

Ordinance No. 2014-24

BE IT ORDAINED by the City Council of the City of Fall River, as follows:

That Chapter 38 of the Revised Ordinances of the City of Fall River, Massachusetts, 1999, which chapter relates to Historical preservation be amended as follows:

By inserting Article IV, HIGHLANDS LOCAL HISTORIC DISTRICT, and inserting under said Article the following new sections to read as follows:

Section 38-150. PURPOSE.

The purpose of this ordinance is to aid in the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the Fall River, the maintenance and improvement of their settings and the encouragement of new building designs compatible with the existing architecture. The Highlands Local Historic District is to be administered by the Fall River Historic District Commission as provided for under Massachusetts General Laws Chapter 40C, as amended.

Section 38-151. DEFINITIONS.

The terms defined in this section shall be capitalized throughout this Ordinance. Where a defined term has not been capitalized, it is intended that the meaning of the term be the same as the meaning ascribed to it in this section unless another meaning is clearly intended by its context. As used in this Ordinance the following terms shall have the following meaning:

ALTERATION, TO ALTER

The act or the fact of rebuilding, reconstruction, restoration, replication, removal, demolition, and other similar activities.

BUILDING

A combination of materials forming a shelter for persons, animals or property.

CERTIFICATE

A Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this Ordinance.

COMMISSION

The Historic District Commission as established in this Ordinance.

CONSTRUCTION, TO CONSTRUCT

The act or the fact of building, erecting, installing, enlarging, moving and other similar activities.

DISPLAY AREA

The total surface area of a SIGN, including all lettering, wording, designs, symbols, background and frame, but not including any support structure or bracing incidental to the SIGN. The display area of an individual letter SIGN or irregular shaped SIGN shall be the area of the smallest rectangle into which the letters or shape will fit. Where SIGN faces are placed back to back and face in opposite directions, the DISPLAY AREA shall be defined as the area of one face of the SIGN.

DISTRICT

The Fall River Local Historic District as established in this Ordinance consisting of one or more DISTRICT areas.

EXTERIOR ARCHITECTURAL FEATURE

Such portion of the exterior of a BUILDING or STRUCTURE as is open to view from a public way or ways, including but not limited to architectural style and general arrangement and setting thereof, the kind and texture of exterior building materials, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.

PERSON AGGRIEVED

The applicant; an owner of adjoining property; an owner of property within the same DISTRICT area; an owner of property within 100 feet of said DISTRICT area; and any charitable corporation in which one of its purposes is the preservation of historic places, structures, BUILDINGS or districts.

SIGNS

Any symbol, design or device used to identify or advertise any place of business, product, activity or person.

STRUCTURE

A combination of materials other than a BUILDING, including but not limited to a SIGN, fence, wall, terrace, walk or driveway.

TEMPORARY STRUCTURE or BUILDING

A BUILDING not to be in existence for a period of more than two years. A STRUCTURE not to be in existence for a period of more than one year. The COMMISSION may further limit the time periods set forth herein as it deems appropriate.

38-152. DISTRICT.

The DISTRICT shall consist of the area as depicted in Section 38-161, (Appendices) of this Ordinance.

38-153. COMMISSION

- a. The DISTRICT shall be overseen by a COMMISSION consisting of seven members. Four members shall be appointed by the Mayor, two members initially to be appointed for one year, one for two years, and one for three years. Three members shall be appointed by the City Council, one member initially to be appointed for one year, one for two years, and one for three years. Each successive appointment shall be made for three years.
- b. The COMMISSION shall include, if possible, one member from two nominees solicited from the Fall River Preservation Society, one member from two nominees solicited from the chapter of the American Institute of Architects covering Fall River one member from two nominees of the Board of Realtors covering Fall River; and one property owner from within each of the DISTRICT areas. If within thirty days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the Mayor may proceed to make appointments as it desires.
- c. The Mayor may appoint up to four alternate members to the COMMISSION. Each alternate member shall have the right to act and vote in the place of one regular member should such regular member be absent from a meeting or be unwilling or unable to act or vote. Said alternate members shall initially be appointed for terms of two or three years, and for three-year terms thereafter.
- d. Each member and alternate member shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed.
- e. Meetings of the COMMISSION shall be held at the call of the Chairman, at the request of two members and in such other manner as the COMMISSION shall determine in its Rules and Regulations.
- f. A majority of members of the COMMISSION shall constitute a quorum.

38-154. COMMISSION POWERS AND DUTIES.

- a. The COMMISSION shall exercise its powers in administering and regulating the CONSTRUCTION and ALTERATION of any STRUCTURES or BUILDINGS within the DISTRICT as set forth under the procedures and criteria established in this Ordinance. In exercising its powers and duties hereunder, the COMMISSION shall pay due regard to the distinctive characteristics of each BUILDING, STRUCTURE and DISTRICT area.
- b. The COMMISSION may adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this Ordinance or M.G.L. Chapter 40C, setting forth such forms and procedures as it deems desirable and necessary for the regulation of Its affairs and the conduct of its business, including requirements for the contents and form of applications for CERTIFICATES, fees, hearing procedures and other matters. The COMMISSION shall file a copy of any such Rules and Regulations with the office of the City Clerk.

c. The COMMISSION, after a public hearing duly posted and advertised at least fourteen (14) days in advance in a conspicuous place in Fall River Government Center and in a newspaper of general circulation, may adopt and from time to time amend guidelines which set forth the designs for certain EXTERIOR ARCHITECTURAL FEATURES which are, in general, suitable for the issuance of a CERTIFICATE. No such design guidelines shall limit the right of an applicant for a CERTIFICATE to present other designs to the COMMISSION for approval.

d. The COMMISSION shall at the beginning of each fiscal year hold an organizational meeting and elect a Chairman, a Vice Chairman and Secretary, and file notice of such election with the office of the City Clerk.

e. The COMMISSION shall keep a permanent record of its resolutions, transactions, decisions and determinations and of the vote of each member participating therein.

f. The COMMISSION shall undertake educational efforts to explain to the public and property owners the merits and functions of a DISTRICT.

38-155. ALTERATIONS AND CONSTRUCTION PROHIBITED WITHOUT A CERTIFICATE.

a. Except as this Ordinance provides, no BUILDING or STRUCTURE or part thereof within a DISTRICT shall be CONSTRUCTED or ALTERED in any way that affects the EXTERIOR ARCHITECTURAL FEATURES as visible from a public way, unless the Commission shall first have issued a CERTIFICATE with respect to such CONSTRUCTION or ALTERATION.

b. No building permit for CONSTRUCTION of a BUILDING or STRUCTURE or for ALTERATION of AN EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT and no demolition permit for demolition or removal of a building or structure within a district shall be issued by the City or any department thereof until a CERTIFICATE as required under this Ordinance has been issued by the COMMISSION.

38-156. PROCEDURES FOR REVIEW OF APPLICATIONS.

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

b. The COMMISSION shall determine within fourteen (14) days of the filing of an application for a CERTIFICATE whether said application involves any EXTERIOR ARCHITECTURAL FEATURES which are within the jurisdiction of the COMMISSION.

c. If the COMMISSION determines that an application for a CERTIFICATE does not involve any EXTERIOR ARCHITECTURAL FEATURES, or involves an EXTERIOR ARCHITECTURAL FEATURE which is not subject to review by the commission under the provisions of this Ordinance, the COMMISSION shall forthwith issue a CERTIFICATE of Non-Applicability.

d. If the COMMISSION determines that such application involves any EXTERIOR ARCHITECTURAL FEATURE subject to review under this Ordinance, it shall hold a public hearing on the application, except as may otherwise be provided in this Ordinance. The COMMISSION shall hold such a public hearing within forty- five (45) days from the date of the filing of the application. At least fourteen (14) days before said public hearing, public notice shall be given by posting in a conspicuous place in Fall River Government Center and in a newspaper of general circulation in Fall River. Such notice shall identify the time, place and purpose of the public hearing. Concurrently a copy of said public notice shall be mailed to the applicant, to the owners of all adjoining properties and of other properties deemed by the COMMISSION to be materially affected thereby, all as they appear on the most recent applicable tax list, to the Planning Board, to any person filing a written request for notice of hearings, such request to be renewed yearly in December and to such other persons as the COMMISSION shall deem entitled to notice.

e. A public hearing on an application for a CERTIFICATE need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application for a CERTIFICATE may be waived by the COMMISSION if COMMISSION determines that the EXTERIOR ARCHITECTURAL FEATURE, or its category, is so insubstantial in its effect on the DISTRICT that it may be reviewed by the COMMISSION without a public hearing. If the COMMISSION dispenses a public hearing on an application for a CERTIFICATE, notice of such application be given to the owners of all adjoining property and of other property deemed by the COMMISSION to be materially affected thereby as above provided, and ten (10) days shall elapse after the mailing of such notice before the COMMISSION may act upon such application.

f. Within sixty (60) days after the filing of an application for a CERTIFICATE or within such further time as the applicant may allow in writing, the COMMISSION shall issue a certificate or disapproval. In the case of a disapproval of an application for a CERTIFICATE, the COMMISSION shall set forth in its disapproval the reasons for such disapproval. The COMMISSION may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material and similar features, which, if made and filed with the COMMISSION in a subsequent application, would make the application acceptable to the COMMISSION.

g. The concurring vote of a majority of the members shall be required to issue a CERTIFICATE.

h. In issuing CERTIFICATES the COMMISSION may as it deems appropriate impose certain conditions and limitations, and may require architectural or plan modifications consistent with the intent and purpose if this Ordinance.

i. If the COMMISSION determines that the construction or alteration for which all application for a CERTIFICATE of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the DISTRICT the COMMISSION shall issue a CERTIFICATE of Appropriateness.

j. If the CONSTRUCTION or ALTERATION for which an application for a CERTIFICATE of appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a CERTIFICATE of Hardship, the COMMISSION shall determine whether, owing to conditions especially affecting the BUILDING or STRUCTURE involved, but not affecting the DISTRICT generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this Ordinance. If the COMMISSION determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the COMMISSION shall Issue a CERTIFICATE of Hardship.

k. The COMMISSION shall send a copy of its CERTIFICATES and disapprovals to the applicant and shall file a copy of its CERTIFICATES and disapprovals with the office of the City Clerk and the Building Commissioner. The date of issuance of a certificate or disapproval shall be the date of the filing of a copy of such CERTIFICATE or disapproval with the office of the City Clerk.

l. If the COMMISSION should fail to issue a CERTIFICATE or disapproval within sixty (60) days of the filing of the application for a CERTIFICATE, or within such further time as the applicant may allow in writing, the COMMISSION shall thereupon issue a CERTIFICATE of Hardship Due to Failure to Act.

m. Each CERTIFICATE Issued by the COMMISSION shall be dated and signed by its chairman or such other person designated by the COMMISSION to sign such CERTIFICATES on its behalf.

n. A PERSON AGGRIEVED by a determination of the COMMISSION may, within twenty (20) days of the issuance of a CERTIFICATE or disapproval, file a written appeal with the COMMISSION for a review by a person or persons of competence and experience in such matters, acting as arbitrator and designated by the regional planning agency. The finding of the person or persons making such review shall be filed with the City Clerk within forty-five (45) days after the request and shall be binding on the applicant and the COMMISSION, unless a further appeal is sought in the Superior Court as provided in Chapter 40C, Section 12A. The filing of such further appeal shall occur within twenty (20) days after the finding of the arbitrator has been filed with the office of the City Clerk.

38-156. CRITERIA FOR DETERMINATIONS.

- a. In deliberating on applications for CERTIFICATES, the COMMISSION shall consider, among other things, the historic and architectural value and significance of the site, BUILDING or STRUCTURE; the general design, proportions, detailing, mass, arrangement, texture, and material of the EXTERIOR ARCHITECTURAL FEATURES involved; and the relation of such EXTERIOR ARCHITECTURAL FEATURES to similar features of BUILDINGS and STRUCTURES In the surrounding area.
- b. In the case of new CONSTRUCTION or additions to existing BUILDINGS or STRUCTURES, the COMMISSION shall consider the appropriateness of the scale, shape and proportions of the building or structure both in relation to the land area upon which the BUILDING or STRUCTURE is situated and in relation to BUILDINGS and STRUCTURES in the vicinity. The COMMISSION may in appropriate cases impose dimensional and setback requirements in addition to those required by applicable statute or ordinance.
- c. When ruling on applications for CERTIFICATES on solar energy systems as defined in Section IA of Chapter 40A, the COMMISSION shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.
- d. The COMMISSION shall not consider interior arrangements or architectural features not subject to public view from a public way.

38-157. EXCLUSIONS.

- a. The COMMISSION shall exclude from its purview the following:

Temporary BUILDINGS, STRUCTURES or SIGNS subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal and similar matters as the COMMISSION may reasonably specify;

Terraces, walks, driveways, sidewalks and similar STRUCTURES, provided that any such STRUCTURE is substantially at grade level;

Storm windows and doors, screen windows and doors, and window air conditioners;

The color of paint;

The color of materials used on roofs;

Signs of not more than two (2) square feet in DISPLAY AREA in-connection with use of a residence for a customary home occupation or for professional purpose, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each BUILDING or STRUCTURE which is not more than six (6) square feet in display

area, consists of letters painted on wood without symbol or trademark and if illuminated is illuminated indirectly;

The reconstruction, substantially similar in exterior design, of a BUILDING, STRUCTURE or EXTERIOR ARCHITECTURAL FEATURE damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence;

Upon request the COMMISSION shall issue a CERTIFICATE of Non-Applicability with respect to CONSTRUCTION or ALTERATION in any category not subject to review by the COMMISSION in accordance with the above provisions;

Nothing in this Ordinance shall be construed to prevent the ordinary maintenance, repair or replacement of any EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT which does not involve a change in design, material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any CONSTRUCTION or ALTERATION under a permit duly issued prior to the effective date of this Ordinance.

38-158. CATEGORICAL APPROVAL.

The COMMISSION may determine from time to time after a public hearing, duly advertised and posted at least fourteen (14) days in advance in a conspicuous place in Fall River Government Center and in a newspaper of general circulation in Fall River, that certain categories of EXTERIOR ARCHITECTURAL FEATURES, STRUCTURES or BUILDINGS under certain conditions may be constructed or altered without review by the COMMISSION without causing substantial derogation from the intent and purpose of this Ordinance.

38-159 ENFORCEMENT AND PENALTIES.

a. The COMMISSION shall determine whether a particular activity is in violation of this Ordinance or not, and the COMMISSION shall be charged with the enforcement of this Ordinance.

b. The COMMISSION, upon a written complaint of any resident of Fall River or owner of property within Fall River, or upon its own initiative, shall institute any appropriate action or proceedings in the name of the City of Fall River to prevent, correct, restrain or abate violation of this Ordinance. In the case where the COMMISSION is requested in writing to enforce this Ordinance against any person allegedly in violation of same and the COMMISSION declines to act, the COMMISSION shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within twenty one (21) days of receipt of such request.

c. Whoever violates any of the provisions of this Ordinance shall be punishable by a fine of up to \$300.00 for each offense. Each day during any portion of which such violation continues to exist shall constitute a separate offense.

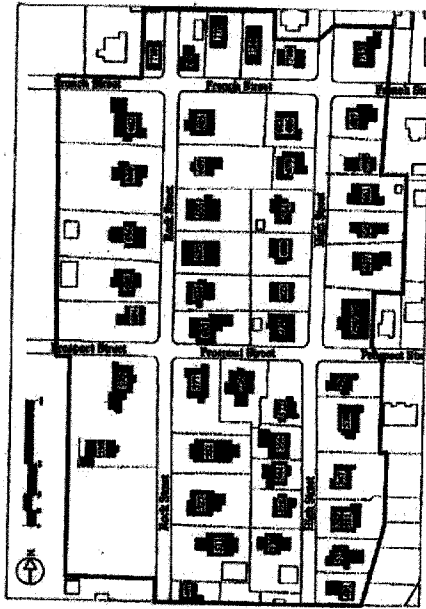
d. The COMMISSION may designate the Building Commissioner of the City of Fall River to act on its behalf and to enforce this Ordinance under the direction of the COMMISSION.

38-160. VALIDITY AND SEPARABILITY.

The provisions of this Ordinance shall be deemed to be separable. If any of its provisions, sections, subsections, sentences or clauses shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall continue to be in full force and effect.

38-161. APPENDICES

The following map is incorporated in and made part of this Article.



In City Council, December 23, 2014
Passed to be ordained, as amended

Approved, January 22, 2015
C. Samuel Sutter, Mayor

A true copy. Attest:

Alison M. Bouchard

City Clerk