, all the information gathered on each property and area investigated.

(BB) **Victorian Hotels** – Hotels with at least one hundred (100) rooms, the main portion of which were constructed during or within fifteen (15) years after the reign of Victoria Alexandrina, Queen of the United Kingdom of Great Britain and Ireland (1837-1901).

### **32-33.3 HISTORIC PRESERVATION COMMISSION**

(A) **Responsibilities** The Historic Preservation Commission shall have the following duties and responsibilities:

(1) To identify, record and maintain a system for survey and inventory of all buildings, sites, places, landmarks and structures of historical or architectural significance based on the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (Standards and Guidelines for Identification); and to aid the public in understanding their worth, methods of preservation, techniques of gathering documentation and related matters.

(2) To make recommendations to the Planning Board on the historic preservation plan element of the Master Plan and on the implications for preservation of historic sites of any other Master Plan elements. The Commission may provide information to the Planning Board indicating

the location and significance of historic sites and districts and by identifying the standards used to assess worthiness for historic site or district identification.

(3) To advise the Planning Board on the inclusion of historic sites and landmarks in the recommended capital improvement program.

(4) To advise the Planning Board and Zoning Board of Adjustment on applications for development pursuant to N.J.S.A. 40:55D-110.

(5) To provide written reports pursuant to N.J.S.A. 40:55D-111 on the application of the Zoning Ordinance provisions concerning historic preservation.

(6) To issue a Certificate of Appropriateness pursuant to Section 32-33.5.

(7) After a public hearing, the Historic Preservation Commission may establish administrative procedures and/or regulations to carry out the purposes of this section.

(8) To carry out such other advisory, educational and informational functions as will promote historic preservation in the City.

(B) **Establishment**

(1) **Members**

There is hereby established a Historic Preservation Commission to be appointed by the Mayor which Commission was established by prior Ordinance and is hereby continued consistent with N.J.S.A.40:55D-107 et seq. The Commission shall consist of seven (7) regular members and two (2) alternate members. Members shall serve without compensation. At the time of appointment, at least one member shall be designated from each of the following classes:

Class A - A person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and,

Class B - A person who is knowledgeable, or with a demonstrated interest in, local history and who may reside outside the municipality; and,

Class C - Citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the Planning Board or Zoning Board of Adjustment. Class C members should have at minimum a demonstrated interest in history, historic preservation or a related field.

Alternate members shall meet the qualifications of Class C members. At the time of appointment, alternate members shall be designated as "Alternate No. 1" and "Alternate No. 2". Of the seven regular members, at least one less than a majority shall be of Classes A and B.

(2) **Terms**

(a) Members of the Historic Preservation Commission who have been appointed under the prior ordinance shall continue in office until expiration of their respective terms. Thereafter, the term of a regular member shall be four years; the term of an alternate member shall be two years.

(b) Notwithstanding any other provision herein, the term of any member common to the Historic Preservation Commission and the Planning Board shall be for the term of membership on the Planning Board; and the term of any member common to the Historic Preservation Commission and the Zoning Board of Adjustment shall be for the term of membership on the Zoning Board of Adjustment.

(c) A vacancy occurring otherwise than by expiration of term shall be filled within 60 days for the unexpired term only.

(3) **Alternates**

(a) The alternate members may participate in discussions of the proceedings but 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.

(4) **Council Liaison** The City of Cape May Municipal Council shall designate a member to act as a liaison between the Historic Preservation Commission and the Council.

(5) **Officers** - Annually, the Commission shall elect a chairman and vice-chairman from its members and select a recording secretary who may or may not be a member of the Commission or a municipal employee.

(6) **Budget** - The governing body shall make provision in its budget and appropriate funds for the expenses of the Historic Preservation Commission. The Commission may employ, contract for and fix the compensation of experts and other staff and services, as it shall deem necessary. The Commission shall obtain its legal counsel from the municipal attorney at the rate of compensation determined by the governing body, unless the governing body by appropriation

provides for separate legal counsel for the Commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by City Council for the Commission's use. In the event that the Commission receives gifts or grants, they will be placed in a dedicated fund for the exclusive use of the Commission.

(7) **Finances** - The City Council shall establish by ordinance reasonable fees necessary to cover the expenses of administration and professional services to aid the Commission in its review of applications and development reviews. These fees are in addition to any other required under any portion of this or any other applicable City Ordinance.

(8) **Rules of Commission**

(a) The Commission shall adopt written rules for the transaction of its business and for the consideration of applications for Certificates of Appropriateness and for designations of historic districts and sites. Such rules shall not be inconsistent with the provisions of this chapter and shall include but not be limited to rules pertaining to all notices and hearings required herein.

(b) In order to make available to the public information useful to the preservation and protection of historic districts and sites and to provide the basis for consistency of policy, the Administrative Officer on behalf of the Commission shall maintain complete files and records. The Commission's files shall include but are not limited to data used in the classification of buildings, places and structures, minutes of Commission meetings, applications for Certificates of Appropriateness along with collateral data, decisions and appeals associated therewith and information, materials and references submitted to the public related to historic preservation. A record of Commission proceedings shall be kept and made available but a formal verbatim record shall not be required.

(c) The Commission Secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, findings, determinations, decisions and applications. All meetings shall be noticed and conducted in accordance with the Open Public Meetings Act. Copies of all minutes shall be maintained in the office of the Commission and shall be delivered promptly to the City Clerk.

(d) Copies of records shall be made available to municipal bodies, agencies, and officials for their use. When the Planning Board or the Zoning Board of Adjustment refers an application to

the Historic Preservation Commission, then the referring Board shall receive a copy of the Commission's Report.

(e) The Construction Official shall maintain and display an up-to-date map showing the Historic District, as well as a current listing of Historic Sites. No member of the Commission shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Unless a member resides or owns property within 200 feet of property which is the subject of an application, mere ownership or residence in a designated historic district and/or ownership of a designated historic site or a nondesignated site shall not be deemed a personal or financial interest.

(f) A member of the Commission may, after a public hearing, if requested, be removed by the governing body for cause.

(9) **Meetings; Quorum**

(a) The Historic Preservation Commission shall establish and post in City Hall a regular schedule of a minimum of one meeting per month. Regular meetings shall be held as scheduled unless cancelled for lack of applications to process. Additional special meetings may be called by the Chairman or Vice Chairman, or on the request of any two of its members, when the regular meetings are inadequate to meet the needs of its business, to handle emergencies or to meet time constraints imposed by law.

(b) Four members shall constitute a quorum. Nonmember liaisons are not entitled to vote. A majority vote of those present and voting shall prevail, and shall be sufficient to grant or deny a Certificate of Appropriateness. A majority of the appointed membership shall be required to grant or change a historic site or district designation or to grant a demolition permit.

(c) The Historic Preservation Commission shall prepare an annual report to the Governing Body which shall be available to the public and placed on file in the City Hall. The report shall detail all activities, including problem solving, advice and support given.

(d) The Historic Preservation Commission shall hold public hearings to review all applications for permits, referrals of development applications and other business which comes before the Commission.

### **32-33.4 DESIGNATION OF HISTORIC SITES AND DISTRICTS**

(A) **Survey**

The Commission shall maintain a comprehensive survey of the City of Cape May to identify historic districts, sites and landmarks which are worthy of protection and preservation.

(B) **Criteria for Designation** The criteria for evaluating and designating historic districts and sites shall be guided by the National Register Criteria. The Commission or any interested party may recommend designation of historic sites or districts that have integrity of location, design, setting, materials, workmanship and association and that meet one or more of the following criteria:

- (i) Character, interest, or value as part of the development, heritage or cultural characteristics of the City, State or nation;
- (ii) Association with events that have made a significant contribution to the broad patterns of our history; or
- (iii) Association with the lives of persons significant in our past; or
- (iv) Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or
- (v) Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the City, State or nation; or
- (vi) Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or
- (vii) Unique location or singular physical characteristics that make a district or site an established or familiar visual feature; or
- (viii) That have yielded, or may be likely to yield, information important in prehistory or history.

(C) **Procedures for Designation.**

(1) Interested parties shall contact the Administrative Officer regarding consideration of a proposed historic site or district. The Commission may also initiate the designation of a historic site or district. The Administrative Officer will schedule a hearing before the Commission to review the proposed historic site or district.

(2) The formal historic district nomination shall include: a building-by-building inventory of all properties within the district; color and/or black and white photographs of all properties within the district; a property map of the district showing boundaries; and a physical description and statement of significance which address the criteria for designation set forth herein. The formal historic site nomination shall include: a color and/or black and white photograph, a tax map of the property and a physical description and statement of significance which address the criteria for designation set forth herein.

(3) Upon review and approval of the proposed site or historic district by the Historic Preservation Commission, and after hearing the comments of the public, if any, the Commission shall forward the proposed site or district nomination to the Planning Board for consideration. Notification shall be by public notice in the official paper and by prominent posting in the municipal building at least thirty (30) days prior to the Planning Board hearing. The interested parties or the Commission shall submit to the Planning Board a complete list of involved properties.

(4) Upon review and approval of the proposed site or district by the Planning Board, the site or district nomination will be sent to the City Council for adoption to amend and supplement the City Zoning Ordinance.

(5) All other requirements of the Municipal Land Use Law regarding adoption of development regulations shall be followed.

(D) **Designation of Districts.** The following historic district is delineated and described in the Master Plan and is hereby a designated historic district for purposes of this Ordinance:

(1) **Cape May Historic District.** The designated historic district is set forth on the zoning map of the City of Cape May which is incorporated herein by reference.

(2) **Additional Districts.** Any additional designated districts and sites and/or any changes in the designation of historic districts and historic sites shall be effectuated by amendment of this Ordinance in accordance with procedures provided for under Municipal Land Use Law, N.J.S.A.40:55D-1 et seq. and the procedures set forth herein.

### **32-33.5 CERTIFICATE OF APPROPRIATENESS**

#### **(A) When Required**

A Certificate of Appropriateness issued by the Commission shall be required before a permit is issued or, before work can commence, for any of the following activities within a historic district(s) or on a historic site designated on the zoning map:

- (1) Demolition of any building, improvement, site, place or structure.
- (2) Change in the exterior appearance of any building, improvement, site, place or structure by addition, reconstruction, alteration or maintenance.
- (3) Relocation of a principal or accessory building or structure.
- (4) Any addition to or new construction of a principal or accessory building or structure.

#### **(B) When Not Required**

(1) A Certificate of Appropriateness shall not be required before a permit is issued by the Construction Code Official for changes to the interior of a structure or changes to the exterior of a structure which strictly meet the standards for ordinary maintenance and repair as defined in this ordinance.

(2) The Construction Official shall review all permit applications to determine if the application proposes work which constitutes ordinary maintenance and repair as defined in this ordinance. The Construction Official may issue a permit if he/she finds that the work strictly meets the standards for ordinary maintenance and repair as defined in this ordinance. The Construction Official shall refer the application to the Historic Preservation Commission if he finds that the proposed work does not meet the standards for ordinary maintenance and repair. If the Construction Official has any doubt as to whether the work constitutes ordinary maintenance and repair, then he may, at his discretion, refer the request to the Commission.

#### **(C) Procedures**

(1) All applicants shall complete an application form. Application forms shall be made available in the office of the Administrative Officer. Completed applications shall be filed with the Administrative Officer.

(2) Each application may be accompanied by sketches, drawings, photographs, descriptions, the property survey, if available, and other information to show the proposed alterations, additions,

changes or new construction. Applications for demolition shall include current and archival photographs of the interior and exterior of the building and drawings to document the condition of the building. The Commission may require the subsequent submission of such additional materials as it reasonably requires to make an informed decision.

(3) The Commission shall reach a decision on an application and submit its report to the Administrative Officer within forty-five(45) days of referral of same by the Administrative Officer. Nothing herein shall prohibit an extension of time by mutual agreement of the Applicant and the Commission.

(D) **Informational Meetings/Conceptual Review**

Persons considering action that requires a Certificate of Appropriateness, as set forth in this section, are encouraged to request an informal "Informational Meeting" with the Commission and/or its chairman prior to submitting a formal application for a Certificate of Appropriateness. Requests for such informational meetings can be made to the Administrative Officer, who will contact the chairman of the Commission. The Commission shall hold such informational meetings within fifteen (15) days of receipt of such request. The purpose of an informational meeting is to review the design guidelines and standards of appropriateness and the procedures for obtaining a Certificate of Appropriateness. Neither the applicant nor the Commission shall be bound by any informational meeting or conceptual review. Conceptual review shall not apply to any applications for development. The Commission shall not consider conceptual review of an application for development unless specifically referred to it by either the Planning Board or the Zoning Board of Adjustment.

(E) **Application Review**

(1) Notices must comply with the requirements of the Open Public Meetings Act

(2) An Applicant shall be required to appear or to be represented at the meeting to consider the application for a Certificate of Appropriateness and the Commission may take action in the absence of the Applicant.

(3) The Historic Preservation Commission shall issue a Certificate of Appropriateness to the applicant if it finds the permit application appropriate to the Historic District or Site and in conformity with the design guidelines. The Commission shall issue a denial of a Certificate of

Appropriateness to the applicant if it finds the permit application inappropriate to the Historic District or Site or not in conformity with the design guidelines.

(4) When an application is approved, the Commission shall forthwith issue a Certificate of Appropriateness. Failure to report within a 45-day period shall be deemed to constitute a report in favor of the proposed work and without conditions. In the event that the Applicant has consented to an extension of time to consider the Certificate, the extension of time should be transmitted to the Construction Official and the permit shall not issue during the period of time of the extension.

(5) Appeals from determinations of the Construction Official pursuant to referral to the Historic Preservation Commission may be made by the applicant to the Zoning Board of Adjustment, according to N.J.S.A. 40:55D-70a. Nothing herein shall be deemed to limit the right of judicial review of the action after an appeal is concluded by the Zoning Board of Adjustment. The appellant shall pay all costs for copies of any transcript(s) required for appeal. If, in the case of an appeal made pursuant to this subsection, the Zoning Board of Adjustment determines there is an error in any order, requirement, decision or refusal made by the Construction Official pursuant to a certificate or denial of a certificate submitted by the Historic Preservation Commission in accordance with N.J.S.A. 40:55D-111, the Zoning Board of Adjustment shall, in writing, include the reasons for its determination in the findings of its decision thereon.

(6) The owner shall post the Certificate of Appropriateness on a conspicuous spot on the site visible to the public during the entire process of work.

(7) Issuance of an approval of a Permit shall be deemed to be a final approval pursuant to this Article. Such approval shall neither cause nor prevent the filing of any collateral application or other proceeding required by any other ordinance to be made prior to undertaking the action requested concerning the landmark or any building structure, object, or site located within a landmark district. The denial of a permit shall be deemed to preclude the applicant from undertaking the activity applied for.

(8) When a Certificate of Appropriateness has been issued, the Administrative Officer or his appointee shall, from time to time, inspect the work approved by such Certificate and shall regularly report to the Commission the results of such inspections, listing all work inspected and reporting any work not in accordance with such Certificate.

(9) A Certificate of Appropriateness shall be valid for a period of two (2) years from date of issue unless reasonable extensions are requested by the Applicant or the Commission

(F) **Minor Applications**

The Chairman of the Historic Preservation Commission, or a committee of commissioners appointed by him/her and acting on his/her behalf, and the Construction Official, may review applications for permits for minor work, without holding a public hearing. If the chairman finds the application appropriate, he/she may act in place of the full Commission and issue a certificate for minor work to the Construction Official, who may then issue a building permit. If the chairman does not find the application appropriate or doubts, the application shall be scheduled for a public hearing before the full Board.

(G) **Emergency Procedures**

(1) When a structure or improvement requires immediate repair to preserve the continued habitability of the structure and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with Construction Codes, without first obtaining a Certificate of Appropriateness. Under such circumstances, the repairs performed shall be only such as are necessary to protect the health and safety of the occupants of the structure or others and/or to maintain the habitability of the structure. Where feasible, temporary measures to prevent further damage should be used, provided these measures are reversible without damage to the structure.

(2) The property owner shall make a request for the Commission's review simultaneously with the onset of emergency work. The request shall be made to the Administrative Officer. Such emergency work shall be permitted only if the Administrative Officer certifies the immediate necessity for such permit issuance. Upon notice to the full Commission by telephone, personal contact or other appropriate means of communication, at least three members of the Commission shall convene as soon as possible and such convening members shall proceed to review the Certificate of Appropriateness application as provided in this Ordinance. The Commission shall conduct the emergency meeting in accordance with the Open Public Meeting Act N.J.S.A. 10:4-9. Subsequent to such review, a Certificate of Appropriateness may be issued upon a majority vote of the members convened.

(3) No work in addition to the emergency repairs shall be performed on the structure until

an appropriate request for approval is made and approval is obtained from the Commission after referral of the request by the Construction Official.

(H) **Requirement of Obtaining Certificates of Appropriateness for Government Actions**

(1) It is recognized that the intent and purposes of this Article would not be fully served if the municipality and other governmental agencies were to control the actions of others but fail to apply similar constraints to itself. The City of Cape May, when it plans an alteration, demolition, construction or change in appearance to any City owned property in any Historic District or on any Historic Site, shall submit such plans to the Historic Preservation Commission and shall receive an advisory report on the appropriateness of those plans before undertaking the work.

(2) In those circumstances where the municipality cannot require compliance, as in certain cases involving the County, State and Federal governments, the City most strongly urges the voluntary cooperation of such agencies in seeking a Certificate of Appropriateness and hereby authorizes the Commission to consider such requests and applications. This does not relieve the property owner from complying with applicable State and Federal regulations regarding historic preservation.

**32-33.6 REFERRAL FROM MUNICIPAL AGENCIES**

(A) The Planning Board and Zoning Board of Adjustment shall refer to the Commission every application for development submitted to either Board for development in historic districts or on historic sites designated on the Zoning Map or identified in any component element of the Master Plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Both Boards must provide a copy of their respective agendas to the Commission members as soon as it has been prepared and at the same time that it is mailed to the members of the respective Board. Failure to refer the application as required shall not invalidate any hearing or proceeding. The Commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

(B) On all matters referred to the Commission which require approval by the Planning Board or Zoning Board of Adjustment, the decision of the Commission shall be a recommendation only. In reviewing applications for development, the Commission may comment on any of the

zoning and land use considerations which are relevant to the application. The Planning Board and the Zoning Board of Adjustment shall not approve exterior building elevations when approving an application for development, unless such approval is contingent on subsequent approval of the elevations by the Historic Preservation Commission.

(C) Yard Variances. Due to the fact that structures in historic districts were often built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by approving variances to normal yard requirements. Where it is deemed that such variance will not adversely affect neighboring properties, the appropriate Board may grant such variance to standard requirements.

(D) An approval by the Planning Board or Zoning Board of Adjustment, as the case may be, does not relieve the applicant of the requirement of obtaining a Certificate of Appropriateness for those aspects of the change not approved by the application for development.

#### **32-33.7 STANDARDS, DESIGN GUIDELINES AND CRITERIA**

(A) The purpose of this section is to provide uniform standards, design guidelines and criteria for the regulation of historic sites and districts for use by the Historic Preservation Commission. All projects requiring a Certificate of Appropriateness and all applications for development in historic districts or on historic sites shall be governed by the principles of the Secretary of the Interior's Standards for Rehabilitation, The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, and the Cape May Design Guidelines for the historic district which are adopted as an appendix to this ordinance and which are incorporated herein by reference.

(B) Criteria for Finding Appropriateness. The Historic Preservation Commission may consider the siting, design, arrangement, texture, details, scale, shape, materials, finish, color, and relationship to streetscape, of the proposed work and the relationship of those characteristics to the historic, architectural, cultural, archeological, and aesthetic significance of the Historic Site or District.

(C) In considering permit applications, the Historic Preservation Commission shall not consider use, zoning requirements for setbacks, density, height limitations, or lot coverage, in finding appropriateness, as these fall within the purview of the Planning Board and the Zoning Board of

Adjustment.

(D) In considering development applications referred to it by a Board, the Historic Preservation Commission may consider use, zoning requirements for setbacks, density, height limitations, and lot coverage, in rendering its advice to the Planning Board and the Zoning Board of Adjustment on the application of the zoning ordinance provisions concerning historic preservation. The Commission should emphasize the streetscape when reviewing applications for development. The Commission shall not hear applications for development unless referred to it by either the Planning Board or the Zoning Board of Adjustment.

(E) **Guidelines and Criteria for Plan Review.** All reviews of plans within historic preservation districts shall give consideration to:

(1) The cultural, historic or architectural values of a structure and its relationship to the surrounding area.

(2) The general compatibility of the proposed use to the cultural and historical values of the surrounding area.

(3) The general compatibility of exterior design, arrangement, texture and materials proposes to be used. In carrying out the review under the guidelines, the following criteria shall be utilized:

(a) All exterior elevations, including the roof, must be maintained and new construction must be compatible with existing districts and surrounding areas.

(b) Inkind or compatible exterior colors must be utilized.

(c) Inkind or similarly compatible building materials must be utilized.

(d) Uses shall be environmentally compatible with the uses adjacent to the property and throughout the surrounding areas. Uses shall not adversely affect the uses in the adjacent or surrounding areas and shall conform to the performance criteria outlined in Section 32-44 herein.

(F) **Guidelines.** Guidelines as are adopted by the Historic Preservation Commission pursuant to resolution of the Historic Preservation Commission are hereby adopted and made part of

this chapter. The guidelines consist of window guidelines, door guidelines, exterior sheathing guidelines, fence guidelines streetscape guidelines and design guidelines for new buildings in East Cape May historic areas. A copy of the guidelines shall be available in the offices of the Construction Official, and the City Clerk. The guidelines may be amended by the Historic Preservation Commission, but shall not take effect until approved by ordinance of City Council.

### **32-33.8 DEMOLITIONS AND RELOCATIONS**

#### **(A) Criteria**

In regard to an application to demolish or move a historic building, site, place, structure, the following matters shall be considered:

- (1) Its historic, architectural, cultural and aesthetic significance.
- (2) Its current and potential use for those purposes currently permitted by the Zoning Ordinance or for the use proposed.
- (3) Its importance to the municipality and the extent to which its historical or architectural value is such that its removal would be detrimental to the integrity of the historic property or district and 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 increase property values, promote business, create new positions, attract tourists, students, writers, historians, artists and artisans, attract new residents, 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 municipality a more attractive and desirable place in which to live.
- (6) The impact of its removal upon the historic district.
- (7) The structural soundness and integrity of the building and the economic feasibility of restoring or rehabilitating the structure so as to comply with the requirements of the applicable building codes.
- (8) The compelling reasons for not retaining the structure or improvement at its present site, the proximity of the proposed new location and its accessibility to residents of the municipality, and the probability of significant damage to the structure or improvement as a result of the

relocation.

(9) The compatibility, nature and character of the current and the proposed surrounding areas as they relate to the intent and purposes of this Ordinance and whether the proposed new location is visually compatible in accordance with the standards set forth herein.

(B) **Procedure**

(1) **Where Demolition Disapproved**

In the event that the Commission disapproves an application for a Certificate of Appropriateness to demolish a historic building, place or structure, the owner shall, nevertheless; as a matter of right, be entitled to raze or demolish such building, place or structure, provided that all of the following requirements have been fully met:

(a) **Appeal to Zoning Board of Adjustment**

The owner may opt to appeal the denial of the Certificate of Appropriateness to the Zoning Board of Adjustment. In the event that the owner appeals the denial of the demolition permit, the owner may simultaneously commence marketing the property for sale for fair market value as set forth below. Alternatively the owner may opt to await the decision of the Zoning Board of Adjustment.

(b) **Sale for Fair Market Value**

The owner has prior to seeking demolition for a period of at least one year for residential properties and two years for commercial properties, and at a price reasonably related to its fair market value, made a bona fide offer to sell such building, place or structure and the land pertaining thereto to any person, organization, government or agency thereof or political subdivision which gives reasonable assurance that it is willing to preserve the building, place or structure and the land pertaining thereto. Market value shall be determined by an appraiser selected by the HPC and at the expense of the owner.

(c) **Demolition Notice Posted & Publication**

Notice of proposed demolition shall be posted on the premises of the building, place or structure throughout the notice period in a location such that it is clearly readable from the street. In addition, the Applicant shall publish a notice in the official newspaper of the City as follows:

Within the first ten (10) days of notice period.

Within not less than ten (10) nor more than fifteen (15) days prior to the expiration of the notice period.

At least once each thirty (30) days between the above first and last notifications.

(d) **Notice Period**

The period of time during which notice must be given in the manner set forth in the preceding subsections shall be known as the "Notice Period" which shall commence on the tenth day following the date of the denial by the Historic Preservation Commission or denial of the appeal by the Zoning Board of Adjustment if an appeal is and such notice period shall run for a period of time of one year for residential properties and two years for commercial properties.

(e) **Certificate of Compliance**

The property owner shall submit a Certificate of Compliance for review and approval by the Historic Preservation Commission to demonstrate that the owner has complied with the requirements of this section.

(2) **Assignment**

No assignment of the rights granted by a certificate of approval shall be permitted.

(3) **Expiration of Approval**

(a) In cases where demolition is permitted, the certificate of approval shall be valid for one (1) year from the date of Historic Preservation Commission approval of the application. The one (1) year period shall not be extended.

(b) At the time of issuance of the certificate of approval, the Construction Official shall designate the period of time (within the one (1) year approval period) within which demolition must be completed after it is initiated on site.

(4) **Approval After Change of Circumstances**

The Commission may at any time during such notice period, if a significant change in circumstances occurs, approve a Certificate of Appropriateness to demolish, in which event, a permit shall be issued within ten (10) days thereafter.

**32-33.9 ENFORCEMENT**

It shall be the duty of all municipal officials reviewing all permit applications involving real property or improvements thereon to determine whether such application involves any activity which

should also be the subject of an application for a Certificate of Appropriateness. If it should, the Officer shall inform both the Administrative Officer and the Applicant, as well as the Historic Preservation Commission.

**32-33.10 VIOLATIONS; PENALTIES AND INJUNCTIVE RELIEF**

(A) **Violations**

(1) If any person shall undertake any activity vis-à-vis a historic site or improvement within a historic district without first having obtained and posted a Certificate of Appropriateness, such person shall be deemed to be in violation of this Ordinance.

(2) Upon learning of the violation, the Zoning Officer shall personally serve upon the owner of the lot whereon the violation is occurring a notice describing the violation in detail and giving the owner ten (10) days to abate the violation by seeking review of the extent and proposed work by the Historic Preservation Commission.

(3) If the owner cannot be personally served within the municipality with the said notice, a copy shall be posted on site and a copy sent by certified mail, return receipt requested, to the owner at the last known address as it appears on the municipal tax rolls.

(B) **Penalties**

If any person shall undertake any activity affecting an historic site or improvement within a historic district without first having obtained a Certificate of Appropriateness, or without subsequent review by the Commission following discovery of the omission, in addition to fines and penalties as set forth in Section 32-79, the violator may be required to restore same to a condition consistent with its historic character and integrity, as approved by the Historic Preservation Committee.

(C) **Injunctive Relief**

In the event that any action, which would permanently and adversely change a historic site or historic district, such as demolition or removal, is about to occur without a Certificate of Appropriateness having been issued, the Zoning Officer may apply to the Superior Court of New Jersey for such injunctive relief as is necessary to prevent the destruction of such site or landmark.

### **32-33.11 OTHER REQUIREMENTS UNAFFECTED**

The requirements of this article shall be considered to be in addition to and in no case shall they be interpreted as a substitute for any other approval, permit or other action as otherwise provided for.

### **32-33.12 USE REGULATIONS**

(a) Uses by Right, Accessory Uses and Conditional Uses permitted in Sections 32-9 to 32-32 inclusive along with all area and bulk requirements and other provisions in the respective zoning districts, shall not be altered by Primary or Secondary Historic Preservation District designation. In addition to those regulations, however, the following shall apply:

1. Historic Structure Conversion. Subject to the review procedures set forth herein, conversions of historic structures which are designated pursuant to subsection 32-33.4 may be permitted in any District by the Planning Board as a conditional use of the following:

(a) Apartment houses and tourist guest houses subject to Section 32-52 and the provision of one (1) off-street parking space for each unit thereof.

(b) Multiple dwellings for rent or for sale including condominium or cooperative ownership.

(c) Single family attached dwellings.

(d) Two (2) family detached dwellings. (1972 Code § 19-25.4; Ord. No. 600; Ord No. 764 § 1

### **32-33.13 SPECIAL PROTECTION AND USES OF VICTORIAN HOTELS**

a. Among the hundreds of Victorian era structures remaining in Cape May are large Victorian Hotels that deserve special protection by the City to preserve and maintain their rare architectural and social heritage by permitting reasonable uses to enhance the future economic viability and maintenance of the hotels. The protection and maintenance of the remaining Victorian Hotels is recognized to be a high priority and essential goal of the City of Cape May.

b. Notwithstanding any other provision of this chapter and in addition to the uses set forth for the applicable zoning districts in Sections 32-9 through 32-32 above, Victorian Hotels shall have the following Accessory Uses, provided such uses may not occupy the equivalent of more than

twenty-five (25%) percent of the total floor area of the principal use:

1. Art, crafts, fine arts and other studios for teaching.
  2. Business, administrative and professional offices.
  3. Eating establishments except drive-in facilities with curb service.
  4. Financial institutions including banks, savings and loan companies and investment companies.
  5. Libraries, art galleries, museums.
  6. Nonpersonal services, excluding large appliance or equipment repair.
  7. Personal services such as, but not limited to beauty and barber shops.
  8. Retail sale of goods or services oriented to gifts and antiques, historic preservation, architecture or similar compatible purposes.
  9. Theatrical or musical presentations, including plays, films and concerts.
  10. Tours and presentations.
  11. Public parking lot or garage except that no automobile service facilities or gasoline sales are permitted.
  12. Bicycle rental.
  13. Private and semi-private recreation facilities subject to Section 32-48.
  14. Clubs, lodges and fraternal organizations subject to Section 32-51.
  15. Service businesses such as, but not limited to, publishing or communications services, shoe repair, tailor, jewelry repair, travel agency, or duplicating service.
  16. Porch or outdoor service of food and beverages within the same lot as the primary use.
  17. Receptions banquets, conventions, meetings, and other gatherings.
- c. No additional parking shall be required for Accessory Uses for Victorian Hotels.
- d. Separate General Business Licenses pursuant to Chapter IV shall be required for each accessory use set forth in paragraph b. above. (Ord. No. 947-92 § 3)

#### **32-33.14 SEVERABILITY**

In the event that any portion of this article is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the

article actually adjudged invalid and shall not be deemed to affect the operation on any other portion thereof.

**32-33.15 INTERPRETATION**

This article shall be liberally construed to affect the purposes set forth herein. In the event that this Ordinance conflicts with State law, State law shall take precedence.

**32-33.16 EFFECTIVENESS**

This Ordinance shall take effect upon publication after final passage and approval, as provided by law.

CITY COUNCIL OF THE CITY OF CAPE MAY

*William G. Gaffney*  
 WILLIAM G. GAFFNEY, Mayor

*Harry A. Stotz*  
 HARRY A. STOTZ, Councilmember

*Laura D. Calnan*  
 LAURA D. CALNAN, Councilmember

*Robert W. Elwell Sr.*  
 ROBERT W. ELWELL, SR., Councilmember

*Edward J. Mahaney, Jr.*  
 EDWARD J. MAHANEY, JR., Councilmember

ATTEST:

*Virginia E. Petersen*  
 VIRGINIA E. PETERSEN, City Clerk

Introduced: 11-15-99  
 First Publication: 11-18-99  
 2nd Reading & Adoption: 12-21-99  
 Final Publication: 12-30-99  
 Effective Date: 1-10-2000

**CERTIFICATION**

I hereby certify that the foregoing is a true and correct copy of a ~~Resolution~~ Ordinance, adopted by the City Council, of the City of Cape May, County of Cape May,

New Jersey, at a meeting held on the 21st day of December, 1999

*Jean A. Davis*  
 Jan. 24, 2000 (Rep.) City Clerk

Roll Call	Ayes	Nays	Absent	Abstain
Mrs. Calnan	✓			
Mr. Elwell	✓			
Mr. Gaffney	✓			
Mr. Mahaney	✓			
Mr. Stotz	✓			

## NOTICE

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Cape May, held on Tuesday, November 15, 1999, and will be further considered for final passage during a meeting of the City Council, to be held at City Hall, Cape May, New Jersey, on Tuesday, December 21, 1999, at 7:30 p.m. at which time a Public Hearing will be held.

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Elaine L. Wallace, Deputy City Clerk