

ORDINANCE NO. 1838

AN ORDINANCE CHANGING THE NAME OF THE BOARD OF ARCHITECTURAL REVIEW TO THE DANVILLE ARCHITECTURAL HERITAGE BOARD IN THE CITY'S EXISTING ORDINANCE PERTAINING TO HISTORIC DISTRICTS.

WHEREAS, the Board of Architectural Review formally requested changing its name to the Danville Architectural Heritage Board; and

WHEREAS, the Board of Commissioners deems it appropriate to amend its existing ordinance pertaining to the historic districts to reflect said name change;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DANVILLE, KENTUCKY, as follows:

SECTION ONE: The following definitions in Section 4-172 of the City of Danville Code of Ordinances are hereby amended to read as follows:

Board. The Danville ~~Board of Architectural Review~~ Heritage Board.

Certificate of Appropriateness. The permit, issued by the ~~Board of Architectural Review~~ Danville Architectural Heritage Board, which gives its approval for work or demolition to be done in a historic district or on a landmark.

SECTION TWO: Section 4-173 of the City of Danville Code of Ordinances is hereby amended to read as follows:

Sec. 4-173. ~~Board of Architectural Review~~ Danville Architectural Heritage Board.

(a) *Establishment.* There is hereby established the ~~Board of Architectural Review~~ Danville Architectural Heritage Board. The board shall consist of seven (7) members appointed by the mayor and approved by the city commission. The members shall have demonstrated interest in historic preservation, and at least two (2) members shall have training or experience in a preservation-related profession: architecture, history, archaeology, architectural history, planning or related fields. When one (1) or two (2) professional members are not available, the mayor may appoint other persons interested in historic preservation to serve. When the board reviews and issue that is normally evaluated by a professional member and that field is not represented on the board, the board shall seek expert advice before rendering its decision. Members of the board shall serve without compensation, but they shall be reimbursed for expenses incurred in the performance of their duties in accordance with the rules adopted by the

board. Each member shall attend at least one (1) educational meeting on historic preservation per year. This meeting shall have been approved by the state historic preservation officer.

(b) *Terms of Office.* The terms of office of the members shall be three (3) years, except the terms of two (2) members of the original board shall expire after two (2) years and the terms of two (2) members of the original board shall expire after one (1) year. Each member shall serve until the appointment and qualification of his successor. Vacancies on the board shall be filled within sixty (60) days. When a vacancy occurs during a term of office, it shall be filled within sixty (60) days, and the person selected shall be appointed for the unexpired portion of the term.

(c) *Officers.* The board shall each year elect members to serve as chairman, vice chairman, and secretary. The chairman shall preside at the meetings of the board and shall be the spokesman for the board. In his absence, the vice chairman shall perform these duties. The secretary shall prepare the minutes of the board's meetings which shall be available for public inspection.

(d) *Conflict of interest.* No member of the board shall vote on any matter that may affect the property, income or business interest of that member.

SECTION THREE: Section 4-174 of the City of Danville Code of Ordinances is hereby amended to read as follows:

Sec. 4-174. Powers and duties of the board.

(a) *Specific powers.* In addition to the powers and duties stated elsewhere, the board shall take action necessary and appropriate to accomplish the purpose of this article. These actions may include, but are not limited to, the following:

- (1) Conducting a survey of historic buildings and areas and preparing a plan for their preservation;
- (2) Soliciting public input for the purpose of collecting information to assist in making recommendations to the planning and zoning commission and city commission;
- (3) Recommending to the city commission and the planning and zoning commission designation of historic districts and individual landmarks;
- (4) Adopting written guidelines for making exterior changes to designated property and for undertaking new construction on designated property;
- (5) Regulating proposed alterations to designated properties, where those alterations are visible to the public; regulating demolitions, relocations, and new construction involving designated property;

- (6) Working with and advising the federal, state, and county governments and other parts of the city government;
- (7) Advising and assisting property owners and other persons and groups including neighborhood organizations who are interested in historic preservation; and
- (8) Conducting educational programs including the preparation of publications and the placing of historical markers.

(b) *Rehabilitation of buildings.* The board may initiate and encourage plans for the preservation and rehabilitation of individual historic buildings. The board shall, on a regular basis, give recognition to owners and tenants who maintain or rehabilitate their historic buildings with care and thus contribute to the preservation of the history of the city.

(c) *Survey of historic buildings.* In making its survey of historic buildings and areas, the board shall conduct this work in accordance with the guidelines of the Kentucky Heritage. The board shall provide that its survey and preservation plan shall be maintained and continued. The board shall use the preservation plan to assist the city and the planning and zoning commission in their overall planning efforts.

(d) *Meetings of the board.* The board shall adopt and make public rules for the transaction of its business and shall hold monthly public meetings and special public meetings, when necessary. All meetings shall have a previously available agenda and shall comply with the Kentucky Open Meeting Statute, KRS 61.805. The votes of a simple majority of the membership shall be required for decisions involving historic districts and landmarks.

(e) *Annual Report.* The board shall prepare and keep on file, available for public inspection, a written annual report of its activities, cases, decisions, qualification of members and other work.

(f) *Right to receive and spend funds.* The board, in addition to any appropriations made by the city, shall have the right to receive, hold and spend funds which it may legally receive from any and every source both in and out of the Commonwealth of Kentucky for the purpose of carrying out the provisions of this article.

(g) *Other duties under the certified local government program.* In the development of the certified local government program, the city may ask the board to perform other responsibilities that may be delegated to the city under the National Historic Preservation Act.

(h) *Assistance for the board.* The board shall receive regular assistance in the performance of its responsibilities from the city staff. In addition, the city may, by contract, obtain assistance on preservation matters from a professional with expertise in historic preservation, architecture, or a closely related field.

SECTION FOUR: Section 4-175 of the City of Danville Code of Ordinances

(Nominations to the National Register of Historic Places) is hereby amended to read as follows:

(a) *Initiation of nominations.* Any person or group, including the city, may request that a property be nominated to the National Register of Historic Places. Nominations shall comply in form and content with the requirements of 36 CFR Chapter I, part 60. As a participant in the certified local government program, the city must participate in and make recommendations on all local nominations to the National Register of Historic Places. The city commission and the board shall each submit recommendations on each proposed nomination to the Kentucky Heritage Council, which will then refer the nomination to the State Historic Preservation Review Board for determination of the property's significance and eligibility for the National Register. Before making their recommendations to the Kentucky Heritage Council, the commission and the board shall obtain comments from the public, which comments shall be included in their National Register recommendations. Within sixty (60) days of the receipt of a notice of intent to nominate a property to the National Register, or receipt of a request for nomination from a private individual or the initiation of a nomination by the city or by the board, the city shall inform the Kentucky Heritage Council and the owner of the property of the two (2) recommendations regarding the eligibility of the property. If the commission and the board agree that property should be nominated, the recommendation for nomination shall be forwarded to the Kentucky Heritage Council for a preliminary review by the Kentucky Historic Preservation Review Board. If the commission and the board do not agree, both opinions shall be forwarded in the city's report. If both the commission and the board recommend that a property not be nominated, the Kentucky Heritage Council shall inform the property owner, the Kentucky Historic Preservation Review Board and the State Historic Preservation Officer of the negative recommendation. In all cases, whether positive or negative, the comments and recommendation of the ~~Board of Architectural Review~~ Danville Architectural Heritage Board shall be forwarded to the Kentucky Heritage Council.

(b) *Review of nomination.* The comments and recommendations of the commissioners and of the board shall be forwarded to the Kentucky Heritage Council for a preliminary review by the Kentucky Historic Preservation Review Board. The Review Board shall make a recommendation to the state historic preservation officer to approve or disapprove the nomination. The state historic preservation officer will decide whether to forward the nomination to the Keeper of the National Register of Historic Places, National Park Service, U.S. Secretary of the Interior who shall make the decision whether to list the property on the National Register. Any person or organization which supports or opposes the nomination of a property by the state historic preservation officer may petition the Keeper during the nomination process either to accept or reject a nomination. Such petitions shall conform to the requirements of 36 CFR Chapter I, part 60.

(c) *Appeals.* Any person, the board or the city may appeal to the Keeper the failure or refusal of the state historic preservation officer to nominate a property that the person, the board or the city considers to meet the National Register criteria, or the failure or refusal of the state historic preservation officer to nominate a property recommended by the State Historic Preservation Review Board. Such appeals shall conform to the requirements of 36 CFR Chapter I, part 60.

SECTION FIVE: Section 4-176 of the City of Danville Code of Ordinances

(Designation of historic districts and landmarks) is hereby amended to read as follows:

(a) *Recommendations and designations.* The board shall recommend to the city commission the designation of historic districts and individual landmarks, and the city commission may make these designations by the enactment of ordinances. In addition, a property owner, any resident of the city, or any organization may ask the board to study a property or an area and then to vote on whether or not to start the process for designating it as historic.

(b) *Public hearing and notice.* To start the designation process, the board shall assemble information about the district or property being considered for designation and shall schedule a public hearing on the proposed designation. Advertised notice of the hearing shall be given, including conspicuous posting in the proposed district or on the lot of the proposed landmark or property for fifteen (15) consecutive days immediately prior to the hearing. At least fifteen (15) days prior to the public hearing, written notice shall be given by first class mail to the owners of property under consideration and the owners of all adjoining property. The secretary of the board or other officer of the board shall certify that the notices were mailed. Written notice shall be considered sufficient when it is mailed to the person listed on the tax rolls of the city. Owners and any interested person may present testimony and evidence at the public hearing on the designation. The record on the designation may also include letters received by the board (Ord. No 1479, 6-30-93)

(c) *Guidelines.* Before its first public hearing on a designation, the board shall adopt general guidelines that will apply to historic districts and landmarks or property and will assist owners in the preservation and rehabilitation of their property. The guidelines shall be submitted to the planning and zoning commission and the city commission for their approval. The guidelines shall include the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and may include other guidelines that will apply to all designated property to the city. In its guidelines and in its decisions the board shall not limit new construction to any one (1) architectural style but shall seek to preserve the character and integrity of the historic districts and landmarks or properties. The guidelines shall suggest changes that would be appropriate for landmarks or for property in historic districts and shall refer to appropriate work completed on property in the city so that applicants may visit those sites. The board may expand on or amend the guidelines it has adopted provided it holds a public hearing on the changes and submits the proposed changes to the planning commission and the city commission for their comments and approval.

(d) *Criteria for designation.* A historic district or a landmark or property shall qualify for designation when it meets one (1) or more of the following criteria which shall be discussed in a board report making its recommendations to the city commission:

- (1) Its character as an established and geographically definable residential neighborhood, united by culture, architectural styles or physical plan and development;
- (2) Its character as a geographically definable area possessing a significant concentration of buildings or structures united by past events or by its plan or physical development;

- (3) Its value as a reminder of the cultural or archaeological heritage of the city, state or nation;
- (4) Its location as a site of a significant local, state or national event;
- (5) Its identification with a person or persons who significantly contributed to the development of the city, state or nation;
- (6) Its identification as the work of a master builder, designer, or architect whose individual work has influenced the development of the city, state or nation;
- (7) Its value as a building that is recognized for the quality of its architecture and that retains sufficient elements showing its architectural significance; or
- (8) Its distinguishing characteristics of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials.

(e) *Report to the city commission.* After evaluating the testimony at its public hearing, survey information and other material it has assembled, the board shall make its recommendation to the city commission with a written report on the area or property under consideration. The report shall also contain information about the buildings which have been identified for inclusion in the proposed designation. The recommendation and the report shall also be sent to the planning commission.

(f) *Report by the planning commission.* The planning commission shall hold a public hearing, after which it shall report on the relationship between the proposed historic district designation and existing and future plans for the development of the city. If the planning commission recommends the approval of the proposed historic district designation, it shall prepare a proposed overlay for the zoning map showing said historic district. The planning commission shall forward its comments and recommendation for the proposed zoning map overlay addition to the city commission. If the planning commission does not approve of the proposed designation, it shall forward its comments to the city commission in the form of a recommendation.

(g) *Action by the city commission.* The city commission shall approve, modify or disapprove the proposed designation and the map amendment within sixty (60) days after receiving the recommendation for the proposed overlay from the planning commission. If approved, the official zoning map shall be so marked.

(h) *Relationship to zoning.* The property in a historic district shall be subject to the zoning article and subdivision regulations and other rules of its underlying zoning district. A landmark shall be subject to the zoning article and subdivision regulations and other rules of its zoning district. When there is a conflict between this article and the zoning article or subdivision regulations, the higher standard shall govern. Upon establishment of an overlay district, development within the area shall conform to all zoning regulations applicable to the area and shall also conform to all historic overlay district regulations.

(i) *Notification of designation.* The board shall notify each owner of the decision relating to his property and shall arrange that the designation of a property as a landmark or as a part of a historic district be filed by the county clerk in the land records by owner's name and tax district lot and block number. The board shall also give notice of the designation to the government offices in the city and county which shall retain them for future reference.

(j) *Amendment or rescission of a designation.* The amendment or rescission of any designation shall be accomplished through the same steps as were followed in the original designation.

SECTION SIX: Section 4-177 of the City of Danville Code of Ordinances (Approval of changes to landmarks and property in historic districts) is hereby amended to read as follows:

(a) *Requirement for certificate of appropriateness.* A certificate of appropriateness from the board shall be required before a person may undertake the following actions affecting a landmark or a property in a historic district:

- (1) Alteration of the exterior part of a building or structure that is visible to the public;
- (2) New construction;
- (3) Demolition; or
- (4) Relocation

Any person applying for a building permit for a project involving designated property must submit a certificate of appropriateness approving any work listed in this section; however, a certificate of appropriateness for any work described in this section is required even when the proposed work does not require a building permit.

(b) *Application to the board.* The building inspector and/or the codes enforcement officer shall refer to the board any person who proposes to undertake an exterior alteration visible to the public, new construction, a demolition or a relocation affecting a landmark or a property in a historic district. The person shall supply the board with the information it requests in order to reach a decision on his application for a certificate of appropriateness. The applicant shall provide, where applicable, drawings of the proposed work, photographs of the existing building or site and adjacent properties, and information about the building material to be used.

(c) *Stop work order; injunction.* In the event work is being performed without the required certificate of appropriateness, the board shall direct the building inspector to issue a stop work order. All work shall cease on the designated property. No additional work shall be undertaken as long as such stop work order shall continue in effect. The board shall meet with the owner or his agent to resolve the problem. The city attorney may seek in circuit court an injunction and any other appropriate relief in order that the intent of this ordinance shall be carried out. The procedure authorized in this subsection may also be used in the event work is being performed which is not in accordance with the certificate of appropriateness issued by the board.

(d) *Action by the ~~board of architectural review~~ Danville Architectural Heritage Board; notice.*

- (1) The board shall hold a public hearing on each application for a certificate of appropriateness within forty-five (45) days after a completed application is received by the board. The board shall make a decision on the application within forty-five (45) days after the receipt of a completed application; provided that the board may extend the time for decision an additional sixty (60) days when the application is for a demolition or new construction. The board shall approve or disapprove each application, and it shall give its reasons for its decision using the criteria contained in this section and in its guidelines. The board may suggest modifications to an application and where the modifications are agreed upon by the owner or his agent, the board may then approve a certificate of appropriateness providing for revisions in the plans submitted. If the board fails to decide on an application within the specified time period, the application shall be deemed approved.
- (2) Applicants shall be given notice of the public hearings and meetings relating to their application and shall be informed of the board's decision. When an application has been approved, the applicant shall be given a certificate of appropriateness. Advertised notice of the public hearing shall be given, including conspicuous posting on the property for five (5) consecutive days immediately prior to the hearing.

(e) *Criteria in deciding on applications.* In making a decision on an application, the board shall use its guidelines. The board shall consider:

- (1) The effect of the proposed work on the landmark or the property in the historic district upon which such work is to be done; and
- (2) The relationship between such work and other adjacent or nearby buildings and property. In evaluating the effect and the relationship, the board shall consider historical and architectural significance, architectural style, design, texture, materials, and color. The certificate from the board shall not relieve the applicant from complying with the requirements of other state and local laws and regulations.

(f) *Consultation with applicants.* Before an applicant prepares his plans, he may bring a tentative proposal to the board for its comments. The board shall be aware of the importance of finding a way to meet the current needs of the applicant. The board shall also recognize the important of approving plans that will be reasonable for the applicant to carry out.

(g) *Routine alterations; ordinary maintenance and repairs.*

- (1) The board may prepare a list of routine alterations that may receive immediate approval without a public hearing, when an applicant complies with the written guidelines of the board. At each meeting the board shall be informed of the certificates of appropriateness that have been issued under this provision. The

board shall not regulate the color of paint used on designated property, but it may prepare and distribute material on paint colors appropriate for different types and styles of buildings.

- (2) Ordinary maintenance and repairs may be undertaken without a certificate of appropriateness provided this work on a landmark or a property in a historic district does not change its exterior appearance in any way that is visible to the public. Every person in charge of a landmark or a property in a historic district shall keep in good repair:

- a. All of the exterior portions of such buildings or structures; and
- b. All interior proportions thereof which, if not so maintained, may cause such buildings or structures to deteriorate or to become damaged or otherwise to fall into a state of disrepair. The purpose of this provision is to prevent a person from forcing the demolition of his building by neglecting it and by permitting damage to the building because of weather or vandalism.

- (3) No provisions in this article shall be interpreted to require an owner or tenant to undertake an alteration or to restore his building to its original appearance. The provisions of this section shall be in addition to the provisions of the Kentucky Building Code requiring buildings and structures to be kept in good repair.

(h) *Meetings with owners about condition of buildings.* The board shall request a meeting with a property owner when his landmark or his building in a historic district is in poor repair, and the board shall discuss with the owner ways to improve the condition of his property. After this step, the board may request the building inspector to take action to require correction of defects in any building or structure designated under this article so that such building or structure shall be preserved in accordance with the purposes of this article. Action taken by the city may include boarding up the doors, windows and other parts of the building and additional steps to stabilize walls, roofs and other parts of the building or structure.

(i) *Emergency situations.* In any case where the building inspector determines that there are emergency conditions dangerous to life, health or property affecting a landmark or a property in a historic district, he may order the remedying of these conditions without the approval of the board. When it is possible, he shall consult with the chairman or vice chairman of the board about the action being taken. If consultation is not possible, the city shall notify the board of the action taken after the completion of the work.

(j) *Demolition of a landmark or a building or structure in a historic district.*

- (1) When an applicant wishes to demolish a landmark or a building or structure in a historic district, the board shall negotiate with the applicant to see if an alternative to demolition can be found. The board may ask interested individuals and organizations for assistance in seeking an alternative to demolition and in obtaining estimates on rehabilitation costs for the threatened building. After its public hearing, the board may decide that a building or structure in a historic district may be demolished because it does not contribute to the historic district.

- (2) On all other demolition applications, the board shall study the question of economic hardship for the applicant and shall determine whether the landmark or the property in the historic district can be put reasonable beneficial use without the approval of the demolition application. In the case of an income-producing building, the board shall also determine whether the applicant can obtain a reasonable return from his building. The board may ask applicant for additional information to be used in making these determinations. If economic hardship or the lack of a reasonable return is not proved, the board shall deny the demolition application unless the board finds grounds to grant the demolition application under the points contained in subsection (e).

(k) *Moving a landmark or a building or structure in a historic district.* When an applicant wishes to move a landmark or a building or structure in a historic district or when an applicant wishes to move a building or structure to a lot containing a landmark or to a property in a historic district, the board shall consider: (i) the contribution the building or structure makes to its present setting; (ii) whether there are definite plans for the site to be vacated; (iii) whether the building or structure can be moved without significant damage to its physical integrity; (iv) the compatibility of the building or structure to its proposed site and adjacent properties. These considerations shall be in addition to the points contained in subsection (e).

(l) *Length of validity of certificate of appropriateness.* A certificate of appropriateness shall remain valid for one (1) year after it is issued. Work is required to start before the end of the one (1)-year period. If actual work is not commenced within one (1) year, the certificate shall expire on the one (1)-year anniversary of issuance. Actual work is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition is required preparatory to rebuilding, such excavation or demolition shall be deemed to be actual work provided that it shall be carried out diligently.

(m) *Appeal of the board's decision.* The applicant shall have an appeal to the board of commissioners of the City of Danville from a decision of the ~~board of architectural review~~ Danville Architectural Heritage Board on an applicant for a certificate of appropriateness. An appeal shall be taken within thirty (30) days of the action of the board.

SECTION SEVEN: Section 4-178 of the City of Danville Code of Ordinances

(Conformity with the certificate of appropriateness) is hereby amended to read as follows:

(1) All work performed pursuant to a certificate of appropriateness shall conform to the provisions of such certificate. It shall be the responsibility of the building inspector and/or the codes enforcement officer and the board to inspect from time to time any work being performed to assure such compliance. In the event work is being performed which is not in accordance with such certificate, the board shall direct the codes enforcement officer to issue a stop work order. All work shall cease on the designated property.

(2) No additional work shall be undertaken as long as such stop work order shall continue in effect. The board shall meet with the owner or tenant to resolve the problem. The city

attorney may seek in circuit court an injunction and any other appropriate relief in order that the intent of this ordinance shall be carried out.

SECTION EIGHT: This ordinance is effective upon its publication.

SECTION NINE: If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED _____.

GIVEN SECOND READING AND PASSED _____.

PUBLISHED IN THE *ADVOCATE-MESSENGER* _____.

APPROVED:

BERNIE HUNSTAD, MAYOR

ATTEST:

DONNA PEEK, CITY CLERK

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