

LOCAL HISTORICAL COMMISSION RULES AND REGULATIONS

{History: Adopted by the Historic District Commission of the Town of Falmouth, January 20, 2010 Rev. March 6, 2012, June 6, 2014, July 1, 2014, January 6, 2015; Revised by Historical Commission on March 2017}

GENERAL REFERENCES

General Court: Chapter 40C of the Massachusetts General Laws. Town of Falmouth Code Chapter 36. Falmouth Historic District Bylaw

Formerly General Court: Chapter 654 of the Acts of 1975 and its associated amendments {Chapter 158 of the Acts of 1984; Chapter 290 of the Acts of 1985; Chapter 250 of the Acts of 1991; Chapter 189 of the Acts of 1993; Chapter 41 of the Acts of 2009; and Chapter 118 of the Acts of 2014}

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ARTICLE I - Authority; Historical Information; Purpose

A. Authority

These rules and regulations governing the Local Historic Districts in the Town of Falmouth have been adopted pursuant to 36-5B of Chapter 36 Falmouth Historic District of Falmouth's code.

Formerly: Section 7 of Chapter 654 of the Acts of 1975 and its amendments (hereinafter referred to as the Historic District Act or "Act") and are published to assist property owners, contractors and architects in complying with the provisions of the Act. Reference should be made to the Act for applicable provisions not set out in these regulations.

B. Historical information

Regulation of local historic districts was initiated in Falmouth 1975 when the Town Meeting voted to petition the General Court to enact the Historic District Act. The Historic District Act

was approved by the General Court in October 1975. The General Court's recent petition to amend the Act was approved by Town Meeting in November 2013, approved by the General Court in May 2014 and was approved by the Governor on May 23, 2014.

M.G.L Chapter 40C adopted by the Town of Falmouth Annual Fall Town Meeting 11-12-2015, Art. 18, approved 2-29-2016. Amendments noted where applicable. Town Charter amended on May 17 at Annual Election to include Chapter 36 Falmouth Historic District.

C. Purpose

The Falmouth Historic District Bylaw and local historic districts were established to promote the general welfare of the inhabitants of the Town of Falmouth through the:

- i. preservation and protection of historical buildings, places and districts of historical interest;
- ii. development and preservation of appropriate settings for such buildings, places and districts;
- iii. and through the benefits resulting to the economy of Falmouth by preserving and enhancing the amenities and historical aspects of the villages and areas of Town which make Falmouth a desirable place to live and for tourists to visit.
- iv. managing and maintaining the List of Significant Buildings
- v. advising the Planning Board, Zoning Board of Appeals and Board of Selectmen on issues relating to historic preservation
- vi. maintaining and publishing The Book of Falmouth
- vii. making nominations to the National Register of Historic Places

ARTICLE II - Definitions

A. Definitions

For the purpose of these regulations, the following terms shall have the meaning here-in-under assigned to them:

APPLICANT – The person who applies for a Certificate of Appropriateness, Administrative Approval, or Hardship application from the Historical Commission. An “applicant” must be the owner of record of all the property subject to the Certificate. An agent of his assigns may act for an owner provided that written evidence of such a fact is submitted.

AS-BUILT PLAN – A plan/profile with sections showing the actual location and elevations of all improvements installed on the site.

CERTIFICATE OF ADMINISTRATIVE REVIEW (Non-applicability) – A written decision issued by the Historical Commission to document that a proposed building alteration is considered regular maintenance or repair, or is not considered visible from any public way within the historic district. Signs may be considered for administrative review if they replicate a previously approved design i.e. a ladder sign.

CERTIFICATE OF APPROPRIATENESS – A written decision issued by the Historical Commission to document that a proposed sign, building alteration, new construction or demolition are considered by the HC to contain appropriate exterior design and appearance that is reasonably consistent with the general character of other buildings and structures in the vicinity within an historical district.

CERTIFICATE OF HARDSHIP – A written decision issued by the Historical Commission when construction or alteration is deemed inappropriate yet the Commission has determined that denial of a Certificate would constitute a hardship, financial or otherwise, on the property owner. In each case, the proposed work should not conflict substantially with the purposes of the bylaw or the design guidelines. Furthermore, it should not relate generally to other property owners in the district. It should be a specific hardship to an individual property owner based on unique circumstances affecting the owner's property. Hardship means the application of Chapter 36 of the Code of Falmouth to a particular piece of property, evaluated in its totality, owing to the unique characteristics of the property that is unduly oppressive, arbitrary or confiscatory and would involve substantial economic loss to the applicant because of the literal enforcement of the By-law provided that the conditions and characteristics of the property are not the result of the actions of the applicant, or owner, or their agents, predecessors, successors or assignees. No hardship exists where there is established under the Code of Falmouth a right to transfer development rights.

COMMISSION – The Historical Commission of the Town of Falmouth.

EXTERIOR ARCHITECTURAL FEATURE – Such portion of the exterior of a building or structure as is open to view from a public street or way¹, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of the exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior features.

LOCAL HISTORIC DISTRICT – areas established through the Falmouth Historic District Commission Act now known as the Falmouth Historic District Bylaw, which are under the jurisdiction of the Historical Commission.

PUBLIC STREET OR WAY – A road, high way, waterway, passage or path established, accepted and/or maintained under public authority or a privately maintained road, passage or path that is subject to a public access; not including bicycle paths.

SIGN – Any display of lettering, logos, colors, lights, flags, banners, pennants, ribbons, spinners (or similar devices) three dimensional objects or illuminated neon tubes visible to the public from outside of a building or from a travelled way, which either conveys a message to the public or intends to advertise, direct invite, announce or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises, This shall not include vending machine signage or temporary holiday displays or dingle signs under two (2) square feet.

STRUCTURE – Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something located on the ground, including tennis courts, swimming pools, gas or storage tanks if principally aboveground, stonewalls, retaining walls, fences of any height, gates, memorials and paved driveways or other paved areas.

TEMPORARY SIGN – A sign intended to be used for a period of no more than thirty (30) days.

¹ The public view from the waterway is included in the instance of the Quissett Harbor District

NATIONAL REGISTER DISTRICT – areas established by the National Park Service that are deemed important in American history, culture, architecture or archaeology and are administered by the Secretary of the Interior through the Massachusetts Historical Commission. {Note: in some instances National Register Districts are inclusive of the Local Historic Districts. Only those properties that are included in the Local Historic District are within the jurisdiction of the Historic District Commission. See maps available online at <http://www.falmouthmass.us/405/Documents> or in the Planning Office.

ARTICLE III – HC Administration: Conduct of Meetings and Commission Membership

A. Conduct of Meetings

1. There shall be at least one regular meeting each month. Additionally, the Commission shall meet as necessary, but in no case more than forty five (45) days after submission of an application for Certificate of Appropriateness or to demolish (§7.4).
2. At least fourteen (14) days before the public hearing notice shall be given by posting in a conspicuous place in Town Hall and in a newspaper of general circulation. Such notice shall identify the time, place, and purpose of the public hearing.
3. Notice of all meetings shall be duly posted with the Town Clerk in compliance with the Open Meeting Law (MGL Chapter 39 §23A). Additionally, notice of all public hearings shall be posted with the Town Clerk 7 days before the meeting.
4. A quorum of at least three voting members (which may include alternate members) is necessary to hold a meeting.
5. In the absence of one or more permanent members, alternate members shall be appointed by the Chairman, to vote at the meeting. Alternate members who are present and who are not appointed to vote in place of an absent permanent member shall be entitled to otherwise participate in all meetings and hearings.
6. All meetings shall have minutes with records of vote that shall be filed with the Town Clerk.

ARTICLE IV – Application Requirements

A. Application Requirements

1. Any person who submits an application for Certificate of Appropriateness, Hardship, or Administrative Review shall file with the Commission the items listed in the relevant subsection below. Any application which omits any of the required items may not be accepted at the discretion of the Commission. Applications shall be filed in the Planning Office of Town Hall during regular business hours.
2. All applications requiring a public hearing shall submit the required filing fee.
3. All applications requiring a public hearing shall submit a certified list of abutters and 1 set of mailing labels from the Assessing Department. The list shall identify all property owners within 100' of the subject property whose property is also within a local historic district.
 - a. New Building Construction
 - i. A completed “Application for Certificate of Appropriateness”
 - ii. A completed “Addendum 1 – Certificate of Appropriateness Specification Sheet”
 - iii. A plot plan showing proposed building, dimensions and setbacks
 - iv. Plans and elevations
 - vi. Photographs of lot from the public way showing adjacent properties \

- b. Existing Building Alterations, Additions, Renovations
 - i. A completed “Application for Certificate of Appropriateness”
 - ii A completed “Addendum 1-“Certificate of Appropriateness Specification Sheet”
 - iii Photographs of existing conditions of areas to be altered; photos from public way
 - iv Elevation plans, if changed

- c. Demolition – As well as a completed “Application for Certificate of Appropriateness” and “Addendum 1-Certificate of Appropriateness Specification Sheet” and photographs, the Commission will take into consideration the significance of the structure and contribution to the district. Expert certification, i.e architect or engineer, if demolition is a result of structural deficiencies. The Commission may request additional information, as may be necessary and reasonable including a narrative description of the structure, including year built, architect, current conditions and existing materials.

- d. Signs – In addition to the “Application for Certificate of Appropriateness” a Town of Falmouth Sign Permit Application must be filled out. Include photos of the building and sign location, size, materials, lighting and color.

- e. Stone walls, Fences, Hardscapes
 - i. A completed “Application for Certificate of Appropriateness”
 - ii. A completed “Addendum 1 – Certificate of Appropriateness Specification Sheet”
 - iii Plot plan, drawings, elevations and photographs

- f. Hardship
 - i. A completed “Application for Certificate of Hardship”
 - ii. A completed “Addendum 1 – Certificate of Hardship Specification Sheet
 - iii. Plot plan, drawings, elevations and photographs
 - iv. Current level of economic return
 - v. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased
 - vi. Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period
 - vii. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years
 - viii. Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations
 - ix. All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
 - x. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation limited partnership, joint venture, or other; Any state or federal income tax returns relating to the property for the last two years.

Article V—Criteria for Review

A. Criteria for Review by the Commission at a Public Hearing

1. The applicant will have an allotted time of thirty minutes for the review of each application, i.e. presentation, public comment, Commission discussion and decision with the possibility of extension by a vote of the Commission.
2. The Commission shall consider the appropriateness of exterior architectural features of buildings and structures or signs. The Commission shall consider the general exterior design, arrangements and appearance of the proposed building, structure or enlargement, extension or external structural alteration thereof. The Commission shall issue a *Certificate of Appropriateness* if such features are of appropriate exterior design and appearance reasonably consistent with the general character of other buildings and structures in the vicinity within a historic district.
 - a. The Commission shall not make any recommendation or requirements except for the purpose of preventing structural developments obviously incongruous to the area and to the purposes set forth in this act.
3. In their review, the Commission shall only consider those architectural features that are subject to public view from a public street or way.
4. In their review of applications, appropriateness will be considered under the “Falmouth Historic District Design Review Guidelines” (effective December 2014), enclosed herein as Appendix “D” and incorporated here and made part of these regulations.
5. In cases of demolition, the Commission shall consider the permissibility of the razing or demolishing of any building or structure within a historic district or are on the List of Significant Buildings.

B. Criteria for Administrative Review

1. The Commission may authorize the chairman, or the vice-chairman (in the chair’s absence) to review and approve certain applications, as defined in paragraphs 2 and 3 below.
 - a. The chairman must evaluate the proposal based on the existing conditions of the property and find that a *determination of non-applicability* is appropriate. Absent such a finding by the chairman, the applicant must appear before the Commission at a public hearing.
2. If the applicant represents that the proposed work is not visible from the public way, he or she may request that the chairman review the application administratively. Any administrative review would only apply to the work described at the time of application.
 - a. The burden of proof is on the applicant to demonstrate that an architectural feature or building elevation is not visible from a public street or way. In reviewing visibility, the chairman shall consider plot plans and photographic documentation. The chairman will conduct site visits as necessary. The chairman will issue a *determination of non-applicability* for any proposed work that is not visible from the public way.

- b. All work approved administratively by the chairman shall be identified by the applicant's name and property address on the next public meeting agenda of the Commission. Furthermore, a letter describing the scope of approved work shall be filed with the Town Clerk.
3. The Commission shall not consider, nor be required to issue Certificates of Appropriateness for details of design, interior arrangements, ordinary repairs to and maintenance of existing buildings or structures.
- a. If the applicant represents that the HC is not required to issue a Certificate of Appropriateness based on paragraph B.3 above, he or she may request that the chairman review the application administratively. Any administrative review would only apply to the work described at the time of application.
 - i. The burden of proof is on the applicant to demonstrate that the proposed work is either a: design detail, interior arrangement, ordinary repair, or maintenance.
 - ii. The application for administrative review must contain photographic documentation of the existing condition of the building.
 - iii. The scope of work must clearly define and specifically list all proposed items, including, but not limited to: materials, dimensions, colors, and manufacturer (if applicable).
 - iv. The chairman will issue a *determination of non-applicability* for any proposed work that is found to be warranted under paragraph B.3 above.
 - v. All work approved administratively by the chairman shall be identified by the applicant's name and property address on the next public meeting agenda of the Commission. Furthermore, a letter describing the scope of approved work shall be filed with the Town Clerk.

Article VI – Issuance of Certificate of Appropriateness

- A.** The Commission shall take final action on an application and notify the applicant in writing of their decision within sixty (60) days after the date of filing. This time period may be extended by mutual agreement between the Commission and the applicant. The number of days in the extension period shall be specified and documented in writing and filed with the Town Clerk. If the Commission fails to take final action on any application within the specified timeframe, the application shall be deemed to have been approved and a constructive approval for a Certificate of Appropriateness or permission to demolish shall be issued by the Town Clerk.
- B.** Certificates of Appropriateness are issued by the Historical Commission following approval of an application which may include conditions and exhibits to be made a part thereof.
- C.** Each Certificate shall be signed by the Commission chairman or his/her designee. The list of authorized signatories shall be kept on file with the Town Clerk.
- D.** Each Certificate shall be filed with the Town clerk and a copy shall be sent to the applicant and Building Commissioner. A copy shall also be on file with the Commission.
- E.** A Certificate is valid for a period of two years from the date of issuance.

- F. After a Certificate has been issued, any changes shall be considered as a modification and shall require a new application.
- G. In the case that an application has been disapproved, the Commission shall record the reasons for the disapproval and shall send notice of these reasons to the applicant, Building Commissioner and Town Clerk. See §7(l) of the Historic District Bylaw.
- H. A majority vote shall be required for approval of an application.
- I. The Town Clerk shall keep a permanent record of all applications, Certificates of Appropriateness, disapprovals and constructive approvals granted.

Article VII – Issuance of Permits

The following apply to the issuance of permits within Historic Districts, per the Code of Falmouth, Chapter 36 Falmouth Historic District §36-11 Enforcement and Penalties.

- A. No building permit for the construction of a building or structure or for the alteration of an exterior architectural feature which is subject to public view from a public street or way shall be issued by the Town or any department thereof until a Certificate of Appropriateness has been issued by the Commission.
- B. No permits for demolition, razing or removal of a building or structure within a Local Historic District shall be issued by the Town or any department thereof until Certificate of Appropriateness has been issued by the Commission (§4)
- C. The erection or display of an occupational or other sign exceeding two square feet in area or the erection or display of more than one such sign, irrespective of size, on any lot, building or structure located within a historic district must be approved in advance by the Commission. Evidence of such approval shall be a Certificate of Appropriateness issued by the Commission.

ARTICLE VIII – Compliance with Certificates of Appropriateness

As per §9 as amended by Chapter 41 of the Acts of 2009
As per §36-11 Enforcement and Penalties.

- A. Before issuing a Certificate of Appropriateness, the Commission may require that construction or other authorized site activities be secured by one of the following methods which method may be selected and from time to time varied by the applicant upon receiving written approval from the Commission.
 - 1. By a proper bond or deposit of money sufficient in the opinion of the Commission to secure performance of the conditions of its decision as noted in the Certificate of Appropriateness or accompanying plans.
 - 2. By a covenant executed and duly recorded by the owner of record, running with the land, whereby the conditions of its decision as noted in the Certificate of Appropriateness or accompanying plans shall be accomplished prior to the issuance of occupancy permits or any conveyance, sale, rental or similar disposition of property.

B. Release of bond or covenant

1. Guarantees may be released in whole or, from time to time, in part when the required work has been satisfactorily completed in accordance with the rules and regulations of the Commission.
2. Requests for all releases shall be by letter to the Commission and shall be accompanied by an “as built” plan along with the engineer or architect’s certification that the work has been done in accordance with these rules and regulations.
3. The Commission shall then release the interest of the Town in such bond and return the bond or deposit to the person who furnished the same or release the covenant by the appropriate instrument, duly acknowledged, which shall be recorded.

ARTICLE IX – Enforcement

As per §9 as amended by Chapter 41 of the Acts of 2009

As per §36-11. Enforcement and penalties Chapter 36 Code of Falmouth

- A.** The Building Commissioner is authorized to enforce the provisions of Chapter 36 Falmouth Historic District, subject to a vote of the Commission that determines that construction, alteration, demolition or moving of any building or structure would be in violation of the Historical Commission rules and regulations. The Building Commissioner is authorized to withhold any permit for construction, alteration, demolition or the moving, use or occupancy of any building or structure until the Commission has issued a determination that compliance with Certificate of Appropriateness has been accomplished or that the Commission has received either a proper bond or covenant, described in Article 8, items A 1 and 2 above.
- B.** Furthermore, the superior court has jurisdiction to enforce the provisions of Chapter 36 Falmouth Historic District bylaw and may restrain violations by injunction. Any person violating any of the provisions of the Historic District Act shall be guilty of a misdemeanor and upon conviction, fined no more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

ARTICLE X – Appeals

As per §10 of Chapter 654 of the Acts of 1975, as amended

As per §36-7 (L). Falmouth Historic District, Procedures for review of applications.

- A.** Any appeal of a decision of the Commission or any appeal of a constructive approval must be made pursuant to Chapter 36 Falmouth Historic District and must be filed with superior court within twenty (20) days of the filing of the decision with the Town Clerk.
- B.** No application which has been denied by the commission shall be approved within one year, unless the commission finds by a 4/5 vote, specific and material changes in the conditions upon which the previous denial was based.

ARTICLE XI – Severability

As per §36-13. Falmouth Historic District, Validity and separability.

A. The provisions of these rules and regulations are separable from each other and the invalidity of any provision or section shall not invalidate any other provision or section thereof.