

structures or districts; and the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

E. Certificates of Appropriateness, Non-Applicability or Hardship

Except as this by-law may otherwise provide in accordance with Section G (exclusions) or Section H (ordinary maintenance), no building or structure within the CCHD shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall first have issued a Certificate of Appropriateness, a Certificate of Non-applicability, or a Certificate of Hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship, as the case may be, in such form as the Commission may reasonably determine together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

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

F. Standards of Review

In passing upon matters before it, the Commission shall strive to advance the purpose of this by-law, and shall consider, among other things, the historical and architectural value and significance of the site, building or structure, the general design, arrangement, proportions, texture and materials involved, the relation of such features to similar features of buildings and structures in the surrounding area, and the position of such buildings or structures in relation to the public streets, public ways, public parks or public bodies of water in the surrounding area. The physical character of the landscape shall enhance rather than detract from the prevalent Victorian architecture and shall enhance the inviting and open vistas of the parks. The Commission shall not consider interior arrangements or architectural features not subject to public view. Variety is to be maintained as a key element in the fabric of the overall district presentation.

The authority of the Commission shall extend to, but not be limited to, the review of the following categories:

1. Terraces, walks, driveways, sidewalks, and similar structures above grade level
2. Decks, porches and other accessory structures
3. Walls and fences
4. Outdoor lighting fixtures, such as post and driveway/walkway lights visible from the street
5. Signs (consisting of letters painted on wood without symbol or trademark and if illuminated, illuminated only indirectly) if permitted by a certificate of appropriateness shall conform to the following:

- a. Non-residential buildings or structures in the District may include one sign of not more than 10 square feet in total area, plans for which must be presented to and approved by the Commission.
- b. Residential use of any building or structure within the District may include one sign advertising ownership, occupancy, or services offered, of not more than one square foot in total area, plans for which must be presented to and approved by the Commission.
- c. Notwithstanding sub-sections a. and b. above, signs containing brief historical information, and of a design approved by the Commission, may be attached to any building or structure within the District upon the approval of the Commission.

The commission shall not make any recommendation or requirements except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the CCHD.

G. Exclusions

1. The authority of the commission shall not extend to the review of any of the following categories of buildings or structures or exterior architectural features in the CCHD, and the buildings or structures or exterior architectural features so excluded may be constructed or altered within the CCHD without review by the commission:
 - a. Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.
 - b. Terraces, walks, driveways and sidewalks, provided that any such structure is substantially at grade level.
 - c. Storm doors and storm windows, screens, lighting fixtures, and antenna (except satellite dishes over 18 inches in diameter).
 - d. The reconstruction, substantially similar in exterior design and materials, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter unless otherwise agreed to by the Commission and is carried forward with due diligence.
2. The Commission may determine from time to time after public hearing, that certain categories of exterior architectural features, structures or signs, may be constructed or altered without review by the Commission without causing substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended.
3. The Commission may further determine from time to time after public hearing that the authority of the Commission shall be limited only to those exterior architectural features within the CCHD subject to view from one or more specifically designated public streets, public ways, public parks or public bodies of water, as opposed to all exterior architectural features within the CCHD subject to view from a public street, public way, public park or public body of water, without substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended.
4. Upon request, the Commission shall issue a Certificate of Non-applicability with respect to construction or alteration in any category then not subject to review by the Commission.

H. Ordinary Maintenance

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

I. Commission Powers, Functions and Duties

The Commission shall have the following additional powers, functions and duties:

1. If the Commission determines that the construction or alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for and compatible with the preservation or protection of the CCHD, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant. In the case of a disapproval of an application for a Certificate of Appropriateness, the Commission shall place upon its records the reasons for such determination, and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in its records, to be issued to the applicant, and the Commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval, the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal, which, if made, would make the application acceptable to the Commission. If within fourteen (14) days of the receipt of such notice, the applicant files a written modification of the application in conformity with the recommended changes of the Commission, the Commission shall cause a Certificate of Appropriateness to be issued to the applicant.
2. In the case of a determination by the Commission that an application for a Certificate of Appropriateness or for a Certificate of Non-applicability does not involve any exterior architectural feature which is not then subject to review by the Commission in accordance with the provisions of Section K, the Commission shall cause a Certificate of Non-applicability to be issued to the applicant.
3. If the construction or alteration for which an application for a Certificate of Appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a Certificate of Hardship, the Commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the CCHD generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant, and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this by-law and of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended. If the Commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be

made with such determination on an application within the time specified in Section 12 hereof, the Commission shall cause a Certificate of Hardship to be issued to the applicant.

4. Each certificate issued by the Commission shall be dated and signed by its Chairman, Vice-chairman, Secretary, or such other person designated by the Commission to sign such certificates on its behalf.
5. The Commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and shall adopt and amend such rules and regulations not inconsistent with the provisions of this by-law and the provisions of the Historic Districts Act, Massachusetts General Laws Chapter 40C, as amended, and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The Commission shall file such rules and regulation with the Town Clerk.
6. The Commission shall file with the Town Clerk, and with any department or official of the Town having authority to issue building permits, a copy or notice of all certificates and determinations of disapproval issued by it.
7. The Commission may, after public hearing, set forth in such manner as it may offer for consideration the various designs of certain appurtenances and materials which will meet the requirements of the CCHD, but no such determination shall limit the right of an applicant to present other designs or materials to the Commission for its approval.
8. The Commission may, subject to appropriation employ clerical and technical assistance or consultants and incur other expenses appropriate to the carrying on of its work, and may accept money gifts and expend the same for such purposes.
9. The Commission shall have, in addition to the powers, authority and duties granted to it by this by-law, such powers, authority and duties as may be delegated or assigned to it from time to time by vote of the Town Meeting.

J. Commission Meetings and Rules

Meetings of the Commission shall be held monthly or shall be called at the request of two members of the Commission and in such other manner as the Commission shall determine in its rules. A majority of the members of the Commission shall constitute a quorum. The concurring vote of the majority of the members of the Commission shall be necessary to issue a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship.

K. Procedure in Decision Making

The Commission shall determine promptly, and in all events within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, a Certificate of Non-applicability or a Certificate of Hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the Commission. If the Commission determines that such application involves any such features which are subject to approval by the Commission, the Commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

The Commission shall fix a reasonable time for the hearing on any application subject to approval and shall give public notice of the time, place and purposes

thereof at least fourteen (14) days before said hearing in the local newspaper, and by mailing, postage prepaid, a copy of said notice to the applicant; to the Planning Board; to any person filing a written request for notice of hearing (such request to be renewed yearly in December); to other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors; to such other persons as the Commission shall deem entitled to notice; and, at the applicant's expense, to the owners of all adjoining property.

(30) As soon as convenient after such public hearing, but in any event, within thirty (30) days after the filing of the application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time, the Commission shall thereupon issue a Certificate of Hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the Commission if the Commission determines that the exterior architectural feature involved or its category, as the case may be, is so insubstantial in its effect on the CCHD that it may be reviewed by the Commission without public hearing on the application, provided, however, that if the Commission dispenses with a public hearing on an application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected thereby, as provided above, and ten (10) days shall elapse after the mailing of such notice before the Commission may act upon such application.

L. Appeal Procedure

Any applicant aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the Town Clerk, file an appeal in the Superior Court sitting in equity for the County of Dukes County pursuant to the provisions of Massachusetts General Laws Chapter 40C, Section 12A, as amended.

M. Enforcement

The superior court sitting in equity for the County of Dukes County shall have jurisdiction to enforce the provisions of this by-law and the determinations, rulings, and regulations issued pursuant thereto and may, upon the petition of the Board of Selectmen or of the Commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, and may issue such other orders for relief as may be equitable. Whoever violates any of the provisions of this by-law shall be punished by a fine of not less than ten (10) dollars nor more than five hundred (500) dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

N. Authority for Enlargement, Reduction or Addition

An historic district may be enlarged or reduced or an additional historic district in the Town may be created in accordance with the provisions of Massachusetts General Laws Chapter 40C, Section 3.

O. Amendment Procedure

This by-law may, from time to time, be amended in any manner not inconsistent with the provisions of Massachusetts General Laws Chapter 40C, by a two-thirds vote of a Town meeting, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty (60) days have elapsed without such recommendation.

P. Severability Provisions

In the event that any provision of this by-law shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.