



## CITY OF ITHACA

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DEPARTMENT OF PLANNING, BUILDING, ZONING, & ECONOMIC DEVELOPMENT

Division of Planning & Economic Development

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### ITHACA LANDMARKS PRESERVATION COMMISSION (ILPC), CITY/TOWN HISTORIC PRESERVATION PARTNERSHIP WORKING GROUP

#### NOTICE OF MEETING & AGENDA

A special meeting of the ITHACA LANDMARKS PRESERVATION COMMISSION, CITY/TOWN HISTORIC PRESERVATION PARTNERSHIP WORKING GROUP will be held at 5:00 p.m. on Tuesday, May 18, 2021. City Hall remains closed to the public. This meeting will be conducted remotely via the online platform Zoom, pursuant to the Governor's Executive Order 202.1. A live stream is available at [https://www.youtube.com/channel/UC7RtjN1P\\_RFaFW2IVCnTrDg](https://www.youtube.com/channel/UC7RtjN1P_RFaFW2IVCnTrDg).

To receive log-in information for the meeting, please email Anya Harris at [aharris@cityofithaca.org](mailto:aharris@cityofithaca.org) or Bryan McCracken at [bmccracken@cityofithaca.org](mailto:bmccracken@cityofithaca.org) or call (607) 274-6550.

#### I. DRAFT ORDINANCE REVIEW

- Commission Structure, Composition, and Appointments
- Commission Member Training
- Designation Categories: Individual Landmarks, Historic Districts, Thematic Historic Districts, Interior Landmarks, and Scenic Landmarks
- Hardship Appeal Criteria

#### II. ADJOURNMENT

##### **ACCESSING ONLINE MEETING MATERIALS:**

Online meeting materials, like applications for a Certificate of Appropriateness and supporting materials, are available electronically via the "Document Center" on the City web site ([www.cityofithaca.org/DocumentCenter](http://www.cityofithaca.org/DocumentCenter)), under "Ithaca Landmarks Preservation Commission" > "Applications for Certificates of Appropriateness" and in the relevant address folder. Please do not hesitate to contact our office if you have any questions or you need any assistance accessing the meeting materials.

*If you have a disability and would like specific accommodation in order to participate, please contact the City Clerk's Office at 274-6570 by 12:00 p.m., no later than 2 days (not including weekends and holidays) before the meeting.*



**Chapter , Landmarks Preservation of the Municipal Code of the City of Ithaca**

**§ 228-1 Title**

This local law shall be known and may be cited as the  
“(Town/City) of “Ithaca Landmarks Preservation Ordinance/Law.”

**§ 228-2. Purpose.**

The purpose of this chapter is to:

- A. Promote the educational, cultural, economic and general welfare of the public through the protection, enhancement and perpetuation of buildings, structures, landscape features, archeological sites, and districts of historic and cultural significance.
- B. Safeguard the city’s historic, aesthetic and cultural heritage as reflected in such buildings, structures, landscape features, archeological sites, and districts.
- C. Protect the value of historic properties and their owners’ investment in them, and stabilize historic neighborhoods.
- D. Foster civic pride in the legacy of beauty and achievements of the past.
- E. Protect and enhance the city’s attractiveness to tourists and visitors and the support and stimulus to the economy thereby provided.
- F. Strengthen the economy of the city.
- G. Promote the use of buildings, structures, landscape features, archeological sites, and districts of historic and cultural significance as sites for the education, pleasure and welfare of the people of the city.
- H. Insure the harmonious, orderly, and efficient growth and development of the city.

**§ 228-3 Ithaca Landmarks Preservation Commission**

To effectuate the goals this chapter, there is hereby established in and for the [Town/City] of Ithaca a Commission to be known as the "Ithaca Landmarks Preservation Commission."

**§228-4 Membership, Appointment, and Compensation.**

- A. Membership. The Commission shall consist of nine members plus two alternates, all of whom shall possess a demonstrated significant interest in and commitment to the field of historic preservation as evidenced by involvement in a local, state, or national historic preservation group; employment; education; or volunteer activity in furtherance of historic preservation.
- B. Appointment. Members of the Commission shall be appointed by the [Mayor/Town Supervisor] with the advice and consent of the [Common Council/Town Board]. Two members shall be residents of the City of Ithaca and appointed by the Mayor. Two members shall be residents of the Town of Ithaca and appointed by the Town Supervisor. Three shall possess professional qualifications evidencing expertise in historic preservation, architecture, city planning or building construction and be appointed duly by the Mayor and Town Supervisor The two remaining members shall be

selected from the community at large and duly appointed by the Mayor and Town Supervisor. In filling two of the Town and City resident and the at-large seats, preference will be given to individuals who reside within locally designed historic district and/or possess demonstrated expertise in commercial or business activity, including, but not limited to, banking, real estate, construction, or law.

- C. Terms. The original appointments of the members of the Commission shall be three for one year, three for two years and three for three years from January following the year of such appointment, or until their successor is named to serve out the unexpired portion of their term of appointment, or until their successor is appointed to serve for the term of three years.
- D. Vacancies. Vacancies occurring in the Commission other than by expiration of term of office shall be filled by appointment by both the Mayor and Town Supervisor, but such appointment shall be only for the unexpired portion of the term of the member replaced.
- E. Reappointment. Members may serve for more than one term, and each member shall serve until the appointment of a successor.
- F. Method of selection to fill vacancies. Vacancies shall be filled by the Mayor and Town Supervisor according to the original selection as aforesaid.
- G. Compensation. Members shall serve without compensation.
- H. Quorum. A majority of the Commission shall constitute a quorum for the transaction of business.

**§228-5 Organization.**

- A. Officers. The Landmarks Preservation Commission shall elect from its membership a Chairperson and a Vice Chairperson whose terms of office shall be fixed by the Commission. The Chairperson shall preside over the Commission and shall have the right to vote. The Vice Chairperson shall, in cases of absence or disability of the Chairperson, perform the duties of the Chairperson.
- B. Alternates. The Chairperson, or in their absence, the Vice-chairperson, shall designate an alternate to serve when a regular member is faced with a conflict of interest. When so designated, the alternate shall possess all the powers and responsibilities of the regular member. Alternates shall be designated at the time of their appointment as "Alternate 1" and "Alternate 2", and shall be call upon to serve on a rotating basis.
- C. Secretary. The **Director of Planning and Development** or his/her designee shall serve as the Secretary to the Commission. The Secretary shall keep a record of all resolutions, proceedings, and actions of the Landmarks Preservation Commission, and shall have the authority to act as provided for in §228-7C of the City Municipal Code.

**§228-6 Training and attendance requirements**

- A. Each member of the commission shall complete, at a minimum, four hours of training each year designed to enable such

members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet this requirement. Such training may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.

- B. To be eligible for reappointment to the commission, a member shall have completed the required number of hours of training.
- C. No decision of a commission shall be voided or declared invalid because of a failure to comply with this subdivision.

#### **§228-7 Powers and Duties.**

The powers of the Commission shall include:

- A. Adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
- B. Conduct of surveys of significant historic, architectural, and cultural landmarks and historic districts within the city and town;
- C. Recommending designation by Common Council or the Town Board of identified structures or resources as landmarks and historic districts;
- D. Adoption of criteria for the evaluation of applications for a Certificate of Appropriateness;
- E. Approval or disapproval of proposals for exterior change resulting in applications for a Certificate of Appropriateness;
- F. Approval or disapproval of applications for a Finding of Economic Hardship;
- G. Making recommendations to the City and Town concerning the acquisition of preservation easements or other interests in real property as necessary to carry out this chapter;
- H. Increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs;
- I. Making recommendations to the City and Town concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the city and town;
- J. Recommending acquisition of a landmark structure by the City or Town where its preservation is essential to the purposes of this chapter and where private preservation is not feasible;
- K. Preparing a report or recommendation to other City and Town boards and committees regarding plans and proposals that could have an impact on designated individual landmarks and/or historic districts;

L. Delegation of work to staff and professional consultants as necessary to carry out the duties of the Commission, within the budget provided therefore by the City and Town of Ithaca.

**§228-8 Promulgation of Rules; Meetings.**

The Commission shall adopt rules for the transaction of its business, which shall provide for the time and place of holding regular meetings. Regular meetings shall be held at least once each month. The Commission's rules shall provide for the calling of special meetings by the Chairperson or by at least five members of the Commission. All regular or special meetings of the Commission shall be open to the public, and any person shall be entitled to appear and be heard on a matter before the Commission before it reaches its decision.

**§228-9 Records and Annual Report.**

The Commission shall keep a record, which shall be open to the public view, of its resolutions, proceedings and actions. The vote or failure to vote of each member shall be recorded. The concurring affirmative vote of a majority of those members present shall constitute approval of plans before it for review or for the adoption of any resolution, motion or other action of the Commission. The Commission shall submit an annual report of its activities to the Mayor, Common Council, Town Supervisor, and Town Board and make such recommendations to the Common Council and Town Board as it deems necessary to carry out the purposes of this chapter.

**§228-10 Committees.**

The Landmarks Preservation Commission may, by rule, establish permanent or ad hoc committees consisting of no less than three current members of the ILPC for assignments delegated by the full Commission.

**§228-11 Cooperation of City and Town Departments.**

As an aid toward cooperation in matters which concern the integrity of the designated landmarks and historic districts, all City departments shall, upon request, furnish to the Landmarks Preservation Commission, within a reasonable time, the available maps, plans, reports and statistical or other information the Commission may require for its work.

**§ 228-12. Designation of Individual Landmarks, Historic Districts, Thematic Historic Districts, Interior Landmarks, or Scenic Landmarks**

- A. The Ithaca Landmarks Preservation Commission is responsible for recommending to Common Council and Town Board the designation of identified structures or resources as individual landmarks and historic districts within the city and town.
- B. Individual Landmarks: The Ithaca Landmarks Preservation Commission may recommend such designation of an individual property as an individual landmark if it:

1. Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or
  2. Is identified with historically significant person(s) or event(s); or
  3. Embodies the distinguishing characteristics of an architectural style; or
  4. Is the work of a designer whose work has significantly influenced an age; or
  5. Represents an established and familiar visual feature of the community by virtue of its unique location or singular physical characteristics.
- C. Historic Districts: The Ithaca Landmarks Preservation Commission may recommend such designation of a group of properties as an historic district if the group:
1. Contains primarily properties which meet one or more of the criteria for designation as an individual landmark; and
  2. Constitutes a distinct section of the city by reason of possessing those qualities that would satisfy such criteria.
- D. Thematic Historic Districts: The Ithaca Landmarks Preservation Commission may recommend such designation of a group of properties as a thematic historic district if the group:
1. Contains properties which meet one or more of the criteria for designation as an individual landmark; and
  2. Includes properties or structures that are related to each other through a common theme, but which are not necessarily all located within a contiguous geographic area.
- E. Interior Landmarks: The Ithaca Landmarks Preservation Commission may recommend such designation of the interior of a property if the interior:
1. Has special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the City, Town, state or nation;
  2. is customarily open or accessible to the public, or is an interior into which the public is customarily invited.
- F. Scenic Landmarks: The commission may recommend such designation of a landscape feature or group of features. Recommendations for designation must be accompanied by such historical and architectural information as is required by the commission to make an informed recommendation.

**§ 228-13. Notice and Hearing Requirements for Proposed Designations**

- A. Notice of a proposed designation shall be sent to the owner or owners of the property or properties proposed for designation, describing the property proposed, or if in a district, the proposed district boundary, and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that the Commission deems individual notice to be infeasible, notice may instead be

published at least once in the City's official newspaper at least 15 days prior to the date of the public hearing.

- B. Once the Commission has issued official notice of a proposed designation, no building permits or demolition permits shall be issued by the Director of Planning and Development or the Director of Code Enforcement until said proposed designation has been acted upon by Common Council, but in any event no longer than 90 days after completion of the public hearing required by § 228-3 F, unless:
  - 1. The permit is for work that is of an emergency nature, as determined by the Director of Planning and Development or Director of Code Enforcement or Fire Chief, or
  - 2. The property owner voluntarily complies with the Certificate of Appropriateness review process.
- C. The Commission shall hold a public hearing prior to designation of any individual landmark or historic district. Notice of the public hearing shall be published at least once in the City's official newspaper at least 15 days prior to the date of the public hearing. The notice shall specify the time and place of the public hearing, a brief description of the proposed designation, and the location where the proposal may be reviewed prior the hearing. The Commission, property owners, and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed individual landmark or historic district. The record may also contain staff reports, public comments, expert testimony, or other evidence offered outside of the hearing.
- D. Within seven days after it has recommended designation of an individual landmark or historic district, the Commission shall file a copy of such recommended designation with the Planning and Development Board and with Common Council.
- E. Within 60 days of the Commission recommending designation, the Planning and Development Board shall file a report with Common council with respect to the relation of such proposed designation to the Comprehensive Plan, the zoning laws, projected public improvements, and any plans for the renewal of the site or area involved. The Council shall, within 90 days of said recommendation of designation, approve, disapprove, or refer the proposed designation back to the Commission for modification.
- F. Any designation approved by the Council shall be in effect on and after the date of approval by Council. The Commission shall forward notice of each property designated as an individual landmark and the boundaries of each designated historic district to the Director of Planning and Development or the Director of Code Enforcement, and the City Clerk for recordation.

**§ 228-14. Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Individual Landmarks or Historic Districts.**

As set forth in §73-4, the Ithaca Landmarks Preservation Commission is responsible for the approval or disapproval of

proposals for exterior changes to a designated historic property. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of an individual landmark or property within an historic district, nor shall any person make any change in the exterior appearance of such property, its site, its light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements, without first obtaining a Certificate of Appropriateness or Finding of Economic Hardship from the Ithaca Landmarks Preservation Commission, or obtaining approval by the Commission's Secretary pursuant to §228-7C, or upon order of the Director of Planning and Development, or Director of Code Enforcement, Superintendent of Public Works, or Fire Chief pursuant to §228-13. Any exterior alteration made in the absence of such required approvals must be reviewed retroactively by the Ithaca Landmarks Preservation Commission, applying the criteria for approval set forth in §228-6 and §228-10 as though the work had not yet been completed. All changes to City-owned property affecting an individual landmark or within an historic district shall be subject to the provisions of this ordinance.

**§228-15 Temporary Improvements.**

No Certificate of Appropriateness is required for temporary improvements. Temporary improvements are those that will be in place for no more than 180 consecutive days and result in no permanent physical alteration of the structure or site.

**§228-16. Criteria for Approval of a Certificate of Appropriateness.**

- A. The Commission shall approve the issuance of a Certificate of Appropriateness only if it determines that the proposed work will not have a substantial adverse effect on the aesthetic, historical, or architectural significance and value of either the individual landmark, or if the proposed work is within an historic district, of the neighboring properties in such district.
- B. In making this determination, the Commission will be guided by the Secretary of the Interior's Standards for Rehabilitation, and by the following principles:
  1. The historic features of an individual landmark shall be altered as little as possible and any alterations made shall be compatible with the historic character of the landmark.
  2. The historic features of a property located within, and contributing to the significance of, an historic district shall be altered as little as possible and any alterations made shall be compatible with both the historic character of the individual property and the character of the district as a whole.
  3. New construction located within an historic district shall be compatible with the historic character of the district within which it is located.
- C. In applying the principle of compatibility set forth above, the Commission shall consider the following factors:

1. the general design and character of the proposed alteration or new construction relative to existing features of the property;
  2. the scale and visual compatibility of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
  3. texture, materials, and color, and their relation to similar features of the property and other properties in the neighborhood;
  4. visual compatibility with surrounding properties, including the proportions of the property's façade; proportions and arrangement of windows, doors, and other openings; roof shape; and rhythm of spacing of properties along the street, including set-backs; and
  5. the importance of historic, physical, and visual features to the significance of the property.
- D. In passing upon an application for a Certificate of Appropriateness, the Landmarks Preservation Commission shall not consider changes to interior spaces or to exterior paint colors.
- E. In cases of a retroactive review of completed work, the Commission may approve any portion of the completed project that is found to meet the criteria for approval enumerated in this §228 while referring to the Office of the City Attorney for potential prosecution any portion of the project that does not meet such criteria for approval.

**§228-17. Certificate of Appropriateness Application Procedure.**

- A. Prior to the commencement of any work requiring a Certificate of Appropriateness, the owner shall file an application for a building permit with the Building Division and an application for such Certificate with the Commission. The application, available on the City's website and through the Department of Planning & Development, shall contain:
1. Building permit application number, as assigned by the Building Division
  2. Name, mailing address, email address, and telephone number of the applicant;
  3. Location and photographs of the property;
  4. Elevation drawings of proposed changes, if available;
  5. Perspective drawings, including relationship to adjacent properties, if available;
  6. Samples of building materials to be used, including their proposed color;
  7. Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and
  8. Any other information that the Commission may deem necessary in order to visualize the proposed work.
- B. No building permit shall be issued for the proposed work until a Certificate of Appropriateness has first been issued by the Commission. The Certificate of Appropriateness required by

this chapter shall be in addition to and not in lieu of any building or other permit that may be required by any other ordinance of the City of Ithaca.

C. The Commission may delegate to the Commission's Secretary the authority to:

1. Determine whether proposed work constitutes ordinary maintenance and repair for which a Certificate of Appropriateness is not required;
2. Approve work that is considered replacement-in-kind;
3. Approve work that is of any other type that has been previously determined by the Commission to be appropriate for delegation to staff, as reflected in the City of Ithaca Landmark and Historic District Design Guidelines.

On at least a quarterly basis, the Commission shall review the Certificates of Appropriateness, if any, issued by the Commission's Secretary, to determine whether or not the delegated review responsibilities should continue or their scope be modified.

- D. Upon application for a Certificate of Appropriateness, a public notice of the proposal shall be posted by the owner or owner's representative on the property for a minimum of 10 days. This notice must remain in place until a decision to approve or deny the Certificate of Appropriateness has been made. The notice shall specify the proposed work, the time and place of the public hearing, and to whom and by when any public comments are to be communicated. The notice must be placed at or near the property line in the front yard so that it will be plainly visible from the street, and, in cases where a property has frontage on more than one street, an additional sign must be placed at or near the property line on any additional street frontage so that the sign will be plainly visible from the street on which it has such additional frontage.
- E. The Commission shall hold a public hearing prior to rendering a decision on any application for a Certificate of Appropriateness. Notice of the public hearing shall be published at least once in the City's official newspaper at least 5 days prior to the public hearing. The notice shall specify the time and place of the public hearing, a brief description of the proposal, and the location where the proposal may be reviewed prior to the hearing. The property owner and any interested party may present testimony or documentary evidence regarding the proposal at the hearing, which will become a part of the record. The record may also contain staff reports, public comments, and other evidence offered outside of the hearing.
- F. The Commission shall approve, deny, or approve with conditions or modifications the Certificate of Appropriateness within 45 days from the completion of the public hearing, except as noted below. The failure of the Commission to act within 45 days from the completion of the public hearing, unless an extension is mutually agreed upon in writing by the applicant and the Commission, shall be deemed to constitute approval.

1. In the event, however, that the Commission shall make a finding of fact that the circumstances of a particular application require further time for additional study and information than can be obtained within the aforesaid 45-day period, then the Commission shall have a period of up to 90 days within which to act upon such an application.
  2. In the event, however, that environmental review of an application is required, the Commission shall approve, deny, or approve with conditions or modifications the Certificate of Appropriateness within 65 days from the completion of environmental review. The failure of the Commission to act within 65 days from the completion of the environmental review, unless an extension is mutually agreed upon in writing by the applicant and the Commission, shall be deemed to constitute approval.
- G. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by mail, and a copy filed with the Director of Planning and Development or Director of Code Enforcement, and City Clerk for public inspection, within 10 days of the date of the decision. The Commission's decisions shall state the reasons for denying or modifying any application.

**§228-18. Expiration of Approval; Extension of Approval**

If the construction of a project approved for a Certificate of Appropriateness has not commenced within twenty-four (24) months of the date of the approval, such approval shall expire, unless an extension has been granted by the Landmarks Preservation Commission following a written request by the applicant. An application for an extension of Certificate of Appropriateness approval shall not be considered a new Certificate of Appropriateness application.

**§228-19. Early Design Guidance.**

- A. Large projects that could potentially have a significant impact on an individual landmark or historic district are required to participate in the Early Design Guidance process. The purpose of this process is to provide input from the Commission on the design of the project as it relates to criteria for the approval of a Certificate of Appropriateness at a time when such input may readily be incorporated into the design without adversely affecting design costs or the project schedule.
- B. For the purposes of this chapter, large projects are defined as:
  1. New construction in an historic district of any primary structure, or
  2. New construction of any accessory structure with a gross square footage of 800 square feet or more in an historic district, or new construction of any accessory structure with a gross square footage of 800 square feet or more on the same tax parcel as an individual landmark when that tax parcel is less than

- five acres in size, or new construction of any accessory structure with a gross square footage of 800 square feet or more on the same tax parcel as an individual landmark when that tax parcel is more than five acres in size and when the proposed accessory structure will be located within 150 feet of the individual landmark, or
3. New additions that will increase the existing footprint of an individual landmark or a structure located within an historic district by 50% or more, or
  4. Any renovation or reconstruction (excluding projects that involve only the replacement of roof coverings) that will affect 50% or more of the exterior envelope of an individual landmarks or a structure located within an historic district.
- C. Applicants subject to Early Design Guidance shall submit materials for review by the Commission as soon as the design has reached a stage of development that would allow the Commission to understand the basic proposal and its significant details.
- D. Based on the limited information provided, the Commission will provide general feedback and non-binding recommendations and comments that might help the applicant further refine the project prior to submitting an application for a Certificate of Appropriateness.

**§228-20. Criteria for a Finding of Economic Hardship.**

- A. An applicant whose Certificate of Appropriateness for a proposed alteration has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship related to a proposed alteration, the applicant shall establish that the denial of a Certificate of Appropriateness will prevent the owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible. In the case of non-profit ownership, the applicant shall establish that the denial of a Certificate of Appropriateness will seriously interfere with, or prevent, the owner from carrying out its chartered purpose. In either case the applicant shall establish that the alleged hardship has not been created by the previous actions or inactions of any person having an ownership or management interest in the property after the effective date of local designation.
- B. Demolition of an individual landmark, or of a structure located within, and contributing to the significance of, an historic district, shall be allowed only in cases of economic hardship, except as provided for in §228-14. In order to prove the existence of economic hardship sufficient to justify demolition, the applicant shall establish to the satisfaction of the Commission that:
1. The denial of the Certificate of Appropriateness will prevent the owner from earning a reasonable return on

- investment, regardless of whether that return represents the most profitable return possible; and
2. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return on investment;
  3. Diligent efforts to find a purchaser interested in acquiring the property and preserving it have failed; and
  4. The alleged hardship has not been created by the previous actions or inactions of any person having an ownership or management interest in the property after the effective date of local designation.

Or, in the case of non-profit ownership that:

1. The denial of the Certificate of Appropriateness will either physically or financially prevent, or seriously interfere with, the non-profit owner carrying out its chartered purpose;
2. The property cannot be adapted for any other use that would result in the non-profit owner being able to carry out its chartered purpose; and
3. The alleged hardship has not been created by the previous actions or inactions of any person having an ownership or management interest in the property after the effective date of local designation.

C. To apply for relief on the grounds of economic hardship for a denied Certificate of Appropriateness, the applicant shall submit any of the following items requested in writing by the Commission and deemed necessary to reach a determination:

1. Current level of economic return;
2. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
3. Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
4. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years;
5. Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations;
6. All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
7. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
8. Any state or federal income tax returns relating to the property for the last two years;

9. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding: (a) any real estate broker or firm engaged to sell or lease the property, (b) reasonableness of price or rent sought by the applicant, or (c) any advertisements placed for the sale or rent of the property;
  10. Feasibility of alternative uses for the property that could earn a reasonable economic return;
  11. Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation;
  12. Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness;
  13. Estimated market value of the property: (a) in its current condition; (b) after completion of the proposed alteration or demolition; and (c) after renovation of the existing property for continued use;
  14. Expert testimony or opinion on the feasibility of rehabilitation or reuse of the existing structure by an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties and rehabilitation;
  15. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property; and
  16. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.
- D. To apply for relief on the grounds of economic hardship for the demolition of an individual landmark, or of a structure located within, and contributing to the significance of, an historic district, the applicant shall provide all of the above-listed information.

**§228-21. Finding of Economic Hardship Application Procedure.**

- A. After the Landmarks Preservation Commission has denied a Certificate of Appropriateness, an applicant may commence the economic hardship process. Consideration of an application for a Finding of Economic Hardship may occur at the same meeting as consideration of an application for a Certificate of Appropriateness. No building permit or demolition permit shall be issued unless the Commission determines that an economic hardship exists and issues a Finding of Economic Hardship, except in cases where the Building Division, upon due deliberation, has made an express finding that the structure presents an imminent threat to the public health, safety, and welfare.

- B. The Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.
- C. The applicant shall consult in good faith with the Commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in appropriate preservation of the property.
- D. All decisions of the Commission shall be in writing and shall state the reasons for granting or denying the requested Finding of Economic Hardship. A copy shall be sent to the applicant by mail and a copy filed with the Director of Planning and Development or Director of Code Enforcement and City Clerk for public inspection within 10 days of the date of the decision.
- E. If a Finding of Economic Hardship is issued, the Commission shall approve only such work as is necessary to alleviate the hardship.

**§228-22 City- and Town-owned Improvements**

- A. All changes to City-owned property affecting an individual landmark or within an historic district shall be subject to the provisions of this ordinance, with the exception of §228-10 and §228-11.
- B. If the cost of an action required by the Commission would exceed by 20% or more the cost of the action if not regulated by the Commission, the Common Council reserves the right to determine whether compliance with the Commission's requirements for that action are prudent and feasible in light of potentially competing public interests. Should Common Council determine, upon due deliberation, that such compliance would not be prudent and feasible, the action may proceed as though it were not regulated by the Commission.

**§228-23 Exceptions for Reasons of Public Safety**

- A. When in the judgment of the Director of Code Enforcement, Superintendent of Public Works, or Fire Chief there exists an emergency condition that poses an imminent threat to the public health, safety, or welfare, the Director of Code Enforcement, Superintendent of Public Works, or Fire Chief may order the property owner to immediately undertake temporary work to correct the defect while a permanent solution is sought that will satisfy the requirements of Section 228-6.
- B. Such temporary work shall remain in place no longer than 180 days. Such 180 day period may only be extended by, and in the sole discretion of, the Director of Planning and Development or Director of Code Enforcement. During that time, the owner shall diligently work to identify and propose to the ILPC, Director of Planning and Development, Director of Code Enforcement, Superintendent of Public Works, and Fire Chief a permanent solution to adequately

address the public safety concern while satisfying the requirements of Section 228-6. Potential solutions identified during this period will be subject to the provisions of Section 228-10 and 228-11.

- C. If, at the end of the 180 day period, or authorized extension of this period, the Director of Planning and Development or Director of Code Enforcement has determined that no reasonable solution exists that will achieve the public safety goal and the ILPC has determined that no reasonable solution exists that will satisfy either the criteria of Section 228-6 or Section 228-11, the Director of Planning and Development or Director of Code Enforcement may order permanent work to be undertaken by the owner that will protect the public health, safety, or welfare without the issuance of either a Certificate of Appropriateness or a Finding of Economic Hardship.
  
- D. When, in the judgment of the Superintendent of Public Works, there exists on City property, on City-possessed easements, or in the City Right of Way a substantial hazard to the public health, safety, or welfare, the Superintendent of Public Works may pursue those remedies, improvements, and infrastructures that he or she deems appropriate; provided, however, that before doing so, the Superintendent of Public Works shall be required, if practicable, to consult with the Director of Planning and Development, or his or her designee. Where said consultation is not practicable, the Superintendent of Public Works shall be required to consult with the Director of Planning and Development, or his or her designee, within a 30 day period after pursuing any such remedies, improvements, and infrastructures. Any remedies, improvements, or infrastructures undertaken on order or authorization of the Superintendent of Public Works under the first sentence of this paragraph shall not be subject to §228-6, to §228-7 or §228-10. The requirements of this paragraph shall apply only to the extent that remedies, improvements, and infrastructures are pursued within an historic district or an individual landmark.

**§228-24. Maintenance and Repair Required.**

- A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of an individual landmark or property within a historic district that does not involve a change in design, building materials, color, or outward appearance; however, the Commission's Secretary shall determine whether proposed work constitutes ordinary maintenance and repair or requires a Certificate of Appropriateness.
  
- B. No owner or person with an interest in real property designated as an individual landmark or included within an historic district shall permit the property to fall into a

serious state of disrepair. Maintenance shall be required, consistent with the provisions of the Property Maintenance Code of New York State and all other applicable regulations.

**§228-25. Enforcement and Violations**

- A. All work performed pursuant to a Certificate of Appropriateness issued under this chapter shall conform to the requirements included therein. It shall be the duty of the Director of Planning and Development or Director of Code Enforcement to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the Certificate of Appropriateness the Director of Planning and Development or Director of Code Enforcement shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.
- B. Any owner or person in charge of a property who demolishes or alters a property in the absence of a Certificate of Appropriateness, a Finding of Economic Hardship, approval by the Secretary of the Commission pursuant to §228-7C of the City Municipal Code, or upon order of the Director of Planning and Development, Director of Code Enforcement, Superintendent of Public Works, or Fire Chief pursuant to §228-13 may be required to restore the property and its site to its appearance prior to the violation. In the event distinctive historic features have been removed or otherwise irreversibly altered, such removal or alteration shall constitute a separate violation under this ordinance.
- C. If, in the judgment of the Commission, a violation of §228-14 exists that will result in a detrimental effect upon the life and character of a designated historic property or on the character of a historic district as a whole, the Commission shall notify the Director of Planning and Development or Director of Code Enforcement. If, upon investigation, the Director of Planning and Development or Director of Code Enforcement finds non-compliance with the requirements of the Property Maintenance Code of New York State, or any other applicable regulation, the Director of Planning and Development or Director of Code Enforcement shall order such remedies as are necessary and consistent with this Chapter and shall provide written notice thereof to the Secretary of the Commission.
- D. Any violation of any provision of this chapter shall be deemed an offense and shall be punishable as provided in Chapter 1 of the **Municipal Code, General Provisions, Article I, Penalties**. Each day's continued breach shall constitute a separate additional violation. In addition, the City shall have such other remedies as are provided by law to enforce the provision of this chapter.

**§228-26. Appeals.**

Any person aggrieved by any decision by the Commission may apply to the Supreme Court in the State of New York for review

under Article 78 of the Civil Practice Law and Rules within 30 days of publication of the decision.