

Chap. 40. AN ACT ESTABLISHING A HISTORIC DISTRICT COMMISSION FOR THE TOWN OF SUDBURY AND DEFINING ITS POWERS AND DUTIES, ESTABLISHING A HISTORIC DISTRICT THEREIN, AND PROVIDING FOR HISTORIC DISTRICT ZONING.

Be it enacted, etc., as follows:

SECTION 1. *Purpose.* — The purpose of this act is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, places and districts of historic significance through the development and maintenance of appropriate settings for said buildings, places and districts and through the maintenance of said buildings, places and districts as sites and landmarks compatible with the historic tradition of the town of Sudbury.

SECTION 2. *Establishment of District.* — There is hereby established in the town of Sudbury a historic district, bounded and described as follows:

OLD SUDBURY DISTRICT.

Beginning at a point on the southerly property line of Marion R. Heath, said point being 300 feet easterly of the easterly side line of Concord Road; thence westerly along said line crossing Concord Road and continuing in same direction on land of Emmons 300 feet westerly of the westerly side line of Concord Road to a point; thence northerly 1600 feet, parallel to and 300 feet from the westerly side line of Concord Road to a point; thence in a northwesterly direction approximately 850 feet to a point approximately 170 feet easterly of the center line of the New York, New Haven and Hartford Railroad Co.; thence easterly 400 feet to a point 300 feet westerly of the westerly side line of Concord Road; thence northerly, parallel to and 300 feet westerly of the westerly side line of Concord Road to the southerly line of Morse Road; thence easterly on Morse Road 300 feet to Concord Road; thence southerly approximately 170 feet on Concord Road to a point; thence easterly crossing Concord Road and continuing on the northerly line of land of Warren to a point 300 feet easterly of the easterly side line of Concord Road; thence southerly approximately 1800 feet to a point parallel to and 300 feet from the easterly side line of Concord Road; thence southeasterly crossing Candy Hill Road and along the westerly side line of Candy Hill Lane 500 feet to a point; thence westerly, parallel to and 300 feet from the southerly line of Candy Hill Road to a point 300 feet easterly of the easterly side line of Concord Road; thence southerly, parallel to and 300 feet easterly of the easterly side line of Concord Road to a point 300 feet northerly of the northerly side line of Old Sudbury Road; thence southeasterly approximately 2300 feet parallel to and 300 feet from the northerly side line of Old Sudbury Road; thence northeasterly and southeasterly by a line 300 feet and parallel to Rice Road to a point 300 feet northerly of the northerly side line of Old Sudbury Road; thence easterly parallel to and 300 feet from the northerly side line of Old Sudbury Road to a point in the easterly property line of Fairbank; thence southerly crossing Old Sudbury Road on Fairbank line to a point 300 feet southerly of the southerly side line of Old Sudbury Road; thence northwesterly parallel to and 300 feet from the southerly side line of Old Sudbury Road to a point 300 feet easterly of the easterly side line of Concord Road; thence southerly crossing

Goodman's Hill Road parallel to and 300 feet easterly of the easterly side line of Concord Road to the point of beginning.

SECTION 3. *Definitions.* — As used in this act, the following words and terms shall have the following meanings: —

"Building", a combination of materials having a roof and forming a shelter for persons, animals or property.

"Building inspector", the building inspector of the town of Sudbury.

"Commission", the Historic District Commission established by section four.

"Erected", the word "erected" includes the words "built", "constructed", "reconstructed", "restored", "altered", "enlarged", and "moved".

"Exterior architectural feature", the architectural style and general arrangement of such portion of the exterior of a building or structure as is designed to be open to view from a public street, way or place including the kind, color and texture of the building materials of such portion and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such portion.

"Historic district", the district established by section two.

"Person", the word "person" includes an individual, a corporate or unincorporated organization or association and the town of Sudbury.

"Structure", a combination of materials, other than a building, sign or billboard, but including a stone wall.

SECTION 4. *Creation and Organization of Historic District Commission.*

— A Historic District Commission in the town of Sudbury is hereby established which shall consist of five unpaid members who shall be residents and voters of the town and shall be appointed by the board of selectmen in the manner and for the terms of office as herein provided and until their successors are appointed and qualified: — one member shall be a registered architect, or, in the event that none is available to serve, a person who in the opinion of the board of selectmen by reason of his experience in the building trades is qualified, whose initial appointment shall be for the term of the remainder of the calendar year in which such appointment is made and one year thereafter:

"where possible, three members shall be appointed from among the voters of the various historic districts, whose initial appointment shall be for the term of the remainder of the calendar year in which such appointment is made and three years thereafter; and one member shall be appointed from two nominees of the Sudbury Historical Commission,"

whose initial appointment shall be for the remainder of the calendar year in which such appointment shall be made and five years thereafter. As the terms of office of said members shall expire, their successors shall be appointed in like manner for terms of five years. All nominations for appointment of members of the said commission shall be submitted to the board of selectmen by letter which shall contain a statement of the qualifications of the nominees. Vacancies in the membership of the commission shall be filled by appoint-

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ment for the unexpired term from nominees of the commission who nominated the member who shall have vacated his office. A member who shall absent himself from three consecutive meetings of the commission, without cause, shall be deemed to have vacated his office, and the secretary of the commission shall give notice thereof to the board of selectmen who shall thereupon proceed to fill the vacancy. The commission shall elect a chairman, vice-chairman and secretary from its membership. In the case of absence of the chairman from any meeting, the vice-chairman shall preside.

SECTION 5. *Limitations.* — (a) No building or structure, except as provided under section six, shall be erected within the historic district unless and until an application for a certificate of appropriateness as to exterior architectural features which are subject to view from a public street, way or place shall have been filed with the commission and either a certificate of appropriateness or a certificate that no exterior architectural feature is involved, shall have been issued by the commission.

(b) No building or structure within the historic district, except as provided in section six, shall be changed as to exterior color features which are subject to view from a public street, way or place unless and until an application for a certificate of appropriateness as to change in such color features shall have been filed with the commission and such certificate shall have been issued by the commission.

(c) No building or structure within the historic district, except as provided under section six, shall be demolished or removed unless and until an application for a permit to demolish or remove the same shall have been filed with the commission, and such permit shall have been issued by the commission.

(d) No occupational, commercial or other sign, except as provided under section six, and no billboard which is subject to view from a public street, way or place shall be erected or displayed within the historic district unless and until an application for a certificate of appropriateness shall have been filed with the commission, and such certificate shall have been issued by the commission. In the case of any such sign or billboard erected or displayed prior to the effective date of this act, there shall be allowed a period of five years, subsequent to said effective date, in which to obtain such certificate.

(e) No landscaping feature which was considered in granting a certificate of appropriateness or permit for demolition or removal and referred to in such certificate or permit as a necessary condition to the granting of such approval shall be changed, except for ordinary maintenance.

(f) Except in cases excluded by section six: —

(1) No permit shall be issued by the building inspector for any building or structure to be erected within the historic district, until a certificate of appropriateness or a certificate that no exterior architectural feature is involved has been issued under section nine.

(2) No permit shall be issued by the building inspector for the demolition or removal of any building or structure within the historic district until a permit has been issued under said section nine.

SECTION 6. *Exclusions.* — (a) Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of any building or structure within the historic district;

nor shall anything in this act be construed to prevent landscaping changes except landscaping changes, involving more than ordinary maintenance, which relate to landscaping features considered in granting a certificate of appropriateness or permit for demolition or removal and referred to in such certificate or permit as a necessary condition to the granting of such approval; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration or demolition of any such feature which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, alteration or demolition of any such feature under a permit issued by the building inspector prior to the effective date of this act.

(b) The following structures and signs may be erected or displayed within the historic district without the filing of an application for, or the issuance of, a certificate of appropriateness: —

(1) Temporary structures or signs for use in connection with any official celebration or parade, or any charitable drive in the town; provided, that any such structure or sign shall be removed within three days following the termination of the celebration, parade or charitable drive for which said structure or sign shall have been erected or displayed. Any other temporary structures or signs which the commission shall determine from time to time may be excluded from the provisions of section five without substantial derogation from the intent and purposes of this act.

(2) Real estate signs of not more than three square feet in area advertising the sale or rental of the premises on which they are erected or displayed.

(3) Occupational or other signs of not more than one square foot in area and not more than one such sign, irrespective of size, bearing the name, occupation or address of the occupant of the premises on which such sign is erected or displayed where such premises are located within a single residence district as defined in the zoning by-law of the town of Sudbury.

(c) The exterior color of any building or structure within the historic district may be changed to white without the filing of an application for, or the issuance of, a certificate of appropriateness or to any color or any combination of colors which the commission shall determine from time to time may be used without substantial derogation from the intent and purposes of this act.

SECTION 7. *Application to be filed with Commission.* — Excepting cases excluded by section six, any person who desires to erect, build, construct, reconstruct, restore, alter, move, demolish, remove or change the exterior color features of any building or structure now or hereafter within the historic district, or to erect or display within the historic district any sign or billboard for which a certificate of appropriateness is required under paragraph (d) of section five, shall file with the commission an application for a certificate of appropriateness or a permit for demolition or removal, as the case may be, together with such plans, elevations, specifications, material and other information drawn to scale, as shall be deemed necessary by the commission to enable it to make a determination on the application.

SECTION 8. *Meetings, Hearings, Time for making Determinations.* — Meetings of the commission shall be held at the call of the chairman and also when called in such other manner as the commission shall determine in its rules.

The commission shall determine promptly, and in all events within fourteen days, after the filing of an application for a certificate of appropriateness as to exterior architectural features, whether the application involves any such features. If the commission determines that such application involves any exterior architectural features, the commission shall hold a public hearing on such application. The commission shall also hold a public hearing on all other applications required to be filed with it under this act, except that the commission may approve an application for a change in exterior color features without holding a hearing if it determines that the color change proposed is appropriate.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen days before said hearing and also, within seven days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed by the commission to be affected thereby as they appear on the most recent local tax list, to the planning board of the town, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within forty-five days after the filing of the application, or within such further time as the applicant shall allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within said forty-five days, or within such further time allowed by the applicant, the commission shall be deemed to have approved the application.

SECTION 9. *Powers, Functions and Duties of Commission.* — The commission shall have the following powers, functions and duties: —

(a) It shall pass upon: —

(1) The appropriateness of exterior architectural features of buildings and structures to be erected within the historic district wherever such features are subject to view from a public street, way or place.

(2) The appropriateness of changes in exterior color features of buildings and structures within the historic district wherever such features are subject to view from a public street, way or place.

(3) The demolition or removal of any building or structure within the historic district. The commission may refuse a permit for the demolition or removal of any building or structure of architectural or historic interest, the removal of which in the opinion of the commission would be detrimental to the public interest.

(4) The appropriateness of the erection or display of occupational, commercial or other signs and billboards within the historic district wherever a certificate of appropriateness for any such sign or billboard is required under paragraph (d) of section five.

In passing upon appropriateness, demolition or removal, the commission shall determine whether the features, demolition or removal, sign or billboard involved will be appropriate for the purposes of this act and, if it shall be determined to be inappropriate, shall determine whether, owing to conditions especially affecting the building, structure, sign or billboard involved, but not affecting the historic district

generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this act. If the commission determines that the features, demolition or removal, sign or billboard involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without substantial detriment or derogation as aforesaid, the commission shall approve the application; but if the commission does not so determine, the application shall be disapproved.

In passing upon appropriateness the commission shall consider, among other things, the historic value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features, sign or billboard involved, and the relation of such factors to similar factors of sites, buildings and structures in the immediate surroundings. The commission shall consider the appropriateness of the size and shape of the building or structure in relation to (a) the land area upon which the building or structure is situated, (b) the landscaping and planting features proposed by the applicant and (c) the neighboring sites, buildings or structures within the district. The commission shall also consider the applicable zoning and other by-laws of the town. The commission shall not consider detailed designs, interior arrangement and other building features not subject to public view.

In approving an application the commission may impose conditions which, if the certificate of appropriateness is acted upon, shall be binding upon the applicant, the owner of the property and his successors in title. Prior to approving an application subject to conditions, the commission may notify the applicant of its proposed action and permit the applicant to express his opinion thereon.

The concurring vote of three members of the commission shall be necessary to make a determination in favor of the applicant on any matter upon which the commission is required to pass under this act.

(b) In the case of an approval by the commission of an application for a certificate of appropriateness or a permit for demolition or removal, or in the event an application is deemed approved through failure to make a determination within the time specified in section eight, the commission shall cause a certificate of appropriateness or a permit for demolition or removal, as the case may be, dated and signed by its chairman or vice-chairman, to be issued to the applicant.

(c) In the case of disapproval of an application for a certificate of appropriateness or a permit for demolition or removal, the commission shall cause a notice of its determination, dated and signed by its chairman or vice-chairman in the absence of the chairman to be issued to the applicant, setting forth therein the reasons for its determination, and, as to applications for a certificate of appropriateness, the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, color and similar factors. Prior to the issuance of any disapproval, the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within ten days of the

receipt of such a notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness or permit for demolition or removal, as the case may be, dated and signed by its chairman or vice-chairman in the absence of the chairman, to be issued to the applicant.

(d) In the case of a determination by the commission that an application for a certificate of appropriateness does not involve any exterior architectural feature, the commission shall cause a certificate of such determination, dated and signed by its chairman or vice-chairman in the absence of the chairman to be issued forthwith to the applicant.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations, and may make such rules and regulations consistent with this act and prescribe such forms as it shall deem desirable and necessary.

(f) The commission shall file with the town clerk a notice of all determinations made by it, and approvals of applications through failure of the commission to make a determination within the time allowed under section eight, except that no notice of a determination that an application for a certificate of appropriateness does not involve any exterior architectural feature shall be filed.

(g) The commission may incur expenses necessary to the carrying on of its work within the amount of its appropriation.

SECTION 10. *Appeals.* — Any person aggrieved by a determination of the commission or by an approval of an application through failure of the commission to make a determination within the time allowed under section eight, whether or not previously a party to the proceeding, or any officer or board of the town may, within twenty days after the filing of a notice of such determination or approval with the town clerk, appeal to the superior court sitting in equity for the county of Middlesex. The court shall hear all pertinent evidence and determine the facts and if, upon the facts so determined, such determination or approval is found to exceed the authority of the commission, the court shall annul such determination or approval and remand the case for further action by the commission. The remedies provided by this action shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted in bad faith or with malice in the matter from which the appeal was taken.

Costs shall not be allowed against the party appealing from such determination or approval of the commission unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

SECTION 11. *Enforcement.* — Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than five hundred dollars.

The superior court sitting in equity for the county of Middlesex upon the petition of the board of selectmen shall have jurisdiction to enforce the provisions of this act and the determinations, rulings and regulations issued thereunder and may restrain by injunction violations thereof and issue such other orders for relief of violations as may be required.

SECTION 12. *Changes in Historic District.* — The district established by section two may be enlarged or reduced and new districts may be created by a two-thirds vote at any regular or special town meeting called for the purpose. Prior to any such action, the planning board of the town shall hold a public hearing, duly advertised, thereon and shall report its recommendations to the town meeting.

SECTION 13. *Historic Zoning.* — The town of Sudbury by a two-thirds vote at any regular town meeting or at any special town meeting called for the purpose may enact additions, changes or amendments to its zoning by-laws to assist in carrying out the purpose of this act. Prior to any such enactment, the planning board of said town shall hold a public hearing, duly advertised, thereon and shall report its recommendations to the town meeting.

SECTION 14. *Severability of Provisions.* — The provisions of this act shall be deemed to be severable; and in case any section, paragraph or part of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the validity of any other sections, paragraphs or parts of this act.

SECTION 15. This act shall take effect upon its acceptance by the town of Sudbury.

Approved February 18, 1963.

Chap. 41. AN ACT RELATIVE TO THE SEWAGE DISPOSAL SYSTEM OF THE TOWN OF LENOX.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of any special or general law to the contrary the town of Lenox may pay the entire expenses which may be incurred from time to time in enlarging, extending and improving its sewage and sewage disposal system, without assessing any part of the expenses so incurred upon persons benefited by such enlargement, extension or improvement; but nothing herein contained shall prevent the selectmen or sewer commissioners, as the case may be, from establishing from time to time for the use of common sewers just and equitable annual charges to be paid by every person who enters his particular sewer therein.

SECTION 2. To the extent that the town of Lenox may have heretofore paid the entire expenses of enlarging, extending and improving its system of sewage and sewage disposal without assessing the persons benefited by such enlargement, extension or improvement, such action is hereby validated and confirmed.

SECTION 3. This act shall take effect upon its passage.

Approved February 18, 1963.

Chap. 42. AN ACT EXTENDING THE TIME DURING WHICH THE TOWN OF SOMERSET MAY BORROW TO CONSTRUCT AND OPERATE A SYSTEM OR SYSTEMS OF SEWERAGE AND SEWAGE DISPOSAL.

Be it enacted, etc., as follows:

SECTION 1. Section 8 of chapter 17 of the acts of 1953, as amended by section 1 of chapter 193 of the acts of 1958, is hereby further amended by striking out, in line 3, the word "ten" and inserting in place thereof the