

Chapter 115

HISTORIC PRESERVATION

ARTICLE I

General Provisions

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 10-25-2018 as L.L. No. 5-2018. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Zoning -- See Ch. 210.

Fees -- See Ch. A220.

ARTICLE I
General Provisions

§ 115-1. Title.

This chapter relating to the establishment of landmarks or historic districts in the Village of Alden shall be known as the "Historic Preservation Law of the Village of Alden."

§ 115-2. Purpose.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts is necessary to promote the economic, cultural, educational, and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the Village of Alden has many significant historic, architectural and cultural resources which constitute its heritage, this chapter is intended to:

- A. Protect and enhance the landmarks and historic districts which represent distinctive elements in the Village of Alden special character and its historic, architectural, and cultural heritage;
- B. Foster civic pride in the accomplishments of the past;
- C. Protect and enhance the Village's attractiveness to visitors and to provide stimulus and support to the economy of the Village and its businesses;
- D. Promote the use of historic districts and landmark sites for the education, and pleasure of the Village and all of its residents;
- E. Insure the harmonious, orderly, and efficient growth and development of the Village, while safeguarding the Village's historic, aesthetic and cultural heritage as embodied and reflected in such landmarks and districts.

§ 115-3. Definitions.

For purposes of this Article, the following words shall be interpreted and defined as follows:

ADAPTIVE REUSE -- Conversion of a building originally designed for a certain purpose to a different purpose.

ALTER -- To change one or more exterior architectural and/or historic feature(s) of a landmark, and improvement on a landmark site or a structure within an historic district.

BOARD OF TRUSTEES -- The Board of Trustees of the Village of Alden, County of Erie, State of New York.

BUILDING -- Any structure or part thereof having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods or materials of any kind.

CERTIFICATE OF APPROPRIATENESS -- A certificate issued by the Board of Trustees after approving plans for the alteration, construction, removal or demolition of a landmark, an improvement to a landmark site, or improvement to a structure within an historic district.

CODE ENFORCEMENT OFFICER -- The Code Enforcement Officer of the Village of Alden.

CONSTRUCTION -- Building an addition, making an alteration to an existing structure, or building a new principal or accessory structure.

DEMOLITION -- Destruction in whole or a part of a building, structure, or improvement.

DEVELOPMENT RIGHTS -- The right to develop property.

EXTERIOR -- Architectural style, design, general arrangement, and components of the outer surfaces of an improvement, building or structure as distinguished from the interior surfaces, including but not limited to the kind and texture of building material and the type and style of windows, doors, signs, and other exterior fixtures.

FAÇADE -- The exterior portions of a building or structure that are exposed to view by persons not within the building or structure.

FACADE EASEMENT -- An easement that prohibits or restricts any changes in the facade of a building that would alter or damage its historic integrity or architectural character.

HISTORIC DISTRICT -- A geographically definable area so designated pursuant to this chapter.

HISTORIC TREES -- Those trees designated within the right of way by the Village which must be given the highest degree of protection possible to preserve them for future generations.

HISTORIC STRUCTURE -- Any structure that is:

- 1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs.

IMPROVEMENT -- Any building, structure, place, parking facility, fence, gate, wall, work of art, or other object constituting a physical betterment, or any part thereof.

INTERIOR -- That portion of a building or structure not defined as exterior.

LANDMARK -- Any building, property, object, structure, or natural feature or any part thereof so designated pursuant to this chapter.

LANDMARK SITE -- A significant historical or cultural site(s) where a building or structure no longer exists so designated pursuant to this code.

OWNER -- A person, firm, partnership, corporation or other legal entity which owns the fee title to a property or site, a mortgagee or vendee in possession, a receiver, an administrator or executor, a trustee or any other person, firm, partnership, organization, corporation or other legal entity in control of a property or site.

PRESERVATION -- Retention of essential character of an improvement, object, building, natural feature, or structure as embodied in its existing form, integrity, and

material. This term includes the retention of trees, landscaping, and vegetative cover of a site. This term may include temporary stabilization work as well as ongoing maintenance of historic building materials.

PROPERTY -- A lot, parcel or tract of land together with the building(s) and/or improvements thereon.

PUBLIC PLACE -- A place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, parks, playgrounds, churches, stores, restaurants and municipal buildings or other buildings substantially open to the public.

RECONSTRUCTION -- Restoration to and/or reproduction of the exact form and detail of a vanished building, structure, improvement or part thereof as it appeared at a specific time.

REHABILITATION -- Repair or alteration that enables building, structures or improvements to be efficiently utilized while preserving those features of buildings, structures or improvements that are significant to their historic, architectural or cultural values.

RESTORATION -- The replication, reconstruction or recovery of the form and details of a building, structure or improvement and its site to its original architectural and or historical features.

SITE -- A plot or parcel of land.

STRUCTURE -- Anything constructed or erected which requires permanent or temporary location on the ground. This term shall include, but not be limited to, buildings, walls, fences, signs, billboards, lighting fixtures, screen enclosures, and works of art.

VILLAGE -- The Village of Alden.

VILLAGE CLERK -- The duly appointed clerk of the Village of Alden, County Erie, State of New York.

§ 115-4. Designation of landmarks or historic districts.

- A. The Planning Board of the Village of Alden may recommend to the Board of Trustees an individual property for designation as a landmark if it:

- 1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or
 - 2) Is identified with historic personages; or
 - 3) Embodies the distinguishing characteristics of an architectural style or method of construction; and/or
 - 4) Is the work of a designer whose work has significantly influenced an age; or
 - 5) Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.
- B. Historic districts designated.
- 1) The Planning Board may recommend to the Board of Trustees a group of properties as a historic district if it:
 - (a) Contains properties which meet one or more of the criteria for designation of a landmark; and
 - (b) By reason of possessing such qualities, it constitutes a distinct section of the Village.
 - 2) The boundaries of each historic district actually designated by the Board of Trustees henceforth shall be specified in detail and shall be filed, in writing, in the Village Clerk's office for public inspection and, where directed by the Board of Trustees, shall also be filed in the office of the Erie County Clerk under "Deeds."
- C. Before issuing a notice of proposed designation pursuant to this Chapter, the Planning Board shall notify affected property owners, and refer to appropriate interested agencies for comment, on the designation proposal.
- D. Notice of a proposed designation shall be pursuant to the Planning Board's notification policy. Once the Planning Board has issued notice of a proposed designation, no building permits shall be issued by the Building Department until the Board of Trustees has granted final approval.
- E. The Planning Board shall recommend to the Board of Trustees who shall adopt a resolution rendering its decision with respect to the Planning Board's

recommendation after a public hearing. Such public hearing shall be conducted by the Board of Trustees upon fifteen (15) days' notice to the affected property owners and any immediate adjoining properties. The Board of Trustees may approve the recommendation, reject the recommendation, or remand the matter to the Planning Board with instructions for further review and consideration.

- F. Following the adoption of a resolution approving the designation of a landmark or historic district, the affected site or area shall be so indicated on the Official Map of the Village of Alden and the resolution or other appropriate certificate of the designation shall be filed for recording in the office of the Erie County Clerk.
- G. The Planning Board may recommend designation of an individual property as a landmark if it:
- 1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic, or social history of the locality, region, state, or nation; or
 - (a) Is identified with historic personages; or
 - (b) Embodies the distinguishing characteristics of an architectural style; or
 - (c) Is the work of a designer whose work has significantly influenced an age; or
 - (d) Because of unique location or singular physical characteristics, represents an established and familiar visual feature of the neighborhood.
 - 2) The Planning Board may recommend designation of a group of properties as an historic district if it:
 - (a) Contains properties which meet one or more of the criteria for designation as a landmark; and,
 - (b) By reason of possessing such qualities, it constitutes a distinct section of the Village.
 - 3) The Board of Trustees shall hold a public hearing prior to designation of any landmark or historic district. The Planning Board, owners, and any interested parties may present testimony or documentary evidence at the hearing which shall become part of the record regarding the historic,

architectural, or cultural importance of the proposed landmark or historic district. The record may also contain consultant reports, staff reports, public comments, or other evidence offered outside of the hearing.

- 4) The Village Clerk shall send notice of a proposed designation of a landmark or a district by registered mail to the owner of any property proposed for designation as a landmark or inclusion within a district to the name and address shown on the latest tax roll for the mailing of the Village tax bill, describing the property or district and announcing the time and place of the public hearing by the Board of Trustees to consider the designation. Such notice shall be mailed by the Village Clerk at least fourteen (14) days prior to the date of the public hearing. The Village Clerk shall also cause notice of the time and place of the public hearing to be published in the Village's official newspaper at least ten (10) days prior to the date of the public hearing. Once the Board of Trustees has issued notice of a proposed designation, no building permit shall be issued by the Code Enforcement Officer with regard to that landmark or district until the Board of Trustees has made its decision.
- 5) The boundaries of each proposed historic district designated henceforth and the location of each proposed historic landmark shall be specified in detail and shall be filed, in writing, in the Village Clerk's office for public inspection at least ten (10) days prior to the public hearing.
- 6) Following the public hearing and within thirty (30) days after the Board of Trustees' decision designating a landmark or district, notice of that decision shall be published in the Village's official newspaper and sent by registered mail to the owner of any property so designated and addressed in the same manner as set forth in subsection (4) of this section.
- 7) The Village Clerk shall immediately forward notice of each property designated as a landmark and the boundaries of each designated historic district to the office of the Erie County Clerk for recordation. This notice shall be signed and acknowledged by the Village Clerk or Deputy Clerk.
- 8) Provided the notices are mailed and published as required by this section, the failure of a particular owner to actually receive notice of the hearing or the designating decision shall not invalidate the proceeding or the designation by the Board of Trustees of a landmark or district.

§ 115-5. Certificate of appropriateness for alteration, demolition or new construction affecting landmarks or historic districts.

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or moving of a landmark or property within an historic district, nor shall any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, windows, doors, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Planning Board. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in any preservation district or landmark site that does not involve a change of design and material or the appearance thereof.

§ 115-6. Criteria for approval of certificate of appropriateness.

- A. In passing upon an application for a certificate of appropriateness, the Planning Board shall not consider changes to interior spaces, unless they are publicly owned property. The Board of Trustees' decision shall be based on the following principles:
- 1) Landmarks and properties which contribute to the character of an historic district shall be retained, with their historic features altered as little as possible;
 - 2) Any alteration of existing properties shall be compatible with their historic character, as well as with the surrounding area; and
 - 3) New construction shall be compatible with the individual landmark of the historic district in which it is located.
- B. In applying the principle of compatibility, the Planning Board and Board of Trustees shall consider the following factors:
- 1) The general design, character and appropriateness of the proposed alteration or new construction;
 - 2) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - 3) Texture, materials, and their relation to similar features of the property itself with other properties in the neighborhood;

- 4) Visual compatibility with the property itself and with surrounding properties, including proportion of a building's front facade, proportion and arrangement of windows and other openings within the facade and roof shape, and the rhythm of spacing of properties on streets, including setback and the features such as drives, walks, walls, fences and vegetation; and
- 5) The importance of historic or cultural features to the significance of the property.

§ 115-7. Certificate of appropriateness application procedure.

- A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Planning Board. The application shall contain:
 - 1) Name, address and telephone number of the applicant;
 - 2) Location and photographs of property;
 - 3) Elevation drawings of proposed changes, if available;
 - 4) Perspective drawings, including relationship to adjacent properties, if available;
 - 5) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and
 - 6) Any other information which the Planning Board may deem necessary in order to visualize the proposed work.
- B. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Planning Board. The certificate of appropriateness required by this chapter shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the Village of Alden.
- C. The Planning Board of the Village of Alden shall approve or deny the permit with modifications within 30 days from receipt of the completed application. The Planning Board of the Village of Alden may hold a public hearing on the

application at which an opportunity will be provided for interested parties of the application to present their views.

- D. All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Village Clerk's Office for public inspection. The Planning Board's decision shall state the reasons for denying or modifying any application.
- E. Certificates of appropriateness shall be valid for 24 months, after which the owner must reapply if he still wishes to undertake work on the property.
- F. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in any preservation district or landmark site that does not involve a change of design, material, color or the appearance thereof.

§ 115-8. Hardship criteria for demolition.

An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- A. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
- B. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- C. Efforts to find a purchaser interested in acquiring the property and preserving it have failed; or
- D. The building has been deemed an unsafe structure by the Code Enforcement Officer.

§ 115-9. Hardship criteria for alteration.

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- A. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

- B. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- C. Efforts to find a purchaser interested in acquiring the property and preserving it have failed; or
- D. The building has been deemed an unsafe structure by the Code Enforcement Officer; and/or
- E. The cost of compliance is cost prohibitive to the owner.

§ 115-10. Hardship application procedure.

- A. After receiving written notification from the Planning Board of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Planning Board makes a finding that a hardship exists.
- B. The Planning Board shall hold a public hearing on the hardship application at which an opportunity will be provided for interested parties of the application to present their views.
- C. The applicant shall consult in good faith with the Planning Board, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- D. All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Village Clerk's Office for public inspection. The Planning Board's decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Planning Board shall approve only such work as is necessary to alleviate the hardship.

§ 115-11. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Historic Preservation Planning Board the Building Inspector shall issue a stop-work order is in effect.

§ 115-12. Maintenance and repair required.

- A. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within an historic district that does not involve a change in design, material, and outward appearance.
- B. No owner or person with an interest in real property designated as a landmark or included within an historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Planning Board, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself. Examples of such deterioration include:
- 1) Deterioration of exterior walls or other vertical supports of buildings or structures or site retaining walls and/or stairs.
 - 2) Deterioration of roofs or other horizontal members of buildings or structures.
 - 3) Deterioration of exterior chimneys architectural features such as towers, chimneys or parapets or site features such as stairs or terraces.
 - 4) Deterioration or crumbling of exterior stucco or mortar.
 - 5) Deterioration of weather protective materials and measures for buildings, structures and general site conditions.
 - 6) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition of all or a portion of a property is necessary for the public safety.

§ 115-13. Penalties for offenses.

- A. A violation of any provision of this chapter shall be punishable by a fine of no less than Twenty Dollars (\$20) up to a maximum of Two Hundred Fifty Dollars (\$250) for each day the violation continues.
- B. Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this chapter shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Village Attorney. This civil

remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 115-14. Appeals.

Any person aggrieved by a decision of the Planning Board relating to hardship or a certificate or appropriateness may, within 20 days of the decision, file a written application with the Board of Trustees for review of the decision. Reviews shall be conducted based on the same record that was before the Planning Board and using the same criteria. Notice of such appeal shall be in writing and shall include a copy of the decision appealed from. The Board of Trustees, upon receipt of such appeal, shall schedule a hearing within 30 days. Such hearing shall be upon written notice to the appellant and the Planning Board. Upon such hearing, the Board of Trustees shall have the power to affirm, modify, reverse or remand to the Planning Board for further consideration the decision appealed from.

§ 115-15. Real property tax exemption.

- A. Legislative intent. This section is intended to create a real property tax exemption that preserves or increases the historic character of real property located within the Village of Alden. In particular, this tax exemption for designated landmarks is being enacted for the following goals:
- 1) To increase incentives for property owners in historic districts and owners of historic properties to invest in the upkeep and rehabilitation of historically significant properties.
 - 2) To provide incentive for the restoration and rehabilitation of commercial structures designated as landmarks in order to help attract and retain businesses in the Village of Alden.
 - 3) To assist homeowners interested in restoring their own properties but facing potential increases in taxation resulting from alterations qualifying for this exemption.
 - 4) To provide a concrete benefit for restoring or improving historically or architecturally significant properties.
- B. Application. This real property tax exemption applies to any alteration or rehabilitation of historic property designated by the Village to be a designated

landmark under § 4 of this chapter and as authorized pursuant to § 96-a or § 119-dd of the General Municipal Law and § 444-a of the Real Property Tax Law.

- C. Historic property exemption. Designated landmarks, as defined in § 3 of this chapter, shall be exempt from taxation to the extent of any increase in value attributable to such alteration or rehabilitation pursuant to the following schedule:

	Year of Exemption	Percentage of Exemption
	1	100%
	2	90%
	3	80%
	4	70%
	5	60%
	6	50%
	7	40%
	8	30%
	9	20%
	10	0%

- D. Exemption requirements. No real property tax exemption shall be granted under this section for such alteration or rehabilitation unless:

- 1) Such property has been designated by the Planning Board as an historic district or as a designated landmark under § 4 of this chapter;
- 2) Any alteration or rehabilitation of the exterior and/or any publicly owned interior of a designated landmark meets the guidelines and review standards established in this chapter;
- 3) Any alteration or rehabilitation of the exterior and/or publicly owned interior of a designated landmark is approved by the Historic Preservation Planning Board of prior to commencement of work;
- 4) Such alteration or rehabilitation is carried out for the purpose of historic preservation. For purposes of qualifying for the real property tax exemption pursuant to this section, alterations and rehabilitations shall be deemed to be for the purpose of historic preservation if:
 - a) Only exterior work is involved; or
 - b) Interior work involves the portion of the building designated as a publicly owned interior under this section; or

- c) At least twenty percent (20%) of the total cost of the project is directly attributable to exterior work and/or work that enhances the structural stability or structural integrity of the property; or
- d) The project returns use to a building which has not previously been used for a permissible purpose under applicable zoning ordinances for a continuous period of at least two years; and
- e) Such alterations or rehabilitation is commenced subsequent to the effective date of this section

E. Exemption application.

- 1) This exemption shall be granted only by application of the owner(s) of such designated landmark, on a form prescribed by the State Equalization and Assessment Board. The application shall be filed with the Assessor for the Village or before the applicable taxable status date covering such landmark.
- 2) Such exemptions shall be granted where the Assessor is satisfied that the applicant is entitled to an exemption pursuant to this section. The Assessor shall approve such application and such property shall thereafter be exempt from taxation and special ad valorem levies for Alden real property taxation as herein provided commencing with the assessment roll prepared on the basis of the taxable status date referred to in this section. The Assessor shall enter the assessed value of any exemption granted pursuant to this section on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

§ 115-16. Tax relief.

After a building, structure, site or district has been duly designated as historically significant, the owner or owners of said building, structure, site or district shall be entitled to receive reimbursement from the Village of Alden for those general Village and highway taxes paid by the owner in the first year following the property's historically significant designation and all subsequent years thereafter that such designation shall exist. Application for a refund must be made no later than June 30 of the year that a refund is claimed or the right to claim a refund will be deemed waived for that taxable year. To receive a refund, the applicant shall provide proof of payment of the real property taxes in the form of a date-stamped and/or duplicate tax receipt from the Village Clerk. In no event shall the applicant be entitled to a refund of any penalty for late payment of the tax bill.

§ 115-17. Penalties for offenses.

Any person who demolishes, alters, constructs or permits a landmark to fall into a serious state of disrepair which results in a violation of this chapter shall be required to restore the property and its site to an appearance acceptable to the Planning Board. Any action to enforce this subsection shall be brought by the Village Attorney upon authorization by the Village Board of Trustees. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 115-18. Conflict with other provisions.

Where this chapter imposes greater restrictions than are imposed by the provisions of any law, ordinances or regulations, the provisions of this chapter shall apply. Where greater restrictions are imposed by any law, ordinance or regulations, such greater restrictions shall apply.

§ 115-19. Compliance required prior to action.

No decision to carry out or approve an action subject to the provision of this chapter shall be rendered by any department, board, commission, officer or employee of the Village of Alden until there has been full compliance with all requirements of this chapter. This shall not prohibit environmental, engineering, economic feasibility or other studies. Compliance with this chapter shall be required before commencement of an alteration.

§ 115-20. Jurisdiction.

This chapter shall apply to the Village of Alden.

§ 115-21. Severability.

If any section, clause or provision of this chapter or the application thereof to any person is adjudged invalid, the adjudication shall not affect other sections, clauses or provisions.

§ 115-22. When effective.

This chapter shall become effective immediately upon adoption by the Village and filing with the Secretary of State of the State of New York.