

11/5/79

ORDINANCE NO. 1-79

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, CREATING A COMMISSION TO BE KNOWN AS THE TOWN OF PALM BEACH "LANDMARKS PRESERVATION COMMISSION" FOR THE PURPOSE OF ESTABLISHING, REGULATING, PRESERVING AND PROTECTING HISTORIC DISTRICTS AND LANDMARKS WITHIN THE TOWN OF PALM BEACH; PRESCRIBING THE POWERS, DUTIES, AUTHORITY, PROCEDURES AND STANDARDS OF SAID COMMISSION; DEFINING THE PURPOSE AND INTENT OF THIS ORDINANCE; PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A PENALTY FOR A VIOLATION HEREOF; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

Section 1. Purpose and Intent. It is hereby declared to be a matter of public policy that the protection, enhancement and perpetuation of properties of special, notable, aesthetic or architectural character or historic interest or value is a public purpose and necessity and is required in the interest of health, prosperity, safety and general welfare of the people residing within and without the Town of Palm Beach.

The purpose of this ordinance is to:

- (a) Effect and accomplish the protection, enhancement and perpetuation of such properties and of districts which represent or reflect elements of the Town's cultural, social, economic, political and architectural history.
- (b) Safeguard the Town's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.
- (c) Stabilize and improve property values.
- (d) Foster civic pride in the beauty and notable accomplishments of the past.

(e) Protect and enhance the Town's attractions to residents and visitors.

(f) Strengthen the economy of the Town.

(g) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the residents of and visitors to the Town.

Section 2. Definitions. In this ordinance, unless the context clearly requires otherwise:

Alteration: Any change because of construction, repair, maintenance or otherwise to a building located within an Historic District or designated as a Landmark, or Landmark Site.

Applicant: The record owner of the site and/or buildings located thereon, the lessee thereof, or a person holding a "bona fide" contract to purchase same who makes application for a certificate of appropriateness under this ordinance.

Building: Any building or other structure built for shelter or enclosure of persons, animals, or chattels, including fences, signs, paving and boundary walls, and any part of any such building or structure when subdivided by division walls or party walls extending to or above the roof and without openings in such separate walls. The term "building" shall be construed as if followed by the words "or any part thereof".

Certificate of Appropriateness: A document evidencing approval of the Commission for work proposed by an applicant.

Commission or Landmarks Commission: Means the Landmarks Preservation Commission created under this ordinance.

Construction: The erection of an on-site improvement to a Landmark or to a building or any parcel of ground located within an Historic District or on a Landmark Site, whether the site is presently improved or unimproved, or hereafter becomes unimproved by "demolition", "demolition by neglect" or as a result of destruction of an improvement located thereon by fire, windstorm or other casualty, or otherwise (such a parcel of Ground being herein referred to as a "site".)

Demolition: The complete or constructive removal of a building on any site.

Demolition by Neglect: Neglect in the maintenance of any building, resulting in any one or more of the following:

(1) The deterioration of a building(s) to the extent that it creates or permits a hazardous or unsafe condition as determined by the Building official.

(2) The deterioration, as determined by the Building Official, of a building(s) characterized by one or more of the following:

(a) Those buildings which have parts thereof which are so attached that they may fall and injure persons or property.

(b) Deteriorated or inadequate foundation.

(c) Defective or deteriorated floor supports or floor supports insufficient to carry imposed loads with safety.

(d) Members of walls or other vertical supports that split, lean, list or buckle due to defective material or deterioration.

(e) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety.

(f) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.

(g) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that are insufficient to carry imposed loads with safety.

(h) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.

(i) Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.

(3) Action by the Town Council, the Fire Chief or the Building Official based upon the safety or physical condition of any building.

Earthworks: Any subsurface remains of historical, archaeological or architectural importance or any unusual ground formations of archaeological significance.

Exterior: All outside surfaces of a building.

Historic District: An area designated by the Commission which contains one or more Landmarks or Landmark Sites as well as those abutting sites which the Commission determines should fall under the provisions of this section to assure that their appearance and development is harmonious with such Landmarks and Landmark Sites.

Landmark and Landmark Site: An unimproved parcel of ground, including, without limitation, earth works (Landmark Site) or a parcel of ground with improvements (Landmark), wheresoever located in the Town, of particular historic, architectural or cultural significance, which said Landmark or Landmark Site meets at least one of the following criteria:

(1) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; or

(2) is identified with historic personages or with important events in national, state or local history; or

(3) embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship; or

(4) is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Ordinary Repairs or Maintenance: Work done to prevent deterioration of a building or to correct any deterioration or decay of or damage to a building or any part thereof by restoring the building as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner of record: As reflected on the current Palm Beach County tax roll.

Section 3. Landmarks Preservation Commission, Composition and Terms. A Landmarks Preservation Commission is hereby created consisting of seven members. A majority of the members shall have, to the highest extent practicable, a special knowledge of and a known interest in landmarks preservation. Each member except one shall be an owner of property located in or a resident of, the Town. The term for each member shall be three years and each will serve without compensation. The Town Council shall appoint the members from time to time. The first commission shall have two members for one-year terms, two members for two-year terms and three members for three-year terms. A member shall not be appointed for more than two consecutive three-year terms but shall be eligible for reappointment upon the lapse of one year after the expiration of the member's second consecutive three-year term. The Town Council may appoint one or more, but not more than three alternate Commissioners, with similar qualifications to serve in the absence of any regular Commissioners.

Section 4. Powers of the Commission.

(a) No Landmark nor any building on a Landmark Site or within an Historic District shall be erected, altered, restored, moved or demolished until after an application for a Certificate of Appropriateness as to exterior architectural features has been submitted to and approved by the Commission. Similarly, if earthworks of historical or archaeological importance exist in an Historic District, or on a Landmark Site, there shall be no excavating or moving of earth, rock, or subsoil in or about such earthworks without a Certificate of Appropriateness. For the purpose of this ordinance "exterior architectural features" shall include but not be limited to the architectural style, scale, general design and general arrangement of the exterior of a building, including the kind and texture of the building material and the type and style of roofs, windows, doors and signs. The style, scale, design, materials and location of advertising signs and bill posters on a Landmark Site or within an Historic District, if located or

plainly visible from out-of-doors, shall be under the control of the Commission.

(b) The Commission shall not consider interior arrangement or use.

(c) Nothing in this ordinance shall be construed to prevent ordinary maintenance or repairs which do not involve a change of design or material, or affect the outward appearance of a building.

(d) The Commission shall exercise only those powers and duties granted by this ordinance and those powers and duties which may be assigned to it at a later date by the Town Council.

Section 5. Creation of Historic Districts: For preservation purposes the Landmarks Commission shall designate geographically defined areas within the Town to be designated as Historic Districts and shall cite the guideline criteria upon which such designation is made. An Historic District may be designated for any geographic area of particular historic, architectural or cultural significance to the Town which:

(a) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or Town; or

(b) is identified with historic personages or with important events in national, state, or local history; or

(c) embodies distinguishing characteristics of one or more architectural types, or contains specimens inherently valuable for the study of a period, style, or methods of construction or use of indigenous materials or craftsmanship; or

(d) is representative of the notable works of one or more master builders, designers, or architects whose individual ability has been recognized to have influenced their age; or

(e) constitutes a unique density of architecture, scale, landscaping and planning.

Section 6. Petition for Special Historic District Category:

Following the designation of each Landmark or Landmark Site, the Commission shall petition the Town Council for the categorizing of such property as Special District H. Following the designation of each Historic District, the Commission shall petition the Town Council for the categorizing of each property in such District to Special District HD.

Section 7. Certificate of Appropriateness:

(a) The Commission shall prescribe the procedure for making application for a Certificate of Appropriateness.

(b) The applicant shall, upon request, have the right to a preliminary conference with a member of the Commission or of the Commission staff for the purpose of making any changes or adjustments to the application which might be more consistent with the Commission's standards.

(c) The Commission shall hold a public hearing upon each application for a Certificate of Appropriateness affecting property under its control. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the Town at least 30 days before such hearing and by posting such notice on the bulletin board in the lobby of the Town Hall. In addition, notice shall be mailed at least 30 days prior to the date of such public hearing to the applicant and to the Building Official.

(d) Within not more than 45 days after the hearing on an application, the Commission shall act upon it, either approving, denying or deferring action until the next meeting of the Commission, giving consideration to the factors set forth in Section 8 hereof. Evidence of approval of the application shall be by Certificate of Appropriateness issued by the Commission, and whatever its decision, notice in writing shall be given to the applicant and the Building

Official. The Commission shall keep a record of its actions under this ordinance.

(e) No Building Permit shall be issued by the Building Official which affects a building or site in an Historic District or a Landmark or a Landmark Site without a Certificate of Appropriateness.

(f) The Commission shall have the right to make such recommendations for changes and modifications as it may deem necessary in order to enable the applicant to meet the requirements.

(g) Nothing contained herein shall prevent the making of any temporary construction, reconstruction, demolition or other repairs on a Landmark, Landmark Site or a building in an Historic District pursuant to the order of any governmental agency or a court of competent jurisdiction for the purpose of remedying emergency conditions determined to be dangerous to life, health, or property, provided that in case of demolition prior notice of such action shall be given to the Commission.

(h) Where, by reason of topographical conditions, or irregularly shaped lots, or because of unusual circumstances applicable solely to the particular applicant, strict enforcement of the provisions of this ordinance would result in serious undue hardship particularly affecting such applicant, then the Commission, in passing upon his application, shall have the power to vary or modify adherence to this ordinance; provided always that its requirements insure harmony with the general purposes hereof and will not adversely affect an Historic District, Landmark or Landmark Site. Guidelines for the application of this sub-section may be developed by the Commission.

Section 8. Criteria for the Issuance of Certificates of Appropriateness. In passing upon an application for a Certificate of Appropriateness the Commission shall consider the following criteria:

(a) For new Construction:

(1) The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, viz: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationships between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials used in the facade, the texture inherent in the facade, the colors, pattern and trim used in the facade, and the design of the roof.

(2) existing rhythm created by existing building masses and spaces between them should be preserved.

(3) The landscape plan should be sensitive to the individual building and its occupants and needs and should be visually compatible with the buildings and environment with which it is visually related.

(4) A new street facade should blend directionally with other buildings with which it is visually related - which is to say, when adjacent buildings have a dominant horizontal or vertical expression, that expression should be carried over in the new facade.

(5) Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent architectural characteristics of the area.

(b) For exterior alterations:

(1) The criteria set forth in (a) above shall be considered insofar as applicable in applying such criteria provided that the Commission may consider the original design of the building and the buildings visually related to it and disregard alteration subsequently made thereto.

(2) Exterior alterations shall not affect the architectural quality or historical character of the building.

(c) For signs located or plainly visible from out-of-doors the scale, design, materials, style and patterns should be compatible with the buildings and environment with which they are visually related.

(d) For demolition of a Landmark or a building in an Historic District, the following should be considered:

(1) The historic or architectural significance of the building.

(2) The importance of the building to the aesthetics of the District.

(3) The special character and aesthetic interest that the building adds to the District.

(4) The difficulty or the impossibility of reproducing such a building because of its design, texture, material, detail, or uniqueness of location.

(5) The future utilization of the site.

(d) Reconstruction of a non-conforming use building:

The reconstruction of a building legally non conforming as to use and destroyed by fire, storm or other act of God shall be governed by the provisions of the zoning ordinance except that the Commission shall regulate the exterior design of such buildings in accordance with the criteria set forth in (a) above.

Section 9. Commission Powers with Respect to Landmarks, Landmark Sites and Historic Districts:

The Commission shall exercise the following powers:

(a) To designate a building together with its accessory building(s) and its lot of record, or a vacant site or a district as historic and worthy of preservation as a Landmark, Landmark Site or Historic District, as the case may be, within the jurisdiction of the Commission, provided such designation is ratified by the Town Council;

(b) To recommend appropriate legislation for the preservation of any building, site or district which it has so designated;

(c) To make application for public and private funds when

appropriate and available for the purposes set forth in this ordinance subject to the approval of the Town Council;

(d) To review application proposing erection, alteration, restoration or moving of any building which it has so designated or any building located in a district which it has so designated, and to issue or deny Certificates of Appropriateness accordingly;

(e) To review applications for demolition permits proposing demolition of all or part of any Landmark or any building located in an Historic District, and to issue Certificates of Appropriateness or to deny them for one year;

(f) To cooperate with the owner of a Landmark or a property located in an Historic District throughout the year following a refusal to issue a Certificate of Appropriateness pursuant to an application for a demolition permit, and to seek alternative economic uses for such Landmark or property;

(g) To renew its denial of a Certificate of Appropriateness for demolition of such Landmark or property for additional one-year periods indefinitely thereafter, following a public hearing each time at which the owner of the affected Landmark or property shall be afforded an opportunity to appear with counsel and to present testimony;

(h) To prohibit the issuance of building, exterior remodeling or demolition permits affecting any property under consideration for landmark designation, said prohibition to remain in effect for the length of time required by the Commission and the Town Council for final action on the proposed designation. The Commission shall accomplish such prohibition by furnishing the Building Official a list of the street addresses of all property under consideration for landmark designation.

Section 10. Landmark, Landmark Site and Historic District Designation Procedure. The following procedure shall be adhered to by the Commission in designating any building, building site, or district that is worthy of preservation;

(a) The Commission shall consider for landmark designation any property proposed by the owner of record or by a member of

the Commission.

(b) Notice of a proposed designation shall be sent by certified mail to the owner of record of property proposed for designation as a Landmark or Landmark Site and to each owner of record of property in a district proposed for designation as an Historic District, describing the property proposed and announcing a public hearing by the Commission to consider such a designation to be held not less than 30 days after the mailing of such notice.

(c) The Commission shall also cause notice of each such proposed designation to be posted at least 30 days prior to the public hearing on the bulletin board in the lobby of the Town Hall, and in addition the Commission may cause such notice to be published in a newspaper having general circulation in the Town.

(d) The Commission may retain or solicit expert testimony regarding the historic and architectural importance of the buildings and districts under consideration for designation.

(e) The Commission may present testimony or documentary evidence of its own to establish a record regarding the historic and architectural importance of the proposed Landmark, Landmark Site or Historic District.

(f) The Commission shall afford the owner of each affected property reasonable opportunity to present testimony or documentary evidence regarding the historic and architectural importance of such property.

(g) The owner of each affected property shall be afforded a right of representation by counsel and reasonable opportunity to cross examine witnesses presented by the Commission.

(h) Any interested party may present testimony or documentary evidence regarding the designation of a proposed Landmark, Landmark Site or Historic District at the public hearing and may

submit to the Commission documentary evidence within three days after the hearing.

(i) Within not more than 45 days after a public hearing the Commission shall render a final decision regarding the proposed designation and shall give written notice of its decision to each owner of property affected by the designation, setting forth the reasons for the decision.

(j) The Commission may maintain a record of testimony and documentary evidence submitted to the Commission for consideration of the designation of a proposed Landmark or Historic District.

(k) In accord with Section 9 (a) of this Ordinance, the Town Council shall within 90 days ratify the determination of the Commission prior to the becoming effective of the designation of a property as a Landmark or Landmark Site or of a district as an Historic District. Absent such ratification the Commission's determination shall be ineffective.

(l) Within 30 days of the date on which the Town Council ratifies the Commission's designation of a Landmark, Landmark Site or Historic District, the Commission shall cause to be filed in the Office of Recorder of Deeds of Palm Beach County a certificate of notification that such property is designated a Landmark or Landmark Site or is located within a district designated an Historic District, and said certificate of notification shall be maintained on the public record until such time as such designation may be withdrawn by the Commission or the Town Council.

(m) The Town Council, upon receipt of a designation from the Commission, shall hold a public hearing to review and ratify, or decline to ratify, such designation.

(n) Hearings before the Landmarks Preservation Commission shall be held only during the months of November, December, January, February, March and April, except in the year 1979.

Section 11. Demolition by Neglect: In the event the Commission determines that a Landmark is in the course of being "demolished by neglect", it shall notify the owner of record of such preliminary finding stating the reason therefore, and shall give the owner of record 30 days from the date of notice in which to commence work rectifying the evidences of neglect cited by the Commission. Such notice shall be accomplished in the following manner:

(a) by certified mailing to the last known address of the owner of record; or

(b) in the event the procedure outlined in (a) above is not successful, then by attaching such notice to the Landmark twice within a week.

(c) Upon the owner of record's failing to commence work within 30 days of such notice, the Commission shall notify the owner of record in the manner provided above to appear at the next public hearing of the Commission. The Commission shall cause to be presented at said public hearing the reasons for the notice, and the owner of record shall have the right to present any rebuttal thereto. If, thereafter, the Commission shall determine that the Landmark is being "demolished by neglect", the Commission shall inform the Town Council of its determination, whereupon the Town Council may bring charges against the owner of record for violation of this ordinance and the Town Council may cause such Landmark to be repaired at its expense at such time as funds are appropriated therefor, in which event the Town may file an affidavit of the Building Official to such effect in the Office of the Recorder of Deeds for Palm Beach County which shall operate to create to the extent it may lawfully do so, a lien against the property for the funds so expended by the Town.

Section 12. Commission Enforcement Powers:

(a) In performance of their duties, members of the Commission shall have the right to enter upon properties in the Town at reasonable times and upon reasonable notice to the owners thereof.

(b) Upon request of the Commission, the Building Official shall aid the Commission in making necessary inspections in Connection with the enforcement of this ordinance, shall furnish the Commission with copies of reports of his inspection and shall send notices to all persons who may be in violation of the provisions of this ordinance to inform them of such violations.

(c) Failure to comply with the provisions of this ordinance shall constitute a violation hereof and shall be punishable by Town Council by a fine of not more than \$500 per day for each day the violation continues and if the violation continues for more than ten days, in addition to said fine, by imprisonment for not more than 60 days.

Section 13. Appeals: Any person aggrieved by any decision, act or proceeding of the Commission shall have the right to apply in writing to the Town Council for reversal or modification thereof, and the President of the Town Council shall have the right to stay all further action by the Commission or the Building Official until the Town Council shall affirm or disaffirm the decision, act or proceeding of the Commission. Any such appeal shall be taken within 20 days of the date of the decision, act or proceeding of the Commission, and the Town Council shall consider said appeal at its next meeting, but in any event, not more than 45 days thereafter. The Town Council has the right to reverse or modify any decision of the Commission.

Section 14. Rules of Procedure: The Commission shall elect a chairman, a Vice Chairman and a secretary and may adopt rules for the conduct of its meetings. A majority of the Commission shall constitute a quorum for the transaction of business, provided however, that in cases of emergency, if a quorum cannot be obtained the chairman or vice chairman in his absence, and one other member of the Commission may act to prevent an imminent and irreparable violation of the provisions of this ordinance.

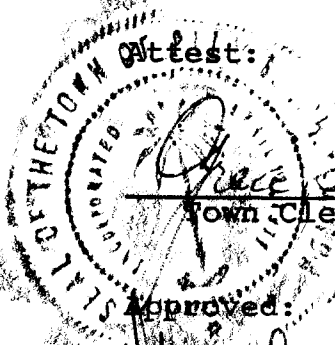
Section 15. Voluntary Restrictive Covenants: The owner of any Landmark or Landmark Site may, at any time following the designation of his property, enter into a restrictive covenant on the property after negotiation with the Commission. The Commission may assist the owner in preparing such a covenant in the interest of preserving the Landmark or the Landmark Site. The owner shall record such covenant in the Office of the Recorder of Deeds for Palm Beach County and shall notify the Town Clerk, Building Official and Town Council and may notify the Office of the County Property Appraiser of Palm Beach County, of such covenant and the conditions thereof.

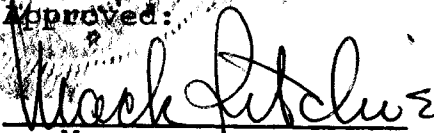
Section 16. Severability Clause: If any provision of this ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications and to this end the provisions of this ordinance are hereby declared severable.

Section 17. Repealer: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 18. Effective Time: This ordinance shall become effective immediately upon its passage and approval as required by law.

Passed and adopted on first reading at a regular adjourned session assembled on the 9th of January, 1979 and on second and final reading on the 13th day of February, 1979.

Attest:


Town Clerk
Approved:

Mark Fitch
Mayor

Walter L. Catthorn

Donald B. Jones

Charles H. Wain

Robert M. Grace

John M. Neuber