

**BOROUGH OF RIVERTON  
BURLINGTON COUNTY**

**ORDINANCE # \_\_\_\_\_**

**ORDINANCE OF THE BOROUGH OF RIVERTON, COUNTY OF BURLINGTON,  
STATE OF NEW JERSEY AMENDING THE CODE OF THE BOROUGH OF  
RIVERTON TO AMEND AND REVISE CHAPTER 128 ZONING ARTICLE XI  
HISTORIC PRESERVATION COMMISSION SECTIONS 128-42 THROUGH 128-50  
AND SECTION 128-75; AND AMENDING CHAPTER 109 SITE PLAN REVIEW  
SECTION 109-5 AND AMENDING CHAPTER 113 SUBDIVISION OF LAND  
SECTIONS 113-7 THROUGH 113-9**

**WHEREAS**, the Council of the Borough of Riverton (the “Borough”) following a thorough discussion amongst its members and thoughtful consideration of comments provided by the Borough’s residents has determined that the goals and objectives of the Borough would be best served by preserving and protecting designated Historic Structures within the Borough;

**WHEREAS**, the Council of the Borough believes that revisions to the duties of the Historic Preservation Commission would achieve these goals and objectives to “Preserve and Enhance” the Borough’s historic appearance as seen from the Public Way and further finds that the standards and guidelines within these revisions would impose the least amount of burden upon property owners within the Borough when weighed against these goals and objectives.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Riverton, in the County of Burlington, State of New Jersey as follows:

**Section 1.** Section 128-42 “Definitions” is hereby deleted in its entirety and replaced as follows:

**§ 128-42. Definitions.**

The terms set forth hereinafter shall have the following meaning:

**ADDITION**

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

**ADMINISTRATIVE OFFICER**

The Zoning Officer of the Borough unless a different municipal official or officials are designated by ordinance to handle the administration of this chapter and attend the Historic Preservation Commission meetings as deemed necessary.

## **APPLICATION FOR DEVELOPMENT**

The application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to Section 25 or Section 27 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-34 or 40:55D-36).

## **CERTIFICATE OF APPROPRIATENESS (CA)**

A Borough permit that states that the activity or action that is required to be approved by the HPC pursuant to § 128-45 has been approved by the HPC, whether or not such activity requires any other permit. CAs apply to certain activities Visible From the Public Way taking place on any parcel within a Historic District or on any individual Historic Site whether located within a Historic District or not.

## **DEMOLITION**

The partial or total razing or destruction, whether entirely or in significant part, of a building, structure, site or improvement, including accessory structures and fences. Demolition includes the removal of a building, structure or improvement from its site. A project that proposes to remove any portion of a facade or surface of a building or structure for the sole purpose of immediately replacing such facade or surface with a new facade or surface approved by the HPC shall not be considered a Demolition.

## **EMERGENCY REPAIRS**

Those immediate remedial actions necessary to preserve the continued habitability of a site or improvement and/or the health and safety of its occupants or others where time will not permit the owner to obtain a Certificate of Appropriateness prior to the undertaking.

## **EQUALIZED ASSESSED VALUE**

The assessed value of the property, or the improved portion thereof, in the year that the Certificate of Appropriateness is sought by an applicant divided by the equalization ratio determined by the Director of the New Jersey Division of Taxation and published annually on or before October 1 pursuant to N.J.S.A. 54:1-35.1.

## **FAIR MARKET VALUE FOR HISTORIC SITES (FMV)**

For a Historic Site subject to regulation by this Article, the price that the Historic Site would sell for on the open market. It is the price that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of all relevant facts, including structural condition and constraints imposed by the Zoning Code of the Borough of Riverton and specifically including all Goals, Standards and Guidelines of this Article and the procedures, both written and customary, of the Historic Preservation Commission.

## **GOALS**

Goals are the public policies contained within the Borough of Riverton Master Plan which describe the shared vision of the Borough's future. Projects requiring CAs shall further these Goals.

## **GUIDELINES**

Guidelines are intended to inform the judgment of the HPC in applying its expertise to achieve the most appropriate decisions and recommendations which further the Goals.

## **HABITABLE / HABITABILITY**

Meeting the criteria of (1) the Maintenance section and (2) Subchapter 1: Standards of Habitability of the New Jersey State Housing Code (N.J.A.C. 5:28-1.10 and N.J.A.C. 5:28-1.12)

## **HISTORIC CHARACTER**

Distinctive stylistic features or materials which embody the Period of Significance of a Historic Site or in common to a cluster of visually-related Historic Structures. Historic Character includes the Criteria for Designation in § 128-44A.

## **HISTORIC DISTRICT**

One or more Historic Sites and intervening or surrounding property significantly affecting or affected by the quality and character of the Historic Site or Sites.

## **HISTORIC SITE**

Any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance.

## **HISTORIC STRUCTURE**

A man-made improvement located on a Historic Site which contributes to the significance of that Historic Site.

## **HPC**

The Historic Preservation Commission of the Borough of Riverton.

## **MATURE TREE**

A tree which measures at least 18" diameter at breast height (DBH).

## **PERIOD OF SIGNIFICANCE**

Span of time in which a property attained the importance for which it meets the criteria for historic designation.

## **PUBLIC WAY**

Any highway, street, alley, way, easement or waterway which is customarily accessible to the public.

## **STANDARDS**

Standards are rules which activities permitted by a CA shall follow unless HPC grants specific relief.

## **VISIBLE FROM THE PUBLIC WAY**

Able to be seen by any person standing on any Public Way. The effect of vegetation and/or fences shall not be considered as they may be removed over time.

## **VISUALLY COMPATIBLE**

Having visual design characteristics which work in harmony with, exhibit a family relationship to and share design element characteristics with, the related qualities of Historic Sites to which something is visually related, while not detracting from their essential qualities. The following factors shall be considered in determining visual compatibility:

- (a) Height.
- (b) Massing, scale and roof shapes.
- (c) Proportion of the width and height of the building's facades.
- (d) Proportion of openings within the building.
- (e) Rhythm of spacing of buildings on streets.
- (f) Rhythm of solids to voids on facades fronting on public places.
- (g) Rhythm of entrance and/or porch projections.
- (h) Relationship of materials and texture.
- (i) Windows and doors, including the style of millwork, amount of recess or projection, the type of glazing and muntins.
- (j) Exterior features, including fences, signs, sidewalks, driveways and parking areas.
- (k) Placement of structures on the lot, particularly front yard setbacks.

## **WAIVER OF CERTIFICATE OF APPROPRIATENESS**

A Borough permit pursuant to § 128-45C that states that the activities described on an application do not require a Certificate of Appropriateness from the HPC.

**Section 2.** Section 128-43 is hereby deleted in its entirety and replaced as follows:

### **§ 128-43. Establishment of HPC.**

A. The Historic Preservation Commission ("HPC") of the Borough is hereby established pursuant to N.J.S.A. 40:55D-107 et seq. The HPC shall consist of five (5) regular members and two (2) alternate members appointed by the Mayor. At least two (2) of the regular members shall be of Classes A and B. The regular members who are not designated as Class A or B shall be designated as Class C. The two (2) alternates must meet the qualifications of Class C and shall be designated "Alternate No. 1" and "Alternate No. 2." The classes are defined as:

(1) Class A: a person who is knowledgeable in building design and construction or architectural history and who may reside outside the Borough.

(2) Class B: a person who is knowledgeable of or who has a demonstrated interest in local history and who may reside outside the Borough.

(3) Class C: any citizen of the Borough who shall hold no other municipal office, municipal position, or municipal employment except for membership on the Planning Board or Zoning Board.

#### **B. Terms of regular members.**

(1) The initial terms of the appointment of the regular members of the HPC shall be as follows:

(a) One (1) member shall be appointed for a term of two (2) years.

(b) Two (2) members shall be appointed for terms of three (3) years.

(c) Two (2) members shall be appointed for terms of four (4) years.

(2) All subsequent appointments shall be for terms of four (4) years or until appointment and qualification of a successor. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term only.

#### **C. Terms of alternate members.**

(1) The initial terms of the appointment of the alternate members of the HPC shall be as follows:

(a) Alternate No. 1 shall be appointed for a term of one (1) year.

(b) Alternate No. 2 shall be appointed for a term of two (2) years.

(2) All subsequent appointments shall be for terms of two (2) years or until appointment and qualification of a successor. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term only.

D. Notwithstanding any other provision, the term of any member who is also a member of the Planning Board or Zoning Board shall be coterminous with his membership on the Planning Board or Zoning Board.

#### E. Rules and Organization of the HPC.

(1) The HPC shall elect a chairman and vice-chairman from its members and select a secretary, who may or may not be a member of the HPC or a municipal employee.

(2) The HPC shall establish a regular schedule of meetings at least once a month or as often as required to meet the needs of its business, to handle emergencies or to meet time constraints imposed by law.

(3) A quorum for the transaction of business shall be three (3) members.

(4) The HPC's Secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, findings, determinations, decisions, and applications for Certificates of Appropriateness. A verbatim record of HPC meetings and proceedings shall be kept and made available in accordance with the provisions of the Municipal Land Use Law.

(5) All HPC records and minutes shall be made public records, and all HPC meetings shall comply with the Open Public Meetings Act (N.J.S.A. 10:4-7 et seq.).

(6) The HPC shall adopt written procedures for the transaction of its business and for the consideration of applications for Certificates of Appropriateness.

(7) No member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest.

(8) A member may be removed by the governing body for cause but only after a public hearing if he or she requests one.

(9) 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. If a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

F. Expenses and costs; employment of experts and staff. The governing body shall make provision in its budget and shall appropriate funds for the expenses of the HPC. The HPC may employ, contract for, and fix the compensation of experts and other staff and services as it shall deem necessary. The HPC shall appoint and receive its legal counsel from an attorney licensed to practice law in this State. Expenditures pursuant to this Article shall not exceed, exclusive of gifts and/or grants, the amount appropriated by the governing body.

G. Powers and duties. It shall be the responsibility of the HPC to:

(1) Prepare a survey of Historic Sites of the Borough pursuant to criteria identified in the survey report.

(2) Make recommendations to the Planning Board and the governing body on the preparation and periodic updating of the historic preservation plan element of the Borough's Master Plan, including but not limited to the addition or deletion of Historic Sites and Historic Districts identified in the Borough's Master Plan.

(3) Make recommendations to the Planning Board and governing body on the historic preservation implications of any plan element of the Borough's Master Plan which has been or may be adopted.

(4) Recommend to the governing body sites and districts to be designated through amendment of this article. The criteria and procedures for designation are set forth in § 128-44.

(5) Review all applications for a Certificate of Appropriateness in accordance with the procedures established in § 128-45.

(6) Advise the Planning Board or Zoning Board on applications for development affecting Historic Districts and Historic Sites, in accordance with the procedures established in § 128-50.

(7) Carry out other advisory, educational and informational functions as will promote historic preservation in the Borough.

H. Roles if chairman is unavailable. For any HPC function customarily performed by the chairman, whether specifically described in this Article or not, the vice-chairman shall be empowered to perform those duties if the chairman is not available and the chairman has not designated another member of the HPC to fill that role. If the vice-chairman is not available, another member of the HPC may be chosen by the chairman or the vice-chairman.

**Section 3.** Section 128-44 remains unchanged and reads as follows:

**§ 128-44. Designation of additional Historic Sites and districts.**



A. Criteria for designation. The HPC shall consider for nomination districts and sites that have integrity of location, design, setting, materials, workmanship, and association and that meet one (1) or more of the following criteria:

- (1) Character, interest, or value as part of the development, heritage or cultural characteristics of the Borough, state or nation.
- (2) Identification with a person or persons who significantly enriched the Borough, state, or nation.
- (3) Site of an historic event which had a significant effect on the development of the Borough, state, or nation.
- (4) Embodiment of distinguishing characteristics of a type, period, or method of construction, architecture, or engineering.
- (5) Identification with the work of a builder, designer, artist, architect, or landscape architect whose work has influenced the development of the Borough, state, or nation.
- (6) Embodiment of elements of design, detail, material, or craftsmanship that render a site architecturally significant or structurally innovative.
- (7) Unique location or singular physical characteristics that make a district or site an established or familiar visual feature.
- (8) Likely to yield information important in prehistory or history.

B. Procedures for designation. Based on the HPC's review of a potential district or site or upon the recommendations of other Borough bodies or of interested parties, the HPC shall consider nomination of a district or a site according to the procedures outlined below:

- (1) The HPC or interested party shall prepare a nomination report for each proposed district or site.
  - (a) For Historic District designations, the report shall include a building-by-building inventory of all properties within the district; black and white photographs of representative properties within the district; a property map of the district showing boundaries; and a physical description and statement of significance for the district.
  - (b) For Historic Site designations, the report shall include one (1) or more black-and-white photographs; the tax lot and block number of the property as designated on the Official Borough Tax Map; and a physical description and statement of significance for the site.
- (2) The HPC shall refer its nomination report to the Planning Board for review and consideration as an amendment to the Master Plan of the Borough.



(3) The Planning Board may schedule a public hearing on the proposed designation of a district, or site, in accordance with the procedures set forth for adoption or amendment of the Master Plan as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. At least ten (20) days prior to the hearing, the HPC shall, by personal service or certified mail:

(a) Notify each owner of a proposed Historic Site or of property within a proposed Historic District that his or her property is being considered for historic designation and the reasons therefor.

(b) Advise each owner of the significance and consequences of such designation and of his or her rights to contest such designation.

(c) Notify each owner of the date, time and place of the hearing.

(4) Public notice of the hearing shall be given at least twenty (20) days prior to the hearing by publication in the official newspaper of the Borough. A copy of the nomination report shall also be made available for public inspection at least twenty (20) days prior to the hearing.

(5) Protests. A protest against designation signed by the owners of record of 30% or more of the properties within a proposed Historic District or by the owner(s) of record of a proposed Historic Site may be filed with the Planning Board no later than 10 days prior to the scheduled hearing date of the proposed designation before the Planning Board. Protests must be in writing, must contain the reason(s) for the protest and must bear the signatures of the owner(s) joining in such a protest.

(6) Upon Planning Board review and adoption of the Historic District or Historic Site designation in the Master Plan, the HPC or the Planning Board shall forward the adopted Master Plan to the governing body. The governing body shall act upon the proposed designation list and map and may approve, reject or modify by ordinance the designation recommendations made by the Planning Board. In the event that the governing body votes to reject or modify any Planning Board recommendations for a proposed designation, the Council shall record in its minutes the reasons for not following such recommendation. All action taken by the Council on proposed designations shall become effective upon a favorable vote of a majority of its full authorized membership, except, in cases in which a protest has been filed in accordance with Subsection B(5) of this section, a proposed designation shall require a favorable vote of 2/3 of the members of the governing body. Governing body action on Historic District or Historic Site designations shall be otherwise subject to those procedures and statutes which apply to designation and regulation of Historic Districts and Historic Sites, including but not limited to N.J.S.A. 40:55D-65.1 and those that apply to a change of a zoning designation and the adoption, revision or amendment of any development regulation.

(7) Notice of designation shall be made public by publication in the official newspaper of the Borough and distributed to all municipal agencies reviewing development applications and permits. A certificate or letter of designation shall be sent to each owner affected by the designation.

**Section 4.** Section 128-45 through 128-50 are hereby deleted in their entirety and replaced as follows:

**§ 128-45. Certificates of appropriateness (CA)**

As defined herein, a Certificate of Appropriateness (CA) is a Borough permit issued by the HPC necessary for one or more activities to proceed, whether or not such activity requires any other permit.

A. A Certificate of Appropriateness shall NOT be required for any of the following activities and no application need be filed:

(1) Repainting already-painted surfaces in any colors. However, masonry materials and new materials manufactured with permanent colors or not intended to be painted are not exempted from requiring a CA. HPC may assist applicants in finding resources for appropriate historic colors on request.

(2) Interiors or any exterior portion which is not Visible From the Public Way.

(3) Construction or installation of any structure in a rear yard with a footprint of less than 150 sq. ft.

(4) Awnings, window boxes, mailboxes, flags, flagpoles, banners, lawn furniture, Little Free Libraries, chicken coops and similar accessories.

(5) Changes to gardens or other landscaping not involving either re-grading or impacts on Mature Trees which contribute to the Historic Character of the Historic Site or Historic District.

B. A Certificate of Appropriateness SHALL be required before any permit is issued by any Borough official for any of the following activities or, if no permit is required, before any work can commence on any of these activities:

(1) Full or partial Demolition of a Historic Structure.

(2) Change in the exterior appearance visible from the Public Way of any Historic Structure including siding and windows but excluding painting of previously painted surfaces.

(3) Changes to exterior site elements, including but not limited to fences, signs, and decks.

(4) New construction of a principal or accessory building or structure including placement of fully- or partly-prefabricated structures.

- (5) The relocation of any structure.

#### C. Waiver.

A Certificate of Appropriateness may be waived for certain applications. After review and conclusion that a waiver is indicated, the chairman or designate shall issue a form entitled Waiver of Certificate of Appropriateness as evidence to the administrative official that the applicant has cleared the HPC and may proceed. The chairman shall include the scope of work Visible From the Public Way in full detail as supplied by the applicant and code citations for the reason(s) for issuance. The chairman shall discuss the waiver during the subsequent HPC meeting as information. The activities for which a CA shall be waived include:

- (1) Complete or partial Demolition of any non-Historic Structure or of any Historic Structure which the full HPC by majority vote determines should not have been designated as a Historic Site per the criteria in § 128-44A. A Waiver of Certificate of Appropriateness shall not be granted if the HPC determines that the site would have met these criteria except for actions or failure to take responsible action on the part of the Applicant.

- (2) Partial Demolition of a Historic Structure which removes only more recent portion(s) which do not contribute to the Historic Structure's designation as a Historic Site per § 128-44A.

- (3) The in-kind repair or exact replacement of any part of a structure using identical materials and design, provided that the work does not alter the structure's exterior appearance Visible From the Public Way. Substitution of non-historic materials or minor design changes shall not be waived but may be permitted by the HPC as part of a Certificate of Appropriateness per Standard at § 128-47.3.2. The following are some of these activities for which an application for a CA may be granted a Waiver of Certificate of Appropriateness:

- (a) Replacement of any existing windows or doors which are of historic materials and design with replacements of the identical material and design.

- (b) Repair of existing windows and doors that does not change their designs, scale or appearance, including the installation of new storm windows.

- (c) Maintenance and repair of existing roofing materials involving no change in the design, scale or appearance of the structure.

- (d) Replacement, maintenance and repair of existing clapboards, shingles or other siding with identical material.

#### D. Major and Minor CAs: definition.

(1) Major. A CA shall be considered Major if the activities proposed include any of the following:

(a) Full Demolition of a Historic Structure.

(b) Demolition of a portion of a Historic Structure or the obscuring of any portion of a Historic Structure which contributes to the structure's Historic Character Visible From the Public Way.

(c) Alterations to a Historic Structure which will cause loss of Historic Character Visible From the Public Way, not including loss caused by the specific exceptions for modern substitute materials detailed at § 128-47.4D.

(d) An Addition as defined herein to a Historic Structure or to any structure within a Historic District which will be Visible From the Public Way.

(e) New construction in a Historic District.

(2) Minor. Certificates of appropriateness for all other activities shall be considered Minor. If HPC determines at any time that the activities applicant intended should have classified the application as Major (such as causing loss of Historic Character Visible From the Public Way that was not clear from the application filing or earlier testimony) the Minor application shall be rejected or denied and must be refiled as a Major Certificate of Appropriateness.

E. Emergency Repairs. Nothing in this Article shall act to delay any of the following:

(1) When a Historic Structure requires immediate repair to preserve its continued Habitability and/or the health and safety of its occupants or others as interpreted by the Administrative Officer, Emergency Repairs may be performed in accordance with the applicable Borough codes without first obtaining a Certificate of Appropriateness.

(2) Under such circumstances, the repairs performed shall be strictly limited only such as are necessary to protect the health and safety of its occupants or others and/or to maintain Habitability.

(3) A request for the HPC's review shall be made simultaneously with the onset of emergency work, and no work in addition to the Emergency Repairs shall performed until approval is obtained in accordance with the procedures set forth in this Article.

F. Informal review of concept plan. HPC shall encourage those considering an activity that may require a CA to request an informal review of their concept. Neither the applicant nor the HPC shall be bound by any informal review. This review may take place either with the full HPC or with one or two members who would be selected by the chairman. Requests for such informal

review may be made to the chairman or to the Administrative Officer. This review may include assistance in finding appropriate sources of designs and materials, to clarify the Goals, Standards and Guidelines herein and how to obtain a CA if such is required. If a Waiver of CA may be appropriate, the chairman or the HPC may advise what data and drawings would be sufficiently explicit to make that determination.

#### **§ 128-46. Application procedures for certificates of appropriateness.**

A. Intake. 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 proposed for a Historic Site or within the Historic District. If it does, the official shall inform the Administrative Officer, the applicant, and the chairman of the Historic Preservation Commission.

B. Location screening. The Administrative Officer shall review all requests for approvals for activities to determine whether they involve a Historic Site or are located in any Historic District, using the map and properties list supplied to him by the HPC. If he determines that such is the case, the Administrative Officer shall immediately notify the chairman of the HPC, forwarding any relevant documents, and advise the applicant to contact the chairman directly. This step shall apply whether or not the application may be considered an Application for Development (as defined herein) and thus may be under the principal authority of the Planning Board or Zoning Board. It shall also apply if the activities contemplated do not need any Borough permit apart from a CA.

C. Chairman screening. The chairman shall determine from the applicant the nature of the activities contemplated and whether they would require a minor or a major CA. Activities not requiring a CA are defined in § 128-45A.

(1) If a CA is required but the chairman determines that it would qualify for a waiver per § 128-45C he may issue such a waiver without formal action by the HPC. He shall review the details of each waiver as part of his report at the next regular meeting of the HPC

(2) If the chairman determines that a CA application is required and cannot be waived, he shall provide the applicant with the HPC application form(s) appropriate to the minor or major nature of the CA required. The forms shall list all items which may be necessary to be certified as complete per § 128-46.1 et seq. The chairman shall strike off items which do not apply to the activities contemplated by applicant.

(3) In every case, the chairman shall offer to the applicant the advice of the HPC in finding appropriate materials, designs and other resources including finding the history of the Historic Site.

D. Applicant shall deliver filled-out paper application forms to the Administrative Officer at Borough Hall and deliver accompanying documents electronically in PDF format along with one paper copy. All materials shall be made available to the public. On receipt, the Administrative Officer shall immediately forward all such material to the chairman.

E. The date on which the Administrative Officer receives the last of the documents required on the application form shall begin the 45 day period for certification of completeness review, during which the application must either be certified as complete or additional information must be requested of the applicant. The Administrative Officer shall inform the chairman of this date.

#### **§ 128-46.1. Application completeness: Minor CA.**

To be certified as complete, minor applications may require the following:

A. A filled out Minor Application form.

B. An application fee of \$50.

C. Sufficient photographs of the portion(s) of the Historic Site such that the work being proposed can be understood.

D. Scale drawings of proposed work to be performed if the element is new or the size or shape of any element is proposed to be changed.

E. A materials list including, as appropriate, manufacturer's printed documents such as cut sheets sufficiently detailed to fully explain the final appearance of the work.

#### **§ 128-46.2. Application completeness: Major CA.**

To be certified as complete, all major applications may require the following:

A. All of the information required for every minor application in § 128-46.1.

B. Proof of payment of taxes.

C. Escrow. At the time the application for a CA is filed, the applicant shall post an escrow payment to pay the fees of any professional services engaged by the HPC in the process to review, inspect and make recommendations on the CA application, including but not limited to legal, clerical, engineering and historic preservation consulting services including those necessary to prepare the final resolution which memorializes the HPC's decision. The applicant shall post an initial escrow with the Secretary of the HPC in the amount of \$1,500 if Demolition is not involved or \$2,500 if Demolition is requested. Said amount shall be set up within two business days in a non-interest-bearing escrow fund administered by the Borough Treasurer.

Disbursements from the fund shall be approved by the chairman, the Mayor and the Borough Clerk. Upon approval of the final inspection and payment by the Borough of all expected invoices relating to the matter, any remaining escrow balance not utilized in the review and inspection process shall be returned to the applicant.

D. Additional escrow. Unless otherwise required by the HPC, the escrow fund shall be replenished if its balance falls below the minimum amount of \$500. Any cost incurred in excess of the escrow fees collected shall be paid by the applicant before the decision of the HPC is final. Any CA is not valid and no permit of any kind shall be issued until all fees and costs are paid in full.

E. Notice. This requirement of necessity must be performed after a hearing date has been scheduled.

(1) Applicant shall undertake notice in accordance with the provisions of § 22-25 of Article III “Provisions Applicable to Planning”, including providing an affidavit of service thereof.

(2) A weather-proof printed notice shall be posted in a conspicuous place on each street frontage of the affected premises in such a way that it is readable by the public from the Public Way and its legibility shall be maintained until the matter is adjudicated.

F. The deed(s) for the Historic Site. If the deed(s) do not show the exact amount paid, a sworn statement by the applicant which details that amount and the date(s) paid shall also be supplied.

G. A professional survey performed no more than one year prior to the application date.

H. Detailed drawings of any new structure(s) or additions including full site plan, and elevations of all portions which would be Visible From the Public Way. Site plan shall locate any Mature Trees, indicating their diameter at breast height (DBH).

I. A list of new materials indicating type of materials, manufacturers and model names/numbers. Where manufacturer cut sheets exist they should also be included.

### **§ 128-46.3. Application completeness: Major: Demolitions.**

To be certified as complete, all major applications involving Demolition of any portion of a Historic Structure may require the following:

A. All of the information required for every major application in § 128-46.2.

B. Statement of the need and purpose for the proposed Demolition.



C. Significance report on the existing Historic Structure prepared by a professional qualified in accordance with the Code of Federal Regulations (Title 36, Part 61) "Secretary of the Interior's Historic Preservation Professional Qualification Standards" for the disciplines "Architectural History" and "Historic Architecture", as same may from time to time be supplemented or amended, including:

- (1) Historic context within the Borough.
- (2) Historic integrity as interpreted by the State Historic Preservation Office.
- (3) Historic significance as interpreted by the State Historic Preservation Office.

D. Alternatives to Demolition Report prepared by a professional qualified in accordance with the Code of Federal Regulations (Title 36, Part 61) "Secretary of the Interior's Historic Preservation Professional Qualification Standards" for the disciplines Architectural History and Historic Architecture, as same may from time to time be supplemented or amended, including:

- (1) Estimated cost and timing of rehabilitation of the Historic Structure so as to make at least part of it Habitable.
- (2) Evidence of good faith efforts to sell the Historic Site, asking for "best offer" to establish its reasonable value to purchasers willing to rehabilitate the Historic Structure and/or relocate the Historic Structure at the purchaser's expense to another location within the Borough.
- (3) Proof of reasonable and comparable value shall be demonstrated with recent appraisals, comparable sales of Historic Structures which are similar in location, land use controls, character and condition to the subject Historic Structure.

E. Copies of all outstanding code violations which have been placed against the Historic Site by any government entity ("code violations"). Indicate whether the conditions existed at the time the current ownership acquired the structure.

F. Photographs and architectural or other drawings or data necessary to adequately inform the HPC of the nature and extent of code violations.

G. If the Historic Structure to be demolished is not Habitable under the New Jersey State Housing Code (N.J.A.C. 5:28), a report from the Construction Official or administrative official, as appropriate, identifying the minimum repairs, materials, utilities, appliances, or other activities necessary to make any portion of the Historic Structure Habitable under that code. The entire Historic Structure and site need not be made Habitable.

H. A signed and sealed engineering report of the Historic Structure to be demolished by a licensed professional engineer who has been recognized in a New Jersey court as an expert

witness in the field of Historic Structure engineering. This report shall be illustrated with detailed photographs and, at a minimum:

(1) Identify all specific structural components whose condition contributes to the code violations. For each such component, detail the most economical repair or replacement method which would be required to correct all code violations, with an estimated cost to perform each one.

(2) Identify any other specific structural components which, in the engineer's opinion, contribute to a dangerous or unsafe condition. For each such component, detail the most economical repair or replacement method which would be required to preserve the Historic Site by correcting all dangerous or unsafe conditions, with an estimated cost to perform each one.

(3) Identify the minimum activities, materials, utilities, appliances, or other expenses necessary to make a portion of the Historic Structure Habitable under the New Jersey State Housing Code (N.J.A.C. 5:28). The entire Historic Structure and site need not be made Habitable. For each, this report shall detail the most economical repair or replacement method and include an estimated cost to perform each one.

I. A certification establishing the Equalized Assessed Value of the Historic Structure sought to be demolished.

J. Any other drawings, specifications, documents, or materials which may assist the HPC in deciding whether a Certificate of Appropriateness should be issued.

K. To establish its Fair Market Value for Historic Sites as defined herein, evidence of active good faith efforts by the owner to broadly market the property to purchasers willing to preserve the Historic Structure and/or relocate the Historic Structure at the purchaser's expense to another location within the Borough on a "best offer" basis, and listing all offers received, detailing the amount of each offer and identity of the prospective purchaser. If applicant cannot comply with this provision, the application shall be considered not complete and HPC shall order a continuance of up to six (6) months while the applicant conducts such an effort. In the interest of promoting the Borough of Riverton's goal of preservation of Historic Sites, the HPC itself may take independent actions to publicize the availability of the property.

L. Dimensions of envelope and siting of Historic Structures to be demolished. Because the siting and dimensions of future new construction on the Historic Site shall be limited to those of any demolished structure(s) per the Standard at § 128-47.3.3B, applicant shall provide HPC with measured drawings of the overall envelope of the Historic Structure(s) to be demolished.

#### **§ 128-46.4. Application completeness: Major: New structure or Addition.**

To be certified as complete, all major applications involving construction of a new structure or an Addition to any existing structure may require the following:

- A. All of the information required for every major application in § 128-46.2.
- B. Detailed drawings of the proposed construction including full site plan, and elevations of all portions which would be Visible From the Public Way.
- C. A list of materials indicating type of materials, manufacturers and model names or numbers. Where manufacturer cut sheets exist they should also be included.
- D. Larger area streetscape elevations and perspective views from all adjacent Public Ways showing nearby structures to scale in sufficient detail to permit analysis of the extent to which the proposed new construction will be visually compatible.

**§ 128-46.5. Application completeness: Certifying as complete.**

- A. To render a decision on any application, the HPC requires that the applicant provides all information requested on the application in order to make a proper decision with confidence. With that information, such an application shall be considered “certified as complete” per N.J.S.A. 40:55D-10.3. Within 45 days of receipt of the application the chairman shall determine if it is complete, apart from notice which cannot be performed until a hearing date is set.
- B. If the chairman determines that the application is not complete or that the information provided is insufficient to make a proper decision, the chairman shall immediately notify the applicant in detail of the specific information which is still needed in order to certify that the application is complete. The chairman may direct the Administrative Officer to take this action in his place. The 45 day period for certification of completeness shall restart on the date of that notification of incompleteness.
- C. If the application does not require notice and the chairman determines that the application is complete the chairman shall proceed to set the hearing date, time and place. That date shall be chosen sufficiently far in the future that all documents required to be put on file can be in the Borough office at least 10 days prior to the hearing.
- D. If the application requires notice and the chairman determines that the application is complete apart from proof of notice the chairman shall proceed to set the hearing date, time and place so that notice can be issued which includes that information. That date shall be chosen sufficiently far in the future that all required notice can be completed and that all required documents can be put on file can be in the Borough office at least 10 days prior to the hearing. At this time, the application cannot yet be certified as complete because chairman has not received proof of notice.
- E. If the 45 day period for certification of completeness has elapsed without either the application being certified as complete or the applicant being notified as to the specific

deficiencies in the application which need to be remedied, the application shall be deemed complete as of the final day of that period, per N.J.S.A. 40:55D-10.3.

**§ 128-46.6. After hearing date is set.**

A. The Chairman or administrative official shall immediately advise the applicant:

(1) of the hearing date, time and location, and

(2) if the application requires notice, to include the hearing date, time and location on all notice materials and to commence performing notice per § 128-46.2E and to provide to the administrative official proof of notice, including photograph(s) of on-premises posting if required.

B. All application forms and the printed copies of accompanying materials comprising the complete application shall be kept on file and available for public inspection at least 10 days before the date of the hearing, during normal business hours in the office of the Administrative Officer as per 40:55D-10b. The applicant may subsequently produce other documents, records, or testimony to substantiate, clarify or supplement the previously filed documents.

C. Inspection. Each applicant shall make the property which is the subject of the application available to the HPC board members and its professionals/agents for physical inspection at reasonable times beginning at least 10 days prior to the date the application is to be heard by the HPC.

**§ 128-47. Public Hearings.**

A. Every application for a Certificate of Appropriateness or Application for Development referred to the HPC by the Planning Board or Zoning Board shall require appearance at a public hearing unless waived per § 128-45C.

B. Representation of parties. Any owner and all persons having a legal and equitable interest in any property subject to an HPC hearing shall appear in person and/or shall be represented by an authorized agent or attorney if they so choose.

C. Per N.J.S.A. 40:55D-10c the officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the “County and Municipal Investigations Law,” P.L. 1953, c. 38 (C. 2A:67A-1 et seq.) shall apply.

D. The HPC may, in its discretion, impose reasonable time limits upon the presentation of evidence and statements. The chairman of the HPC, at his/her discretion, may alter the order of procedure as circumstances may require and warrant.

E. All testimony relating to engineering, construction, construction costs, appraisals, estimates, and other professional matters shall be given by experts. HPC may hire its own experts to advise it in these and other fields at the expense of the applicant, paid from the applicant's escrow whether these experts are called to testify or not.

F. All testimony offered by witnesses shall be given under oath or affirmation and said testimony may be given by question-and-answer method or, at the chairman's discretion, in statement form. Persons wishing merely to state a position for or against a proposed application shall be placed under oath or affirmation.

G. Exhibits shall be marked for identification and shall be offered in an orderly fashion. They shall be made available for examination by any and all parties of interest. Leave to file post-hearing exhibits or information may be sought at the hearing, or thereafter in writing, which may be granted by the chairman. In the event leave to file post-hearing exhibits or information is granted, copies shall be served upon interested parties or representatives in person, or by United States mail, by certified mail, return receipt requested, together with a signed statement that this rule has been complied with, which shall be attached to or shall accompany such documents submitted.

H. Hearings shall be conducted in such a manner as shall result in a just and lawful determination of the issues as promptly as circumstances shall permit. The HPC shall make determinations as to the relevance and materiality of evidence. The HPC may require a preliminary statement of the nature of the evidence proposed to be elicited from any witness.

#### **§ 128-47.1. Goals, Standards and Guidelines for review by Historic Preservation Commission.**

Per 40:55D-65.1 the HPC may regulate Historic Sites or Historic Districts and provide design criteria and Guidelines therefor, which shall be in addition to such designation and regulation as the zoning ordinance may otherwise require. The purpose of this section is to provide uniform Standards and criteria for use by the Historic Preservation Commission for the regulation of Historic Sites and Historic Districts. All projects requiring a Certificate of Appropriateness and all applications for development referred to the HPC by the Planning Board or Zoning Board which involve Historic Sites or are located within Historic Districts shall conform to the Standards and be guided by the principles contained in this section.

Goals, Standards and Guidelines are distinct tools not to be confused. They are to be applied to projects applying for CAs as follows:

A. Goals are inspired by the public policies contained within the Borough of Riverton Master Plan which describe the shared vision of the Borough's future. Projects requiring CAs shall further these Goals.

B. Standards are rules which activities permitted by a CA shall follow unless HPC grants specific relief.

C. Guidelines are intended to inform the judgment of the HPC in applying its expertise to achieve the most appropriate decisions and recommendations which further the Goals.

### **§ 128-47.2. Goals.**

Goals are the public policies which describe the shared vision of the Borough of Riverton's future growth and development. All decisions and recommendations of the HPC shall be made in pursuit of and in the spirit of the policies set forth in the Master Plan of the Borough of Riverton first adopted in 1998, as amended from time to time, with its repeated direction to "preserve and enhance". If the language of the current Master Plan differs from that Plan, the current Master Plan shall govern.

The Goals of this Ordinance shall be in the spirit of that Master Plan, as follows:

A. Promote an appropriate stewardship by private property owners to preserve and enhance the exceptional historic and aesthetic qualities of the community and its buildings.

B. Preserve and enhance the key distinguishing man-made and natural features that define Riverton's character as a historic, Victorian, riverfront community.

C. Retain the architectural integrity of existing structures.

D. The history of Riverton is so important to the character of the town that it must be considered during any development or redevelopment project.

E. In Riverton, the houses are all very different. Rarely does one find two houses that are alike. Many homes have gingerbread, porches, roof details, unique windows, decorative doors or ornamental clapboards. Yards are filled with fences, small lampposts, benches, retaining walls and steps. New construction should continue this intimacy.

### **§ 128-47.3. Standards.**

A. The fundamental standard of the HPC shall be to "preserve and enhance": preserve existing Historic Character that is Visible From the Public Way and enhance by not perpetuating past poor choices and by encouraging recreating Historic Character which has been lost over time.

B. All Standards shall be followed unless HPC grants specific relief per § 128-47.4.

#### **§ 128-47.3.1. Standards for Demolition.**

HPC shall not issue a CA for any Demolition, in whole or in part, which would cause a loss of Historic Character Visible From the Public Way.

**§ 128-47.3.2. Standards for Alterations or Additions to Historic Structures.**

A. Alterations or Additions to a Historic Structure shall be Visually Compatible with its Historic Character and shall not be obviously incongruous with characteristics which are typical of the structure's Period of Significance. Creation of features the Historic Structure never had shall be permitted if these features conform to this subsection.

B. Paint colors for surfaces which are presently painted shall be exempt from consideration of Historic Character.

C. Use of substitute modern materials (including components such as windows) which are indistinguishable from historical materials when viewed from the Public Way shall be acceptable. Relief for other substitute modern materials may be sought per § 128-47.4D

D. Additions shall not be permitted in front yards as defined by this Chapter.

E. Massing of Additions shall be subordinate to the massing of the Historic Structure, as perceived from the Public Way.

F. Additions shall not result in harm to or endangerment of Mature Trees which contribute to the Historic Character of the Historic Site or Historic District.

**§ 128-47.3.3. Standards for new structures or changes to non-Historic Structures.**

A. Within a Historic District, the design of new structures and alterations or additions to non-Historic Structures may be recognizably of the present day but shall be Visually Compatible with existing Historic Structures to which they are visually related. In particular, materials and components, such as windows and doors, for new structures shall be indistinguishable from historic materials when viewed from the Public Way.

B. If the CA is for new construction taking place on a parcel on which any Historic Structure has been demolished within the 20 years preceding the date of application, whether demolished with or without the approval of this HPC, the negative impact of the loss of the Historic Structure on the historic visual rhythm of the streetscape shall be ameliorated. In addition to following the other requirements of this Section, no dimension of such new structure shall exceed the envelope of the Historic Structure which had formerly stood on that site.

C. New structures or additions to non-Historic Structures shall not result in harm to or endangerment of Mature Trees which contribute to the Historic Character of the Historic District.



#### **§ 128-47.3.4. Standards for relocating Historic Structures.**

A. Relocation of Historic Structures from the Borough of Riverton shall be subject to the same Standards as Demolition of a Historic Structure because it would cause the Borough to suffer the complete loss of the historic value of that structure.

B. Relocation within the Borough shall not cause a loss of context or loss of the visual density of Historic Character which provides the historic setting of existing Historic Structures either in its present location or in its proposed locations.

#### **§ 128-47.3.5. Standards for subdivisions and zoning variances.**

Subdivisions of or zoning variances for Historic Sites shall not be approved if the resulting changes to the bulk characteristics of the parcel or improvements diminish the Historic Character of a Historic Structure by removing open space or Mature Trees, thereby diminishing the setting which complements, frames or balances the massing of a Historic Structure.

#### **§ 128-47.4. Relief from Standards.**

Where the strict application of any regulation pursuant to this Article would result in peculiar and exceptional practical difficulties to, or exceptional and undue physical (not personal) hardship upon the developer of such property, the HPC shall have the power to grant an exception from such strict application of such regulation so as to relieve such difficulties or hardship similar to relief given by other bodies from other Articles of the Zoning Ordinance. Exceptions, however, are disfavored because all zoning ordinances, including this Article, presumptively further the purposes of zoning embodied in the MLUL.

A. Conditions. When granting relief, the HPC may include specific provisos or conditions to reduce its negative impact on the Historic Site's Historic Character Visible From the Public Way or to the Historic Character of the surrounding Historic Sites to which it is visually related.

B. Written detail. The details and reasons for any relief granted, including provisos and conditions, shall be included in the resulting Certificate of Appropriateness and in the accompanying resolution memorialized by the HPC, including citations to the relevant code sections.

C. De minimis. Relief may be granted if the HPC determines in its judgment that granting a specific CA would result in either no loss of Historic Character or a de minimis loss of Historic Character unlikely to be discernable from the Public Way.

D. Substitute materials. A modern material may be substituted for a historical material if it conforms to at least one of the following:

(1) The modern substitute material will be indistinguishable from the historical material when viewed from the Public Way, or

(2) a genuine historical material having the appropriate appearance or durability is no longer obtainable, or

(3) the cost of a genuine historical material substantially exceeds the cost of a modern substitute material not of a historical appearance but acceptable in appearance to the HPC. Examples of this situation include slate, tile or cedar shake roofing.

E. Protecting the public good. No relief shall be granted under the terms of this Article, including relief involving an inherently beneficial use, without a showing that such relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Master Plan and zoning ordinance.

F. Self-created hardships: Demolition by neglect. No relief shall be granted from conditions of Applicant's own creation nor shall costs be recognized which would remediate conditions resulting from failure by Applicant, a prior owner or testamentary devisor to take preventive actions, such as maintenance or repair, customarily performed by a responsible property owner.

G. Self-created hardships: pre-existing physical conditions / due diligence. No relief shall be granted based on conditions or characteristics of the Historic Structure which existed at the time of purchase by the current owner or applicant.

H. Self-created hardships: pre-existing regulations / due diligence. No relief shall be granted from any HPC regulation or any Borough policy such as the Master Plan if the Applicant justifies such relief in whole or in part by citing a reduction in property value by that regulation or policy if said regulation or policy was already in effect on the date the current owner or Applicant gained ownership of the Historic Site.

I. Failure to locate a buyer to preserve. No relief shall be granted permitting Demolition if the HPC determines that the applicant has not made a good faith effort to market the property for preservation as described in § 128-46.3D(2).

J. Overpaying to purchase. No relief shall be granted if the Applicant justifies such relief in whole or in part by the magnitude of the purchase price willingly paid by the applicant or owner.

K. Economically viable use. Relief shall be granted where the result of literal application of this Article would deprive an owner of all economically viable use of any part of the Historic Site.

(1) If the HPC determines that relief is required in order for the Historic Site to have economically viable or beneficial use it shall condition the Certificate of Appropriateness to

permit only those actions which it deems would permit an economically viable use with the least detriment to its Historic Character Visible From the Public Way and with the least detriment to the Historic Character of the surrounding Historic Sites to which it is visually related. If such relief would result in the Demolition of any historic portion of any Historic Structure the requirements of § 128-48.4 shall apply.

(2) An economically viable use may be deemed to exist if it can be shown that a comparable Historic Structure within the Borough of Riverton which was in a comparable condition is currently legally occupied or has been returned to legal occupancy within the five years preceding the date of the application.

(3) An economically viable use shall be deemed to exist if the HPC determines by any method that the entire Historic Site has a positive “Fair Market Value for Historic Sites”, as defined herein, and thus a use, without granting the actions sought. Acceptable methods to determine Fair Market Value for Historic Sites may include:

(a) an offer has been made by a bona fide purchaser which gives reasonable assurances that it is willing to preserve the Historic Structure and land pertaining thereto,

(b) an appraisal by an independent professional appraiser aware of the contents of this Article and hired by the HPC from applicant’s escrow,

(c) Testimony is given by an individual detailing how they were successful in putting into economically viable use a comparable Historic Structure in comparable or worse condition.

(d) Economic valuation using official equalized assessment value. A Historic Structure may be considered to have no economically viable or beneficial use if the estimated cost of repairs exceeds 100% of the Equalized Assessed Value of the structure (i.e., improvements excluding land) for which a CA is being sought. Estimates for such repairs shall be prepared by independent professional estimators and/or engineers hired by HPC and paid from applicant’s escrow. Repairs to conditions specifically excluded from consideration by these Standards shall not be included in this calculation. Estimated cost of repairs shall otherwise include all reasonable activities identified in the engineering report required at § 128-46.3H necessary to:

[1] Make the Historic Structure safe and free of construction code violations; and

[2] Make the Historic Structure minimally Habitable under the New Jersey State Housing Code (N.J.A.C. 5:28) in the opinion of the Construction Official or Administrative Officer, as appropriate. The entire Historic Structure need not be made Habitable.

## **§ 128-47.5. Guidelines.**

The judgment of the HPC in reaching decisions and recommendations consistent with the Goals enumerated in this Article shall be informed by the following Guidelines.

A. Federal guidelines. Incorporated here by reference are Part 68 “Secretary of the United States Department of the Interior’s Standards for the Treatment of Historic Properties – Rehabilitation” as they existed at the passage of this Ordinance. Note well: though entitled “Standards”, they shall be used by the Borough of Riverton HPC only as Guidelines, not as “Standards” as defined in this Article. They shall be disregarded if they conflict with other explicit Goals, Standards, or Riverton-specific Guidelines in this Article.

B. Riverton-specific Guidelines.

(1) Demolitions. In regard to applications for total or partial Demolition of a Historic Structure, the following matters shall be considered:

(a) Its historic, architectural, cultural, or scenic significance in relation to the criteria established in this article.

(b) If it is within a Historic District, its significance to the Historic District and the probable impact of its loss on its neighboring Historic Sites and the character and ambience of the entire Historic District considering the criteria which were the basis of the designation of the Historic District.

(c) Whether the property can be put to reasonable beneficial use without the approval of the Demolition application.

(d) HPC shall take strong note of the irreversible nature of Demolition. Unlike the granting of other kinds of zoning relief or variances which can be later reversed with little harm, once a Historic Structure is gone it is gone forever, to the detriment of nearby owners of historic properties whose economic and intrinsic cultural values depend on their historic setting and to the detriment of the public which loses in perpetuity a genuine piece of Riverton’s history.

(e) Its importance to the Borough and the extent to which its historical or architectural value is such that its Demolition would be detrimental to the public interest.

(f) The extent to which it is of such old, unusual or uncommon design, craftsmanship, texture or material that it would not be reproduced or could be reproduced only with great difficulty and expense.

(g) The extent to which its retention would promote the general welfare by maintaining and increasing the real estate values, generating business, attracting tourists,

attracting new residents, stimulating interest and study in architecture and design or making the Borough an attractive and desirable place in which to live.

(2) Alterations or Additions to a Historic Structure. These should harmonize with the appearance of that structure. The HPC shall consider the siting, arrangement, exterior design, design quality, bulk, arrangement, density, texture, details, style, scale, setbacks, stepbacks, shape, height, massing, lot coverage, rhythm, directional emphasis, proportions, building elements, materials, finishes (except paint colors of surfaces already or intended to be painted), preservation of Mature Trees and relationships to the streetscape and/or landscape views of the proposed work and the relationship of those characteristics to the Historic Structure itself and of the structure's Period of Significance.

(3) New construction in Historic Districts, and alterations and Additions to a non-Historic Structure within a Historic District. Characteristics should be Visually Compatible, as defined in this Article, with other structures in the Historic District in which it is located, particularly nearby Historic Structures to which it is visually related, or appropriate to the Period of Significance of nearby Historic Structures..

(4) Relocation.

(a) In considering whether to approve or disapprove a CA for a relocation of an existing Historic Structure to a location outside of the Borough, the HPC shall use the same Guidelines as Demolition of a Historic Structure because it would cause the Borough to suffer the complete loss of the historic value of that structure.

(b) In considering whether to approve or disapprove a CA for a relocation of an existing Historic Structure to a location within the Borough, the HPC shall consider the impact that losing its original or historic context would have on the Historic Structure, its neighboring structures, and the impact on the Historic District as a whole; the reasons for not retaining the Historic Structure at its present site; the compatibility, nature, and character of the areas surrounding the current site and the proposed site, as they relate to the protection of interests and values referred to in this section; if the proposed new location is within a Historic District, visual compatibility factors as set forth in this section; and the probability of significant damage to the Historic Structure itself.

(5) Encouragement to recreate missing elements. In pursuit of the "and enhance" portions of the Goals of this Article deriving from the Master Plan of the Borough of Riverton, the HPC shall endeavor to be helpful to applicants to enhance Riverton's Historic Character by encouraging the re-creation of missing historic elements such as porches, trim, gingerbread, shutters, windows of Historic Character, etc.

#### **§ 128-47.6. Alternatives to Demolition or relocation.**

A. During the hearing or otherwise, the HPC shall be empowered to assist or negotiate with the applicant to see if a reasonable alternative can be found to preserve the Historic Site when relocation or Demolition thereof would be a significant loss to the Borough.

B. Powers shall include recommending to the Planning Board, Zoning Board of Adjustment and/or the Borough Council that the area in which the Historic Site lies be designated as an area reserved for public use pursuant to N.J.S.A. 40:55D-44, and that the reservation of the Historic Site as a public area within any proposed development, be considered as part of any Application for Development for subdivision, or preliminary or final site plan approval.

#### **§ 128-48. Decision and further actions on applications.**

A. The HPC shall reach a decision on the application and report such decision to the Administrative Officer within forty-five (45) days of date application declared complete. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant and the HPC.

B. Failure of the HPC to reach a decision or report within the forty-five-day period shall be deemed to constitute a report in favor of the issuance of the permit without conditions.

C. Voting. The presence of three members, which may include alternate members filling the vacancies of regular members, shall constitute a quorum. A majority vote of those present and voting shall prevail, and shall be sufficient to grant or deny a Certificate of Appropriateness.

##### **§ 128-48.1. Decision: Approval.**

A. The HPC shall issue a Certificate of Appropriateness. If the HPC approved the application with conditions, those conditions shall be spelled out clearly on the CA itself. The HPC shall forward the CA to the Administrative Officer or Construction Official, as appropriate, who shall provide the applicant with a copy. The CA shall be deemed to be 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 Borough ordinance to be made prior to undertaking the activity concerning the Historic Site or the structure in a Historic District or the Demolition.

B. If any additional permit other than the CA is required from the Borough, such as a building permit, the Administrative Officer or Construction Official, as appropriate, shall then process the permit(s). If the HPC approved the CA with conditions, the Administrative Officer or Construction Official shall ensure that the permit(s) unmistakably indicate that those conditions are included and made a part of the permit(s) and that the permit(s) shall not be closed out unless all conditions are met.

C. After a Certificate of Appropriateness has been issued, the Administrative Officer or the Construction Official, as appropriate, shall, from time to time, inspect the work approved by the

Certificate of Appropriateness and report to the HPC any work not in accordance with such Certificate of Appropriateness. The HPC may also make inspections of work approved by a Certificate of Appropriateness whenever it considers such to be desirable.

D. A Certificate of Appropriateness shall be valid for a period of two years from the date of issuance unless reasonable extensions are granted by the HPC. If a permit is also required for the activity and is obtained prior to the expiration of said two-year period, then the Certificate of Appropriateness shall be valid for the life of the permit and any extensions thereof.

#### **§ 128-48.2. Decision: Denial.**

A. Denial of a Certificate of Appropriateness shall be deemed to preclude the applicant from undertaking the activity applied for.

B. The HPC shall state its reasons, in writing, in resolution form which shall be forwarded to the Administrative Officer or Construction Official, as appropriate.

C. The Administrative Officer or Construction Official, as appropriate, shall deny issuance of any permit to the applicant and provide the applicant with a copy of the resolution from the HPC.

#### **§ 128-48.3. Further Actions - Resolution.**

A. Actions taken by the HPC shall be memorialized at the meeting following approval or disapproval by the adoption of a formal resolution setting forth in detail all the reasons for the approval or disapproval of a Certificate of Appropriateness with specific code citations and setting forth any and all conditions imposed, if any, on a grant of approval.

B. The Secretary of the HPC shall immediately upon adoption forward a copy of the resolution to the applicant, the Construction Official, the Administrative Officer, the Borough Planning Board, and the Borough Clerk.

C. The Borough shall, within 10 days of the adoption of such a resolution of memorialization, publish notice thereof in the same manner as notice of formal action by the Riverton Planning Board is required for site plan approval, subdivision approvals and the like.

#### **§ 128-48.4. Further Actions - Demolitions.**

Where an applicant has gained the right to demolish, whether as a result of approval of a CA by the HPC or by action on appeal or by any other means, the following provisions shall apply and shall be included in the resolution:

A. Assignment. No assignment of the rights granted by a Certificate of Appropriateness related to Demolition shall be permitted.



B. Delay/denial of Demolition. If the applicant gained the right to demolish without HPC approval of a Certificate of Appropriateness for Demolition, the applicant shall, nevertheless, as a matter of right, be entitled to demolish such Historic Structure, provided that all of the following requirements have been fully met:

(1) Appeal pursuant to §128-48.5 of this Article.

(2) Sale for Fair Market Value for Historic Sites. The applicant has for a period of at least one (1) year and at an asking price reasonably related to its Fair Market Value for Historic Sites as defined herein “or best offer”, continuously made a bona fide and diligent effort to sell such Historic Site to any buyer which gives reasonable assurances that it is willing to preserve the Historic Structure and land pertaining thereto but no such buyer has been found to the present day nor has a potential tenant offering an economically viable use been identified.

(3) Demolition notice. Notice of proposed Demolition shall have been posted on the premises by the applicant per § 128-46.2E(2) and remained continuously visible and readable from the Public Way.

C. Salvage. In the event the Applicant does not intend to salvage or recycle parts of the Historic Structure, the Applicant for thirty (30) days shall afford interested parties and groups the opportunity to remove parts or architectural features from the Historic Site at no cost prior to Demolition. Applicant may require such parties to sign reasonable releases of liability for their tasks on-site.

D. Documentation prior to Demolition. Because Demolition necessarily results in an incalculable intangible loss in perpetuity to the public of the Historic Character, historic materials and construction techniques, prior to the issuance of any Demolition permit or the removal of any portion of the Historic Structure, the HPC may require applicant at applicant’s sole expense to engage a historic preservation professional qualified in accordance with the Code of Federal Regulations (Title 36, Part 61) “Secretary of the Interior’s Historic Preservation Professional Qualification Standards” for the discipline of Historic Architecture, as same may from time to time be supplemented or amended, to prepare and deliver in electronic form to the HPC:

(1) architectural quality photographs of all walls both exterior and interior as well as representative examples of all architectural details in sufficient clarity to permit their late study,

(2) architectural quality dimensioned scale drawings measured in the field of all exterior walls and details, including overall dimensions of the footprint and envelope of each structure and details of decorative items such as gingerbread, railings, steps and molding profiles.

E. Commemoration. The HPC may require applicant at applicant’s sole expense to create a permanent commemoration of the Historic Structure’s significance and install it where it will be accessible to the public, such as a marker or durable art installation.

## **§ 128-48.5. Further Actions - Appeals.**

The granting or the denial of a Certificate of Appropriateness and/or the action of the Administrative Officer and/or Construction Official in reliance upon same may be appealed to the Zoning Board in the same manner as an appeal is taken pursuant to N.J.S.A. 40:55D-72. Nothing herein shall be deemed to limit the right of judicial review of the Borough action after an appeal is concluded by the Zoning Board.

## **§ 128-49 Violations and Enforcement.**

Actions which diminish the Historic Character of the Borough of Riverton in violation of this Article result in both tangible and intangible loss to the inhabitants of this community.

### **A. Violations of this Article include:**

(1) Any activity which has not obtained a required Certificate of Appropriateness or a waiver of same.

(2) Any activity which is not in compliance with a properly obtained CA.

(3) Any removal of a historic component from a Historic Structure in accordance with a duly issued CA which also requires replacement by a specified component, which replacement has not been installed within 60 days.

(4) Any other loss or damage to a Historic Structure such as fire, flood, wind, insect damage, vandalism or accident, whether or not caused by the owner's actions or negligence.

### **B. Stop Work and Restore Order**

(1) Upon learning of any violation, the Administrative Officer or Construction Official, as appropriate, shall immediately post the premises with a stop work notice and notify owner and contractor(s) to immediately stop all work (except where necessary to stabilize the structure and protect the safety of the public and inhabitants). This official shall order the owner to take any necessary measures to secure and preserve the affected premises and any historical materials which may have been compromised. This order shall also require the owner to abate the violation by restoring the Historic Structure or Historic Site to the condition it was in prior to the violation. It shall direct the owner to apply to the HPC for a Certificate of Appropriateness for the means and methods to accomplish this abatement.

(2) 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.

(3) Where possible the HPC will document historic material which has been removed in order to guide later reconstruction of the appearance of the Historic Structure.

C. Injunctive relief. In the event that any action which could permanently and adversely change a Historic Site or Historic District, such as partial or complete Demolition or relocation, is about to occur without a Certificate of Appropriateness having been issued, or work continues to be performed in spite of a stop work order issued, the Administrative Officer may apply to the Superior Court of New Jersey for such injunctive relief as may be necessary to prevent the destruction or other compromise of the Historic Structure.

#### D. Hearing

(1) The owner shall be required to apply to the HPC for a hearing for a CA for the work already performed and additional work which is contemplated per the procedures of this Article.

(2) If the owner fails to apply within 30 days to the HPC to obtain said CA for the activities already completed, the Borough may place a lien against the property in an amount sufficient to reinstate the property to its condition prior to commencement of work and may place a Specific Performance lien to compel this or some future owner to reinstate the property.

(3) As a result of this hearing, the HPC shall address the Restore Order issued by the Officer into its deliberations. The resulting resolution shall either allow that order to stand or modify it in any way that the HPC determines shall conform to the Goals and Standards of this Article.

#### E. Penalties

(1) A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(2) For any case of total or partial Demolition or relocation performed without a CA, the days of violation shall be counted until either the date on which the HPC approves the Demolition or, if the HPC denies the CA, the date on which the demolished structure has been reinstated on the Historic Site.

(3) If the HPC denies the CA for the changes which have taken place, the owner shall immediately restore the affected premises to its condition prior to the commencement of the work, including partial or complete structures which have been demolished, utilizing a new CA

application. Such work shall be in addition to any other penalties which may be assessed per this section.

(4) To mitigate the permanent harm to the Borough of Riverton which the loss of authentic Historic Character causes, damage which cannot be ascribed to action or inaction on the part of the owner, such as damage resulting from accidental fire, arson, wind, environmental or other causes, shall require reconstruction in a manner identical to work without a CA described in this section. However, daily penalties in this regard shall not begin to accrue until 90 days after the Borough of Riverton first becomes aware of the damage if the owner has not completed the reconstruction.

(5) Monetary penalties. In addition to the remedies provided above, a person convicted of a violation of this Chapter before a court of competent jurisdiction shall be subject to penalties as follows:

(a) For each day up to ten (10) days: not more than \$50 per day.  
(b) For each day between eleven (11) and twenty-five (25) days: not more than \$100 per day.

(c) For each day beyond twenty-five (25) days: not more than \$500 per day.

(d) If a Historic Structure is demolished or relocated without first obtaining a Certificate of Appropriateness and other applicable permits, the owner shall be afforded a thirty (30) day period to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation and penalty. Subsequent to the expiration of the thirty (30) day period, a fine greater than \$500/day may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the cure or abatement has not substantially been completed. If the Demolition or relocation of the Historic Structure has not been or cannot be cured or abated, any subsequent Application for Development for the property shall obtain a Certificate of Appropriateness from the HPC as a mandatory condition of approval.

F. Loss by fire, flood, wind, insect damage or other similar mechanism including arson shall require reconstruction per the Standards and Guidelines of this Article.

G. A person convicted of a violation of this Chapter may also be subject to any fines and penalties for a violation of any other Township code or ordinance, or any state or federal law.

#### **§ 128-50 Review by HPC of applications for development and zoning referred by the Planning Board or Zoning Board.**

A. The Planning Board or Zoning Board shall refer to the HPC every Application for Development submitted to that Board for development and/or zoning changes in Historic

Districts or on Historic Sites or identified in any component element of the Master Plan. That board shall provide to the HPC copies of all materials relating to its application.

B. That Board shall not certify its application as complete per N.J.S.A. 40:55D-10.3 until it has received back from the HPC its recommendations per this Section. Failure to refer the application as required shall not invalidate any hearing or proceeding.

C. Review procedure at the HPC shall be identical to that detailed in this Article for certificates of appropriateness.

D. The HPC shall make its recommendations to the Planning Board, 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.

E. In cases where the approval of an Application for Development by the Planning Board or Board of Adjustment would result in the Demolition of a Historic Structure, issuance of a Certificate of Appropriateness by the HPC for Demolition shall be included as a condition in that Board's resolution of approval.

F. The decision of the HPC shall be a recommendation-only though it shall follow the form and process of a Certificate of Appropriateness. The Planning Board or Zoning Board may approve, disapprove, or amend the HPC's recommendation. If the Planning Board or Zoning Board should disapprove of or amend the decision of the HPC, it shall state its reasons therefor at a public hearing and in its resolution of memorialization

**Section 5.** Section 128-75 entitled "Building and zoning permits and variances" shall be amended to include a new section 128-75 H which shall read as follows:

H. Historic Preservation Commission referral. For applications for variances for Historic Sites or any parcel within a Historic District identified in § 128-41, the Zoning Board shall not certify the application to be complete per N.J.S.A. 40:55D-10.3 until it has forwarded copies of all materials relating to the application to the Historic Preservation Commission for its review per §128-50 and has received back from the HPC its recommendations. If the Zoning Board should disapprove or amend the decision of the HPC, it shall state its reasons therefor at a public hearing and in its resolution of memorialization.

**Section 6.** Sections C through G of Section 113-7 entitled "Minor subdivisions" shall be renumbered to become Sections D through H.

**Section 7.** Section 113-7 shall be further amended and revised to include a new section 113-7 C which shall read as follows:.

C. Historic Preservation Commission referral. For applications for Historic Sites or any parcel within a Historic District identified in § 128-41, the Planning Board shall not certify the application to be complete per N.J.S.A. 40:55D-10.3 until it has forwarded copies of all materials relating to the application to the Historic Preservation Commission for its review per §128-50 and has received back from the HPC its recommendations. If the Planning Board should disapprove or amend the decision of the HPC, it shall state its reasons therefor at a public hearing and in its resolution of memorialization.

**Section 8.** Sections C through H of Section 113-8 entitled “Preliminary approval of major subdivisions” shall be renumbered to become Sections D through I.

**Section 9.** Section 113-8 shall be further amended and revised to include a new section 113-8 C which shall read as follows:

C. Historic Preservation Commission referral. For applications for Historic Sites or any parcel within a Historic District identified in § 128-41, the Planning Board shall not certify the application to be complete per N.J.S.A. 40:55D-10.3 until it has forwarded copies of all materials relating to the application to the Historic Preservation Commission for its review per §128-50 and has received back from the HPC its recommendations. If the Planning Board should disapprove or amend the decision of the HPC, it shall state its reasons therefor at a public hearing and in its resolution of memorialization.

**Section 10.** Sections C through H of Section 113-9 entitled “Final approval of major subdivisions” shall be renumbered to become Sections D through I.

**Section 11.** Section 113-9 shall be further amended and revised to include a new section 113-9 C which shall read as follows:

C. Historic Preservation Commission referral. For applications for Historic Sites or any parcel within a Historic District identified in § 128-41, the Planning Board shall not certify the application to be complete per N.J.S.A. 40:55D-10.3 until it has forwarded copies of all materials relating to the application to the Historic Preservation Commission for its review per §128-50 and has received back from the HPC its recommendations. If the Planning Board should disapprove or amend the decision of the HPC, it shall state its reasons therefor at a public hearing and in its resolution of memorialization

**Section 12.** Section A of Section 109-5 entitled “Final Site Plan” shall be amended to read as follows:

A. The applicant shall submit six copies of the final site plan to the Administrative Officer. If the application is complete per the Planning Board or Zoning Board’s requirements, the Administrative Officer shall transmit the site plans to the appropriate municipal agencies for

review and determination of completeness. This review shall include the Historic Preservation Commission per §128-50 if any portion of the application includes a Historic Site or is within the Historic District identified in § 128-41. These municipal agencies shall prepare reports containing recommendations and/or conditions of approval and a certification as to completeness. The Administrative Officer shall advise the applicant of the certification within 45 days of submission. The applicant is not required to amend the plan until after Planning Board or Zoning Board of Adjustment action at a public meeting.

**Section 13.** If any section, subsection, paragraph, sentence or any other part of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of the Ordinance.

**Section 14.** All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 15.** This Ordinance shall take effect after final adoption and publication according to law.