

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-001
AMENDMENTS TO HISTORIC PRESERVATION REGULATIONS IN THE LAND
DEVELOPMENT CODE
CHAPTER 22, ARTICLE I, AND CHAPTER 22 ARTICLE II, DIVISION 2

WHEREAS, the Local Planning Agency (LPA) as established through Chapter 34, Article II, Division 3 of the Land Development Code of the Town of Fort Myers Beach is designated to serve as the Historic Preservation Board (HPB) for the Town; and

WHEREAS, the Land Development Code Sec. 22-71 to 22-74 vests the HPB with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological and architectural resources as prescribed by Chapter 22; and

WHEREAS, the Local Planning Agency is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Beach Land Development Code (LDC) Section 34-120 to review and make recommendation to Town Council concerning proposed land development regulations, land development codes, or amendments thereto, and performing such other reviews as are requested by the Town Council; and

WHEREAS, the Comprehensive Plan of the Town of Fort Myers Beach, POLICY 13-F-6 states that by 1999, the Town shall begin the process for formally designating one or more historic districts which would include most of the buildings listed on the Florida Master File; and

WHEREAS, the Comprehensive Plan of the Town of Fort Myers Beach, POLICY 13-F-32 seeks to review and update Lee County's 1986 and 1992 surveys of historic buildings on Estero Island; and

WHEREAS, following proper notice and as required under the LDC, the LPA conducted a public hearing on January 14, 2014 to consider a Town Ordinance amending certain sections of the LDC, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforementioned Ordinance, if passed, would create four historic districts in the Town and amend regulations relating to the designation of historic resources, as is more fully set forth in the proposed Ordinance.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council **APPROVE** and adopt the proposed Town Ordinance amending Chapter 22, Article I, Section 22-1, "Purpose," and Chapter 22, Article I, Section 22-3 "Definitions," and Chapter 22, Article II, Section 22-75, "Historic Districts," and Chapter 22, Article II, Section 22-6, "Categories of Historic Importance," in the Land Development Code and recommends the following findings of fact and conclusions of law:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed ordinance will promote the appreciation and sensitive use of historic and archaeological sites, resources and districts for the education, pleasure, and welfare of the people of the town and visitors from around the world.
2. The proposed ordinance will promote implementation of historic preservation as contemplated by the Fort Myers Beach Comprehensive Plan.
3. The proposed ordinance will assist the Historic Preservation Board with their duty to review historic sites, areas, structures and buildings for possible designation as historic resources pursuant to LDC Chapter 22.
4. The proposed ordinance will assist in promoting education and recognition programs aimed at fostering a better understanding of the community's heritage.
5. The LPA hereby recommends the following revision(s) to the proposed ordinance:

The foregoing Resolution was adopted by the LPA upon a motion by LPA member Kakatsch and seconded by LPA member Plummer, and upon being put to a vote, the result was as follows:


Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett	AYE	John Kakatsch	AYE
Jane Plummer	AYE	Chuck Bodenhafer	AYE
Jim Steele	AYE		

DULY PASSED AND ADOPTED THIS 14th day of **January, 2014**.

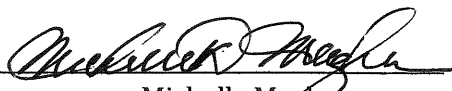
Local Planning Agency of the Town of Fort Myers Beach

BY: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: 
Fowler White Boggs
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 22 HISTORIC PRESERVATION

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Sec. 22-1. Purpose.

The purpose of this chapter is to identify, evaluate, preserve, and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic, and general welfare of the public by:

- (1) Establishing a historic preservation board with the power and duty to review historic sites, areas, structures, and buildings for possible designation as historic resources.
- (2) Empowering the historic preservation board to determine the *category of historical significance importance* of a designated historic resource *and designate those of the highest importance*.
- (3) Protecting designated historic resources by requiring the issuance of certificates of appropriateness and certificates to dig before allowing alterations to those resources.
- (4) Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices.
- (5) Stabilizing and improving property values through the revitalization of older residential and commercial neighborhoods.
- (6) Enhancing the town's attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities.
- (7) Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage.
- (8) Promoting the sensitive use of historic and archaeological sites, resources, and districts for the education, pleasure, and welfare of the people of the town and county.
- (9) Implementing the historic preservation element of the Fort Myers Beach Comprehensive Plan.

Sec. 22-2. Applicability.

- (a) This chapter shall govern and be applicable to all property located in the incorporated area of the town.
- (b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

Sec. 22-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Archaeological site means an individual historic resource recognized for its prehistoric or historic artifacts and features.

Archaeologist means a person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments, or excavations, or is recognized as qualified to perform those tasks by the county.

Area of archaeological sensitivity means an area identified in the survey entitled "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc., 1987), as known or being likely to yield information on the history and prehistory of the town based on prehistoric settlement patterns and existing topographical features. Areas of archaeological sensitivity are divided into the following categories:

(1) *Sensitivity Level 1*: Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for listing on the National Register of Historic Places or local historic resource designation.

(2) *Sensitivity Level 2*: Those areas containing known archaeological sites that have not been assessed for significance but are likely to conform to the criteria for local designation, or areas where there is a high likelihood that unrecorded sites of potential significance are present.

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, or property of any kind.

Building official means the same officer as appointed by the town manager through § 6-44.

Certificate of appropriateness means a written authorization by the director or the historic preservation board to the owners of a designated historic resource or any building, structure, or site within a designated historic district, allowing a proposed alteration, relocation, or the demolition of a building, structure, or site. Certificates of appropriateness are divided into the following two classes:

(1) ***Regular certificate of appropriateness*** means a certificate of appropriateness issued by the director allowing minor activities which require the issuance of a building permit but which will result in little or no change in appearance.

(2) ***Special certificate of appropriateness*** means a certificate of appropriateness issued directly by the historic preservation board and required for any proposed work that will result in alteration, demolition, relocation, reconstruction, new construction, or excavation, but which does not qualify for a regular certificate of appropriateness.

Certificate to dig means a certificate issued by the director or the historic preservation board authorizing certain clearing, digging, archaeological investigation, or archaeological development projects that may involve the exploration of established or suspected archaeological sites in areas of archaeological sensitivity level 1 or 2.

Contributing property means any building, structure, or site which contributes to the overall historic significance of a designated historic district and was present during the period of historic significance and possesses historic integrity reflecting the character of that time or is capable of yielding important information about the historically significant period, or which independently meets the criteria for designation as a historic resource.

Demolition means the complete removal of a building or structure, or portions thereof, from a site.

Demolition by neglect means the willful abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

Designated means that the town has established the historical, cultural, architectural, aesthetic, or archaeological significance of a specific historic resource or district in accordance with §§ 22-201–22-204 of this chapter.

Designation report means a written document indicating the basis for the findings of the historic preservation board concerning the proposed designation of a historic resource or district pursuant to this chapter.

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

Exterior means all outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

Guidelines mean specific criteria set out in a designation report for a historic district that, if adopted by the historic preservation board, will be used to evaluate alterations, demolitions, relocations, excavations, and new construction within a historic district.

Historic district means a geographically definable area designated pursuant to this chapter possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A historic district may also be comprised of individual elements separated geographically but linked by association or history. A historic district may contain both contributing and noncontributing properties.

Historic preservation board* or *board means the local planning agency, a board of citizens appointed by the town council in accordance with ch. 34, article II, division 3 of this code, that will administer the provisions of this chapter in addition to its other duties.

Historic resource means any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural or archaeological value. Historic resources may also include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the town, the

county, the state or the United States. ~~Significant~~ *Highly important* historic resources may be “designated” by the town in accordance with §§ 22-201–22-204 of this chapter.

Historic resource database means the compilation of data gathered on historical and archaeological sites in the town, based on the findings of the surveys entitled “Historical and Architectural Survey, Lee County” (Florida Preservation Services 1986), “Historical Report and Survey Supplement for Lee County, Florida” (Janus Research 1992, and “An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida” (Piper Archaeological Research 1987), and any subsequent historic or archaeological survey.

National Register of Historic Places means a federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures, and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 USC 470, as such act may be amended, renumbered, or replaced, and its implementing regulation, 36 CFR 60, “National Register of Historic Places,” as such regulations may be amended, renumbered, or replaced.

Noncontributing property means any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances, or other changes and therefore no longer possesses historic integrity, or was not present during the period of historic significance or is incapable of yielding important information about that period.

Ordinary maintenance and repairs means work done to prevent deterioration, decay, or damage to a building or structure, or any part thereof, by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay, or damage.

Owner means those individuals, partnerships, corporations, or public agencies holding fee simple title to real property. The term “owner” does not include individuals, partnerships, corporations, or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

Structure means that which is built or constructed. The term “structure” shall be construed as if followed by the words “or part thereof.”

Undue economic hardship means an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a special certificate of appropriateness for demolition, thereby amounting to the taking of the owner’s property without just compensation.

Sec. 22-4. Penalty.

The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this chapter.

Secs. 22-5--22-40. Reserved.

Sec. 22-41. Appeals.

(a) Any owner of a building, structure, or site affected by the operation of this chapter may appeal a decision of the historic preservation board by filing a written notice of appeal within 15 days of the date the written decision of the historic preservation board was rendered. The notice of appeal shall state the decision being appealed, the grounds for the appeal, and a summary of the relief sought.

(b) Appeals shall be pursued using the procedure set forth in § 34-86 pertaining to appeals from administrative matters, except that the local planning agency shall not be required to hold a second public hearing to render a separate opinion from the decision it made while sitting as the historic preservation board.

Secs. 22-42--22-70. Reserved.

Sec. 22-71. General authority.

The local planning agency, as established through ch. 34, article II, division 3 of this code, shall serve as the historic preservation board for the Town of Fort Myers Beach. The historic preservation board is

hereby vested with the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the town, as prescribed by this chapter.

Sec. 22-72. Reserved.

Sec. 22-73. Reserved.

Sec. 22-74. Powers and duties.

The historic preservation board shall have the following powers and duties:

- (1) To propose rules and procedures to implement the provisions of this chapter to the town council.
- (2) To maintain and update the findings of the historical and archaeological surveys and validate those findings.
- (3) To evaluate the ~~significance and eligibility~~ *level of importance* of historic resources, *and eligibility* for designation pursuant to this chapter.
- (4) To designate eligible historic resources pursuant to this chapter.
- (5) To nominate historic resources to the National Register of Historic Places.
- (6) To approve, deny, or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.
- (7) To issue certificates, place historical Markers *and plaques*, and administer other programs aimed at the proper recognition of designated historic resources.
- (8) To advise the town council on all matters related to historic preservation policy, including use, administration, and maintenance of town-owned designated sites and districts.
- (9) To recommend zoning and building code amendments to the town council to assist in the preservation of designated historic resources or districts.
- (10) To review and make recommendations to the town council on proposed amendments to the comprehensive plan or this code that may affect designated historic resources and districts or buildings, structures, districts, or sites eligible for designation.
- (11) To propose and recommend to the town council financial and technical incentive programs to further the objectives of historic preservation.
- (12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.
- (13) To record and maintain records of the actions and decisions of the historic preservation board.
- (14) To apply for, in the name of the town only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
- (15) To perform any other function or duty assigned to it by the town council.

Sec. 22-75. ~~22-100. Reserved.~~ *Historic Districts*

Four (4) Fort Myers Beach historic districts (FMBHD) have been identified within the town as follows:

FMBHD1 – EARLY BAYSIDE COTTAGE

DISTRICT: Primo Avenue to Pearl Street, includes first bayside canals and early structures.

FMBHD2 – CORE HISTORIC VILLAGE:

Bay Street area, including the Estero Island Historic Society and Matanzas Pass Preserve.

FMBHD3 – CORE BEACHFRONT COTTAGE

DISTRICT: Includes the early Gulf front cottages in the 3000 – 4000 block of Estero Blvd.

FMBHD4 – SOUTH BEACHFRONT COTTAGE

DISTRICT: Beginning near Sterling Street and continues south. Includes largest group of remaining cottages between Estero Boulevard and the beach.

Sec. 22-76. Categories of Historic Importance.

Upon petition or application, the historic preservation board will evaluate the importance of structures/sites within the town's heritage and issue a determination of Category of Historic Importance (CHI) as follows:

CHI-1 - Historic Designation: Assigned to historic and/or archaeological resources that meet the requirement standards for county, state and/or national registration. Subject to LDC Chapter 22, Article II, Division 3 and Division 4.

CHI2 - Historic Recognition: Assigned to resources that meet the criteria of importance to the cultural, religious, educational, commercial, and tourism historical development and/or archaeological resources of the town.

CHI3 - Historic Significance: Assigned to resources that on an individual basis do not constitute a significant site.

but do contribute to the overall significance of a district.

CHI4 - Historic Interest: assigned to areas and vistas that offer insight into understanding the history of the town, the lifestyle of its inhabitants, the historic use of its natural resources and trends in its development.

Secs. 22-77--22-100. Reserved.

Sec. 22-101. Required.

(a) No building, moving or demolition permit shall be issued for a designated historic resource, or a building, structure, or site which is part of a designated historic or archaeological district, until a certificate of appropriateness has been issued.

(b) The criteria for issuance of a certificate of appropriateness (regular or special) shall be:

(1) *For designated historic resources and contributing properties in a historic district:*

a. The U.S. Secretary of the Interior's *Standards for Rehabilitation*, 36 CFR 67.7 (1990), as such standards may be amended, renumbered, or replaced, which are hereby adopted by reference as though set forth fully in this article. Guidance in interpreting the *Standards for Rehabilitation* may be found in the rehabilitation chapter of *The Secretary of the Interior's Standards for the Treatment of Historic Properties, With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, published by the Department of the Interior's National Park Service in 1995; and

b. The specific guidelines, if any, set out in the resolution designating the historic district where the property is located.

(2) *For noncontributing properties in a historic district:* The specific guidelines, if any, set out for noncontributing properties in the resolution designating the historic district where the property is located.

Sec. 22-102. Regular certificate of appropriateness.

(a) A regular certificate of appropriateness shall be required for work requiring a building permit and classified as ordinary maintenance and repair by this chapter, or for any work that will result, to the satisfaction of the director, in the close resemblance in appearance of the building, architectural feature, or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.

(b) The director shall, within five working days from the date a complete application has been filed, approve, deny, or approve with conditions an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a property within a designated historic district. The findings of the director shall be mailed by certified mail, return receipt requested, to the applicant within two working days of the decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the director's decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

Sec. 22-103. Special certificate of appropriateness.

(a) Required.

(1) A special certificate of appropriateness shall be issued by the historic preservation board prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation, or new construction which will result in a change to the original appearance of a designated historic resource or a contributing property within a designated historic district.

(2) A special certificate of appropriateness is also required prior to any new construction, reconstruction, or alteration of a noncontributing property within a designated historic district, except where the director has issued a regular certificate of appropriateness for minor activities that will result in little or no change in appearance.

(3) A special certificate of appropriateness may also be issued to reverse or modify the director's decision regarding an application for a regular certificate of appropriateness or a conditional certificate to dig.

(b) Application. An applicant for a special certificate of appropriateness shall submit an application to the director accompanied by full plans and specifications, a site plan, and, in the case of sites involving buildings or structures, samples of materials as deemed appropriate by the historic preservation board to fully describe the proposed appearance, color, texture, materials, or design of the building or structure and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage, or exterior lighting. The applicant shall provide adequate information to enable the historic preservation board to visualize the effect of the proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district.

(c) Public hearing. The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owners by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of hearing.

(d) Action of historic preservation board. The historic preservation board shall meet and act upon an application for a special certificate of appropriateness on or within 70 calendar days from the date the application and materials adequately describing the proposed action are received. The historic preservation board shall approve, deny, or approve the special certificate of appropriateness with conditions, or suspend action on the application for a period not to exceed 35 calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the historic preservation board to act upon an application on or within 70 calendar days (if no additional information is required) or 105 calendar days (if additional information is required by the historic preservation board) from the date the application was received shall result in the immediate issuance of the special certificate of appropriateness applied for, without further action by the historic preservation board.

(e) Notice of decision. All decisions of the historic preservation board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the special certificate of appropriateness issued by the historic preservation board or the director on the board's behalf. Notice of a decision shall be given to the applicant and to the building official, the director and any other appropriate public agency, as determined by the historic preservation board.

When an application is denied, the notice of the historic preservation board shall provide an adequate written explanation of its decision to deny the application. The director shall keep a record of the historic preservation board's actions under this chapter.

Sec. 22-104. Demolition.

(a) Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition.

(b) Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to article III of this chapter. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. The historic preservation board may make recommendations and suggestions to the governmental agency and the owner relative to the feasibility of and the public interest in preserving the designated resource.

(c) No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner thereof until an application for a special certificate of appropriateness has been submitted to the historic preservation board and approved pursuant to the procedures in this article. The historic preservation board shall approve, deny, or approve with conditions the application for a special certificate of appropriateness for demolition. Refusal by the historic preservation board to grant a special certificate of appropriateness for demolition shall be evidenced by a written order detailing the public interest which is sought to be preserved. The historic preservation board may grant a special certificate of appropriateness for demolition which may provide for a delayed effective date of six months to allow the historic preservation board to seek possible alternatives to demolition. During the demolition delay period the historic preservation board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purpose of this chapter. Such steps may include but shall not be limited to consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving the building or other feature.

(d) The historic preservation board shall consider the following criteria in evaluating applications for certificates of appropriateness for demolition of designated historic resources or contributing properties within a designated historic district:

(1) Is the building or structure of such interest or quality that it would reasonably meet national, state, or local criteria for additional designation as a historic or architectural landmark?

(2) Is the building or structure of such design, craftsmanship, or material that it could be reproduced only with great difficulty or expense?

(3) Is the building or structure one of the last remaining examples of its kind in the neighborhood, the town, the county, or the region?

(4) Does the building or structure contribute significantly to the historic character of a designated historic district?

(5) Would retention of the building or structure promote the general welfare of the town by providing an opportunity for the study of local history or prehistory, architecture, and design, or by developing an understanding of the importance and value of a particular culture and heritage?

(6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?

(7) Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?

(e) Unless demolition has been ordered by a court of competent jurisdiction or another governmental body, a special certificate of appropriateness for demolition of a designated building or structure shall not be issued until there are definite plans for reuse of the property and a building permit or development order for the new construction has been applied for.

(f) If an undue economic hardship is claimed by the property owner as a result of the denial of a special certificate of appropriateness for demolition, the historic preservation board shall have the power to vary or modify adherence to its original decision no later than 35 calendar days from the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner and a subsequent finding by the historic preservation board that retention of the building or structure would deny the owner of all economically viable use of the property, thus creating an undue economic hardship. The owner may present the following evidence as grounds for such a finding:

- (1) For all property, the owner may present:
 - a. The amount paid for the property, the date of purchase, and the party from whom purchased;
 - b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
 - c. The amount of real estate taxes for the previous two years;
 - d. The annual debt service, if any, for the previous two years;
 - e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - f. Any listings of the property for sale or lease, the price asked, and offers received, if any; and
 - g. Any profitable adaptive uses for the property which have been considered by the owner.
- (2) In addition to the items set forth in subsection (f)(1) of this section, the owner may present, for income-producing property:
 - a. The annual gross income from the property for the previous two years;
 - b. Itemized operating and maintenance expenses for the previous two years; and
 - c. The annual cash flow, if any, for the previous two years.

Sec. 22-105. Moving permits.

The historic preservation board shall consider the following criteria for applications for special certificates of appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

- (1) The historic character and aesthetic interest the building or structure contributes to its present setting.
- (2) The reasons for the proposed move.
- (3) The proposed new setting and the general environment of the proposed new setting.
- (4) Whether the building or structure can be moved without significant damage to its physical integrity.
- (5) Whether the proposed relocation site is compatible with the historical and architectural character of the building or structure.
- (6) When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

Sec. 22-106. Archaeological sites.

(a) **Identification.** The survey entitled “An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida” (Piper Archaeological Research, Inc., 1987) was the basis for Figure 22-1, which shall be used:

- (1) to identify areas of archaeological sensitivity levels 1 and 2, for which certificates to dig must be obtained (see § 22-106(c)); and
- (2) as the initial database when considering the formal designation of areas of archaeological sensitivity level 1 as historic resources pursuant to §§ 22-201–22-204.

(b) **Certificate of appropriateness.** A certificate of appropriateness shall be required prior to the issuance of a development order or building permit for activity within an archaeological site that has been designated as a historic resource pursuant to §§ 22-201–22-204.

- (1) An application for a certificate of appropriateness in accordance with §§ 22-101–22-105 shall be accompanied by full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.
- (2) In reviewing the application for a special certificate of appropriateness for a designated archaeological site, the historic preservation board may also require any or all of the following:
 - a. Scientific excavation and evaluation of the site by an archaeologist at the owner’s expense.
 - b. An archaeological survey, conducted by an archaeologist, containing an analysis of the impact of the proposed activity on the archaeological site.
 - c. Proposal for mitigation measures.
 - d. Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in article III, division 2, of this chapter.

(c) *Certificate to dig.* A certificate to dig shall be required prior to or in conjunction with the issuance of a development order or building permit for activity within any area of archaeological sensitivity levels 1 and 2 that may involve new construction, filling, digging, removal of trees, or any other activity that may alter or reveal an interred archaeological site.

(1) If submerged or wetland areas, such as ponds, sloughs, or swamps, are also to be damaged by development or by dredge and fill activities, these shall also be assessed for their potential to contain significant archaeological sites.

(2) The purpose of a certificate to dig shall be to allow sufficient time to conduct any necessary investigations, including the location, evaluation, and protection of significant archaeological sites in areas suspected of having such archaeological sites.

(3) The director shall, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. The director's decision shall be based on the application and any other guidelines which the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate shall specify a period of time during which excavation shall occur, not to exceed 60 days unless the owner agrees to an extension. The owner shall have an archaeologist conduct excavations as necessary during this period. The certificate to dig and any findings shall be mailed to the applicant by certified mail, return receipt requested, within seven calendar days of its review and approval.

(4) The applicant shall have the opportunity to appeal any conditions attached to a certificate to dig by applying for a special certificate of appropriateness within 30 calendar days of the date the conditional certificate to dig is issued. The historic preservation board shall convene no later than 50 calendar days after the date a completed application for a special certificate of appropriateness is filed. Approved certificates to dig shall contain an effective date not to exceed 60 calendar days, at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to §§ 22-201--22-204.

(5) All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the director to inspect work for compliance with such certificate. In the event of noncompliance, the director or the building official shall have the power to issue a stop work order and all work shall cease.

(d) *Human burials.* To knowingly disturb human burial remains is a third degree felony in the state, pursuant to F.S. ch. 872, pertaining to offenses concerning dead bodies and graves. The law includes prehistoric as well as historic period interments, and aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in F.S. ch. 872.

(1) If unmarked human burials are suspected or known in an area under consideration for any certificate of appropriateness or certificate to dig, the area shall be surveyed by a professional archaeologist to locate such remains.

(2) Procedures for dealing with human remains shall be carried out according to F.S. ch. 872. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community, or ethnic relationship with the deceased in order to arrange for their appropriate reinterment or disposition.

Secs. 22-107--22-140. Reserved.

Secs. 22-141--22-170. Reserved.

Sec. 22-171. Financial assistance.

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation projects by the town, the county, the state, or the federal government, provided they meet any additional requirements of those financial assistance programs.

Sec. 22-172. Nomination to National Register of Historic Places.

The historic preservation board shall encourage and assist in the nomination of eligible properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register of Historic Places.

Sec. 22-173. Relief from building regulations.

Designated historic resources and any property in a designated historic district may be eligible for administrative variances or other forms of relief from applicable building codes as follows: Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work has been approved by a regular or special certificate of appropriateness and also by the building official, pursuant to the authority granted to the building official by other ordinances or statutes, provided that:

- (1) The restored building will be no more hazardous based on considerations of life, fire, sanitation, and safety than it was in its original condition.
- (2) Plans and specifications are sealed by a Florida registered architect or engineer, if required by the building official.
- (3) The building official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety, and welfare.

Sec. 22-174. Relief from zoning and development regulations.

The director may, by written administrative decision, approve any relief request for designated historic resources or any property in a designated historic district for matters involving setbacks, lot width, depth, area requirements, height limitations, open space requirements, parking requirements, and other similar relief from this code not related to a change in use of the property in question.

(1) Before granting relief, the director must find that:

- a. The relief will be in harmony with the general appearance and character of the community.
- b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety, or welfare.
- c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.

(2) In granting any relief, the director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:

- a. Landscape materials, walls and fences as required buffering.
- b. Modifications of the orientation of any openings.
- c. Modifications of site arrangements. The owner of a building, structure or site affected by the operation of this chapter and the decision of the director may appeal that decision according to the provisions of ch. 34.

Sec. 22-175. Variances from floodplain regulations.

Variances from the floodplain regulations may be requested pursuant to the terms of ch. 6, article IV.

Secs. 22-176--22-200. Reserved.

Sec. 22-201. Initiation of designation process.

The designation process under this chapter may be initiated by a written petition from the property owner, by a majority vote of the historic preservation board, or at the request of the town council. The historic resource database shall be used initially to identify buildings, structures, and sites potentially eligible for historic designation.

(1) *Designation proposed by owner.* When designation is requested by the owner, a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the property and to aid in the preparation of a designation report. The historic preservation board shall, based on the request and information presented, either ask the director to begin or assist in preparation of a designation report, accept and direct the filing of a designation report prepared by the owner, reject a report submitted for filing, or deny the designation petition. Upon the filing of a designation report, the historic preservation board may request the director to commence the designation and notice process.

(2) *Designation proposed by historic preservation board or town council.* Upon the recommendation of the director, a request by a member of the historic preservation board, or a request by the town council, the historic preservation board may ask the director to prepare or assist in preparation of a designation report. Upon completion of the designation report, the historic preservation board may, by majority vote, initiate the designation process by a motion asking the director to file the designation report and begin the notification process.

Sec. 22-202. Designation report.

Prior to the designation of any historic resource or historic district pursuant to this chapter, a designation report shall be filed with the historic preservation board. The designation report shall contain the following information:

(1) *Individual buildings or sites.* For individual historic or archaeological buildings, structures or sites:

- a. A physical description of the building, structure or site and its character-defining features, accompanied by photographs.
- b. A statement of the historical, cultural, architectural, archaeological, or other significance of the building, structure, or site as defined by the criteria for designation established by this chapter.
- c. A description of the existing condition of the building, structure, or site, including any potential threats or other circumstances that may affect the integrity of the building, structure, or site.
- d. A statement of rehabilitative or adaptive use proposals.
- e. A location map, showing relevant zoning and land use information.
- f. The director's recommendations concerning the eligibility of the building, structure, or site for designation pursuant to this chapter, and a listing of those features of the building's structure or site which require specific historic preservation treatments.

(2) *Historic districts.* For historic or archaeological districts:

- a. A physical description of the district, accompanied by photographs of buildings, structures, or sites within the district indicating examples of contributing and noncontributing properties within the district; also, a list of all contributing properties outside the proposed boundaries of the district.
- b. A description of typical architectural styles, character-defining features, and types of buildings, structures, or sites within the district.
- c. An identification of all buildings, structures, and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
- d. A statement of the historical, cultural, architectural, archaeological, or other significance of the district as defined by the criteria for designation established by this chapter.
- e. A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
- f. A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation, or new construction within the boundaries of the district.

Sec. 22-203. Required notices; action by historic preservation board.

The historic preservation board shall hold timely public hearings upon every petition for designation made pursuant to this chapter. References in this chapter to calendar days shall include Saturdays, Sundays, and legal holidays. References in this chapter to working days exclude Saturdays, Sundays, and legal holidays.

(1) *Notice to owner.* The historic preservation board shall notify the property owners of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. Notice shall be sent by certified mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the director shall furnish the owners with copies of the designation report and this chapter. The director shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions, and address areas of concern prior to the public hearing.

(2) *Notification of public hearing.* For each proposed designation pursuant to this chapter, the historic preservation board shall hold a public hearing no sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice of the intent to designate sent to the owners. Notice of the public hearing shall be published in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of the public hearing.

(3) *Decision deadlines.* Within 14 calendar days after the date of the public hearing, the historic preservation board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this chapter. The rendering of a decision by the historic preservation board shall constitute final administrative action. The historic preservation board shall notify the following parties of its actions and shall attach a copy of the resolution:

- a. The owner of the affected property.
- b. The building official.
- c. The county clerk.
- d. The county property appraiser.
- e. Any other county, municipal, state, or federal agency, including agencies with demolition powers, that may be affected by the decision of the historic preservation board.

(4) *Recording of designation.* All resolutions designating historic resources shall be recorded in the public records of the county within 25 calendar days of the date the historic preservation board renders its decision, unless an appeal of that decision has been filed within the time limits established by this chapter.

(5) *Suspension of activities.* Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation, or excavation on the subject property until final administrative action occurs or the expiration of 75 calendar days from the date the designation report is filed with the historic preservation board, whichever occurs first, unless an appeal of the decision of the historic preservation board is filed. If an appeal is filed as provided in this chapter, the suspension of activities shall continue in effect for an additional 35 calendar days from the date the historic preservation board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner may waive the suspension of activities deadlines set out in this section. Waivers shall be in the form of a notarized statement to the historic preservation board for inclusion in the board's files. The historic preservation board shall notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities expires after 60 days if no public hearing is held.

Sec. 22-204. Criteria for designation.

(a) *Significance generally.* The historic preservation board shall have the authority to designate historic resources based upon their significance in the town's or county's history, architecture, archaeology or culture, or for their integrity of location, design, setting, materials, workmanship, or associations, and because they:

- (1) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric, or architectural history that have contributed to the pattern of history in the community, the county, southwestern Florida, the state, or the nation;
- (2) Are associated with the lives of persons significant in our past;
- (3) Embody the distinctive characteristics of a type, period, style, or method of construction or are the work of a master; or possess high artistic value or represent a distinguishable entity whose components may lack individual distinction;
- (4) Have yielded or are likely to yield information on history or prehistory; or
- (5) Are listed or have been determined eligible for listing in the National Register of Historic Places.

(b) ***Historical or cultural significance.*** A historic resource shall be deemed to have historical or cultural significance if it is:

- (1) Associated with the life or activities of a person of importance in local, state, or national history;
- (2) The site of a historic event with a significant effect upon the town, county, state, or nation;
- (3) Associated in a significant way with a major historic event;
- (4) Exemplary of the historical, political, cultural, economic, or social trends of the community in history; or
- (5) Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.

(c) ***Architectural or aesthetic significance.*** A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:

- (1) Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
- (2) Embodies the characteristics of an architectural style, period, or method of construction;
- (3) Is a historic or outstanding work of a prominent architect, designer, or landscape architect; or
- (4) Contains elements of design, detail, material, or craftsmanship which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response to the south Florida environment.

(d) ***Archaeological significance.*** A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:

- (1) There is an important historical event or person associated with the site;
- (2) The quality of the site or the data recoverable from the site is significant enough that it would provide unique or representative information on prehistoric or historical events;
- (3) The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc.;
- (4) The site was the location of historic or prehistoric activities during a particular period of time; or
- (5) The site maintains a sufficient degree of environmental integrity to provide useful archaeological data.

Such integrity shall be defined as follows:

- a. The site is intact and has had little or no subsurface disturbance; or
- b. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.

(e) ***Not generally eligible.*** Properties not generally considered eligible for designation include cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than 50 years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria described in this section or if they fall within one or more of the following categories:

- (1) A religious property deriving primary significance from architectural or artistic distinction of historical importance.
- (2) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person.

- (3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life.
- (4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
- (5) A property primarily commemorative in nature if design, age, tradition, or symbolic value have invested it with its own historical significance.
- (6) A building, structure, site, or district achieving significance less than 50 years from the date it is proposed for designation if it is of exceptional historical importance.

Sec. 22-205. Amendment or withdrawal of designation.

(a) A request to amend or withdraw the designation of a historic resource shall be made and processed in accordance with the designation procedures and criteria in effect at the time the withdrawal is requested.

(b) A withdrawal request shall also be evaluated as to the following factors:

(1) Whether any reduction or loss of historic or archaeological value was caused by the owner of the designated historic resource (as opposed to unavoidable actions of others or acts of god).

(2) Whether the owner of the designated historic resource has taken advantage of relief pursuant to this chapter that would not have been available without the historic designation.

(3) Whether the requested withdrawal would adversely affect other designated historic resources or nearby historic districts.

Secs. 22-206--22-240. Reserved.

Sec. 22-241. Ordinary maintenance and repair.

Nothing in this chapter shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair do not involve a change of design, appearance (other than color), or material, and do not require a building permit.

Sec. 22-242. Correction of deficiencies generally.

When the historic preservation board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the historic preservation board may request appropriate officials or agencies of government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws, and regulations.

Sec. 22-243. Unsafe structures.

If the building official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of this code, the building official will immediately notify the historic preservation board by submitting copies of such findings. Where appropriate and not in conflict with this code, the historic preservation board shall encourage repair of the building or structure rather than demolition. The building official will, in these instances, take into consideration any comments and recommendations made by the historic preservation board. The historic preservation board may also endeavor to negotiate with the owner and interested parties, provided such actions do not interfere with procedures established in this code.

Sec. 22-244. Emergency work.

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health, or property, nothing contained in this chapter will prevent the temporary construction,

reconstruction, demolition, or other repairs to a historic structure, building, or site or a contributing or noncontributing property, structural improvement, landscape feature, or archaeological site within a designated historic district.

(1) Such temporary construction, reconstruction, or demolition must take place pursuant to permission granted by the building official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out.

(2) The owner of a building or structure damaged by fire or natural calamity will be permitted to immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this chapter.

(3) The owner may request a special meeting of the historic preservation board to consider an application for a certificate of appropriateness to provide for permanent repairs.

Sec. 22-245. Demolition by neglect.

If the director or the building official informs the historic preservation board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this chapter, the historic preservation board shall notify the owners of record by certified mail of its preliminary findings and intent to hold a public hearing no later than 35 calendar days from the date the notice was sent to determine evidence of neglect. The owner shall have until the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner to abate the structural, health, or safety hazards identified in the initial notice within 35 calendar days, the historic preservation board shall hold a public hearing to consider recommending to the building official that the owner be issued a citation for code violation. The owner shall have the right to rebut the preliminary findings of the historic preservation board at the public hearing. If the historic preservation board finds that the building or structure is being demolished by neglect pursuant to this chapter, the historic preservation board may recommend to the building official that the owner be issued a citation for code violations and that penalties be instituted pursuant to this chapter.