

Town of Magnolia Springs

ORDINANCE 2007-13

AN ORDINANCE TO ESTABLISH A HISTORIC PRESERVATION COMMISSION IN THE TOWN OF MAGNOLIA SPRINGS, TO PROVIDE FOR DESIGNATION OF HISTORIC PROPERTIES OR HISTORIC DISTRICTS; TO PROVIDE FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS; TO PROVIDE FOR AN APPEALS PROCEDURE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

BE IT ORDAINED, by the Mayor and Council of the Town of Magnolia Springs, Alabama, as follows:

Section I. Purpose:

In support and furtherance of its findings and determination that the historical, cultural and aesthetic heritage of the Town of Magnolia Springs is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity and general welfare of the people;

In order to stimulate revitalization of the business districts and historic neighborhoods and to protect and enhance local historical and aesthetic attractions to tourists and thereby promote and stimulate business;

In order to enhance the opportunities for federal or state tax benefits under relevant provisions of federal or state law; and

In order to provide for the designation, protection, preservation and rehabilitation of historic properties and historic districts and to participate in federal or state programs to do the same;

The Town Council of the Town of Magnolia Springs, hereby declares it to be the purpose and intent of this Ordinance to establish a uniform procedure for use in providing for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, objects, landscape features and works of art having a special historical, cultural or aesthetic interest or value, in accordance with the provisions of the Ordinance.

Section II. Definitions:

- A. **Certificate of Appropriateness** – Means a document evidencing approval by the Historic Preservation Commission of an application to make material change in the appearance of a designated historic property or of a property located within a designated historic district.
- B. **Certificate of Economic Hardship** – Means a document evidencing approval of an Owner's application for relief from the application of this Chapter as provided in Section II.
- C. **Exterior Architectural Features** – Means the architectural style, general design and general arrangement of the exterior of a building or other structure, including but not limited to the kind of or texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.
- D. **Exterior Environmental Features** – Means all those aspects of the landscape or the development of a site which affect the historical character of the property.
- E. **Historic District** – Means a geographically definable area designated by the Town Council as a historic district.
- F. **Historic Property** – Means an individual building, structure, site, object or work of art including the adjacent area necessary for the proper appreciation thereof designated by the Town Council as a historic property.

- G. **Material Change in Appearance** – Means a change that will effect either the exterior architectural or environmental features of a historic property or any building, structure, site, object, landscape feature or work of art within a historic district, such as:
1. A reconstruction or alteration of the size, shape or façade of a historic property, including relocation of any doors or window or removal or alteration of any architectural features, details or elements;
 2. Demolition or relocation of a historic structure;
 3. Commencement of excavation for construction purposes;
 4. A change in the location or advertising visible from the public right of way; or
 5. The erection, alteration, restoration or removal of any building or other structure within a historic property or district, including walls, fences, steps and pavements or other appurtenant features.
- H. **Town** – Means the Town of Magnolia Springs, Alabama

Section III. Creation of a Historic Preservation Commission:

A. **Creation of the Commission:**

There is hereby created a commission whose title shall be “Town of Magnolia Springs Historic Preservation Commission” (hereinafter “Commission”).

B. **Commission Members: Number, Appointment, Terms, Compensation and Rules and Standards:**

The Commission shall consist of seven (7) members appointed by the Mayor and ratified by the Town Council. To the extent possible, all members shall be residents of the Town of Magnolia Springs and shall be persons who have demonstrated training of experience in history, architecture, architectural history, American studies, cultural geography, cultural anthropology, planning, archaeology, law, or other related historic preservation field or who shall be residents of a historic district.

Members shall serve three year terms. Members may be reappointed. In order to achieve staggered terms, initial appointments shall be: Two (2) members for one (1) years; two (2) members for two (2) years; and three (3) members for three (3) years. Members shall not receive compensation, although they may be reimbursed for expenses incurred on behalf of the Commission.

Members of the Commission may be removed for cause by the Town Council.

Vacancies on the Commission shall be filled by persons nominated by the Mayor and appointed by the Town Council. Such appointments shall be for the unexpired term of the member replaced.

Members of the Commission shall elect a chairman and a vice chairman and such other officer as the members deem necessary. The Commission shall adopt rules of procedure and bylaws to govern its operations and shall communicate those rules of procedure and bylaws to the Town Council. The rules of procedure and bylaws of the Commission shall specify what number of members of the Commission constitutes a quorum.

The Commission shall have the flexibility to adopt rules and standards without amendment to this Ordinance.

C. **Commission Meetings, Minutes and Public Participation:**

1. All meetings of the Commission must be publicly announced and be open to the public. Commission meetings must occur at regular intervals. Public notice must be provided prior to any special meetings.
2. Minutes of all decisions and actions of the Commission including the reasons for making these decisions must be kept on file and available for public inspection.
3. All decisions of the Commission shall be made in a public forum and applicants must be given written notification of the Commission’s decision.
4. The rules of procedure adopted by the Commission must be available for public inspection.

5. During the process of reviewing properties for nomination to the National Register, the Commission must provide opportunity for public comments.

D. Statement of the Commission's Power:

The Commission shall be authorized to:

1. Prepare and maintain an inventory of all property within the Town having the potential for designation as historic property;
2. Recommend to the Town Council specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts;
3. Review applications for Certificates of Appropriateness and grant or deny same in accordance with the provisions of this Ordinance.
4. Recommend to the Town Council that the designation of any place, district, site, building, structure, objects or work of art as a historic property or as a historic district be revoked or removed;
5. Restore and preserve any historic properties acquired by the Town or acquired by the Commission
6. Promote the acquisition by the Town of façade easements and conservation easements;
7. Develop and conduct educational programs on historic properties located within the Town and on general historic preservation activities;
8. Make such investigations and studies of matters relating to historic preservation employment of historic preservation experts of the Town Council or the Commission it self may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources.
9. Seek out local, state, federal and private funds for historic preservation, and make recommendations to the Town Council concerning the most appropriate uses of any funds acquired;
10. Perform historic preservation activities as the official agency of the Town historic preservation program;
11. Employ person, if necessary, to carry out the responsibilities of the Commission;
12. Receive donations, grants, funds or gifts of historic property;
13. Purchase, sell, contract to purchase, contract to sell, own, encumber, lease, mortgage and insure real and personal property in carrying out the purposes and responsibilities of the Commission. The Commission shall not obligate the Town without prior consent;
14. Review and make comments to the Alabama Historical Commission concerning the nomination of properties within its jurisdiction to the National register of Historic places;
15. Investigate, survey and process nominations of properties to the National Register of Historic Places;
16. Investigate, survey and process applications for certification of historic properties for tax credits for preservation expenditures;
17. Participate in private, state and federal historic preservation programs and with the consent of the Town Council, enter into agreements with the same to perform historic preservation related functions.

E. Annual Reports of the Commission's Activities:

The Commission shall prepare and file with the Town Council and with the Alabama Historical Commission, an annual report of its activities as required by the Town Council and the Alabama Historical Commission. The annual report shall cover the period from October 1st to September 30th and shall be submitted in October of each year. The report shall include such items as the number of cases reviewed, historic district and property designations made, revised resumes of commission members/staff, appointments to the Commission, attendance records and all minutes relating to the review of National Register nominations. The report shall document attendance at the orientation/training session as specified in Section III, H and I.

- F. **Conflict of Interest:**
At any time the Commission reviews a project in which a member of the Commission has ownership or other vested interest, that member will be forbidden from presenting, voting or discussing the project, other than answering a direct question.
- G. **Records of Commission Meetings:**
A public record shall be kept of the Commission's resolutions, proceedings and actions.
- H. **Responsibilities of Commission Members:**
Each Commission member and anyone serving the Commission in a technical/professional staff capacity is required to attend at least two informational or educational meetings per year pertaining to historic preservation. Such meetings may include those sponsored by the Alabama Historical Commission, Board of Advisors, and the National Trust for Historic Preservation or local preservation organization. One of the two should be a regional or statewide meeting.
- I. **Liaison Between the Commission and the State Historic Preservation Office (Alabama Historical Commission).**
Should the Town council elect to become a Certified Local Government, the Town Council shall designate a paid member to the Town's staff or a person working under contract as a source of technical/administrative/professional assistance to be responsible for the operations of the Commission in keeping with the requirements of certification for participation in the Certified Local Government Program. At least one member of the commission and/or the person serving as the Commission's technical staff, and/or a representative appointed by the Mayor who has an ongoing relationship with the Commission, will attend the Alabama Certified Local Government orientation/training session sponsored by the Alabama Historical Commission each year.

Section IV. Recommendation and Designation of Historic Districts and Properties;

- A. **Preliminary Research by Commission:**
1. Commission's Mandate to Conduct a Survey of Local Historical Resources; The Commission shall compile and collect information and conduct surveys of historic resources within the Town.
 2. Commission's Power to Recommend Districts and Buildings to the Town Council for Designation: The commission shall present to the Town Council recommendations for historic districts and properties.
 3. Commission's Documentation of Proposed Designation: Prior to the Commission's recommendation of a historic district or historic property to the Town Council for designation, the Commission shall prepare a report consisting of:
 - a. a physical description;
 - b. a statement of the historical, cultural, architectural and/or aesthetic significance;
 - c. a map showing district boundaries and classification (i.e. historic, non-historic) of individual properties therein, or showing boundaries of individual historic properties
 - d. a statement justifying district or individual property boundaries;
 - e. design standards for development in the historic district; and;
 - f. representative photographs.
- B. **Designation of a Historic District:**
1. Criteria for selection of historic districts; A historic district is a geographically definable area, which contains buildings, structures, sites, objects, landscape features and works of art or a combination thereof, which:
 - a. represents one or more periods, styles or types of architecture typical of one or more eras in the history of the municipality, county, state or region;
 - b. represents a significant aspect of the cultural, political, economic, military or social history of the locality, region, state or nation;

- c. has had a significant relationship with the life of a historic person or event, representing a major aspect of the history of the locality, region, state or nation;
- d. is a part of the historic, architectural, archaeological or aesthetic heritage of the locality, region, state or nation;
- e. contains vernacular structures which contribute to an overall character and sense of place which is representative of the Town or historic district.

2. **Boundaries of a Historic District:** Boundaries of a Historic District shall be shown on the (Official Zoning Map or, in the absence of such a map, on an official map designated as a public record).

3. **Evaluation of properties with Historic Districts:** Individual properties with historic districts shall be classified as:

- a. contributing (contributes to the district);
- b. noncontributing (does not contribute to the district);
- c. Designation of a Historic Property.

1. **Criteria for selection of Historic Properties:** A historic property is a building, structure, site, object, work of art; including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the Town for one of the following reasons:

- a. it is an outstanding example of a structure representative of its era;
- b. it is one of the few remaining examples of past architectural style;
- c. it is a place or structure associated with an event of person of historic or cultural significance to the Town, State of Alabama of the region;
- d. it is a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the municipality, county, state or region; or
- e. the building or structure is an example of an architectural style, or combination of architectural styles, which is representative of the Town or which is unique to the Town.

4. **Boundary Description:** Boundaries shall be shown on the Official Zoning Map or, in the absence of such a map, on an official map designated as a public record.

C. Requirements for Adopting an Ordinance for the Designation of Historic Districts and Historic Properties.

1. **Application for Designation of Historic Districts or Property:** Designations may be proposed by the Town Council, the Commission, or:

- a. for historic districts: a historical society, neighborhood association or group of property owners may apply to the Commission for designation;
- b. for historic properties; a historical society, neighborhood association or property owner may apply to the Commission for designation.

2. **Required Components of a Designation Ordinance:** Any ordinance designating any property or district as historic shall:

- a. list each property in a proposed historic district or describe the proposed individual historic property;
- b. set forth the name(s) of the owner(s) of the designated property or properties;

- c. require that a Certificate of Appropriateness be obtained from the Commission prior to any material change in appearance of the designated property; and
 - d. require that the property or district be shown on the Official Zoning Map, or other designated map in the absence of such a map and kept as a public record to provide notice of such designation.
3. **Required Public Hearings:** The Commission shall hold a public hearing on any proposed ordinance for the designation of any historic district or property. Notice of the hearing shall be published in at least three (3) consecutive issues in the principal newspaper of the local circulation, and written notice of the hearing shall be mailed by the Commission to all owners and occupants of such properties. All such notices shall be published or mailed, not less than ten (10) nor more than twenty (20) days prior to the date set for the public hearing. A notice sent via United States Mail to the last known owner of the property shown on the Town tax roll and a notice sent via United States Mail to the address of the property to the attention of the occupant under this ordinance.
 4. **Recommendations on Proposed Designations:** A recommendation to affirm, modify or withdraw the proposed ordinance for designation shall be made by the Commission within fifteen (15) days following the Public Hearing and shall be in the form of a resolution to the Town Council.
 5. **Town Council Action on Commission Recommendation:** Following receipt of the Commission's recommendation, the Town Council may adopt the ordinance as proposed, may adopt the ordinance with any amendments it deems necessary, or reject the ordinance.
 6. **Notification of Adoption of Ordinance for Designation:** Within thirty (30) days following the adoption of the ordinance for designation by the Town Council, the owners and occupants of each designated historic property and the owners and occupants of each structure, site or work of art located within a designated historic district, shall be given written notification of such designation by the Town Council which notice shall apprise said owners and occupants of the necessity of obtaining a Certificate of Appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated. A notice sent via the United States Mail to the last known owner of the property shown on the Town and the Baldwin County Revenue Commissioner tax roll and a notice sent via United States Mail to the address of the property to the attention of the occupant shall constitute legal notification to the owner and occupant under this ordinance.
 7. **Notification of Other Agencies Regarding Designation:** The Commission shall notify all municipal agencies within the Town of the ordinance for designation.
 8. **Moratorium on Applications for Alteration or Demolition while Ordinance for Designation is Pending:** If an ordinance for designation is being considered, the Commission shall have the power to freeze the status of the involved property.

Section V. Application to Historic Preservation Commission for Certificate of Appropriateness:

A. Approval of Alterations , Demolitions or New Construction in Historic Districts or Involving Historic Properties:

After the designation by ordinance of a historic property or of a historic district, no historic property may be demolished, no building or structure in a historic district may be erected or demolished and no material change in the exterior appearance of such historic property, or of a structure, site, object or work of art within such historic district, shall be made or be permitted to be made by the owner of occupant thereof, unless or until the application for a Certificate of Appropriateness has been submitted to and approved by the Commission

B. Approval of New Construction Within Designated Districts:

The Commission shall issue Certificates of Appropriateness to new structures constructed within designated historic districts if these structures conform in design, scale, building materials, setback and landscaping to the character of the district specified in the design criteria developed by the Commission.

C. **Approval of Signs Within Designated Districts.**

Signs shall be considered as structures and no sign on a historic property or in a historic district shall be changed, erected or demolished unless and until a certificate of appropriateness is approved by the Commission.

D. **Demolitions Within Designated Districts.**

1. **Required Findings-Demolition/Relocation.** The Commission shall not grant Certificates of Appropriateness for the demolition or relocation of any property within a Historic District unless the Commission finds that the removal or relocation of such building will not be detrimental to the historical or architectural character of the district. In making this determination, the Commission shall consider:

- a. The historic or architectural significance of the structure;
- b. The importance of the structure to the integrity of the Historic District, the immediate vicinity, an area, or relationships to other structures;
- c. The difficulty or the impossibility of reproducing the structure because of its design, texture, material, detail or unique location.
- d. Whether the structure is one of the last remaining examples of its kind in the neighborhood, the county, or the region or is a good example of its type, or is part of an ensemble of historic buildings creating a neighborhood;
- e. Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what effect such plans will have on the architectural, cultural, historical, archaeological, social, aesthetic, or environmental character of the surrounding area.

2. **Content of Applications.** All applications to demolish or remove a structure in a Historic District shall contain the following minimum information:

- a. The date the owner acquired the property, purchase price, and condition on date of acquisition;
- b. The number and types of adaptive uses of the property considered by the owner;
- c. Whether the property has been listed for sale, prices asked and offers received, if any;
- d. Description of the options currently held for the purchase of such property, including the price received for such option, the conditions placed upon such option and the date of expiration of such option;
- e. Replacement construction plans for the property in question and amounts expended upon such plans, and the dates of such expenditures;
- f. Financial proof of the ability to complete the replacement project, which may include but not be limited to a performance bond, a letter of credit, a trust for completion of improvements, or a letter of commitment from a financial institution; and
- g. Such other information as may reasonably be required by the Commission.

3. **Post Demolition or Relocation Plans Required.** In no event shall the Commission entertain any application for the demolition or relocation of any Historic Property unless the applicant also presents at the same time the post-demolition or post-relocation plans for the site.

E. **Approval of Alterations or Demolitions of Public Property within Historic Districts or Public Property Which Has Been Designated as a Historic Property.**

The requirement of a certificate of appropriateness shall apply to public property which has been designated as a historic property or which is contained in a historic district, and shall apply to all actions by public authorities which involve historic properties and properties within historic districts.

- F. **Approval of Painting Originally Unpainted Surfaces.**
The painting of originally unpainted surfaces shall require a Certificate of Appropriateness.
- G. **Interior Alterations.**
In its review of applications for Certificates of Appropriateness, the Commission shall not consider interior arrangement or use having no effect on exterior architectural features.
- H. **Failure to Maintain a Historic Property.**
Demolition by neglect and the failure to maintain a historic property or a structure in a historic district shall constitute a change for which a Certificate of Appropriateness is necessary.
- I. **Guidelines and Criteria for Certificates of Appropriateness.**
The Commission shall adopt rules and regulations setting forth the procedure for submission and consideration of applications for Certificates of Appropriateness. The Commission shall also adopt general design standards which shall apply in considering the granting and denial of Certificates of Appropriateness. Design standards shall be in compliance with the Secretary of the Interior's "Standards for Historic Preservation Projects" including the Secretary's "Standards for Rehabilitation."
- J. **Submission of Plans to Commission.**
An application for Certificate of Appropriateness shall be accompanied by such drawings, photographs, plans or other documentation as may be required by the Commission. Applications involving demolition or relocation shall be accompanied by post-demolition or relocation plans for the site.
- K. **Acceptable Commission Reaction to Applications for Certificate of Appropriateness.**
1. The Commission shall approve the application and issue a Certificate of Appropriateness if it finds that the proposed material change(s) in the appearance would not have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district. In making this determination, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of the other structures in the immediate neighborhood.
 2. The Commission shall deny a Certificate of Appropriateness if it finds that the proposed material change(s) in appearance would have substantial adverse effects on the aesthetic, historic or architectural significance and value of the historic property or the historic district. The Commission shall not grant Certificates of Appropriateness for demolition or relocation without reviewing at the same time the post-demolition or post-relocation plans for the site.
- L. **Public Meetings and Hearings on Applications for Certificates of Appropriateness, Notices and Right to be Heard.**
Applications for Certificates of Appropriateness shall be considered by the Commission at public meetings, held at (time) in (place) on the (1st, 2nd, 3rd, or 4th) (day) of each month. At least seven (7) days prior to review of a Certificate of Appropriateness, the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be affected by reason of the application, and shall give applicant and such owners an opportunity to be heard. In case where the Commission deems it necessary, it may hold a public hearing concerning the application.
- M. **Deadline for Approval or Rejection of Application for Certificate of Appropriateness.**
1. The Commission shall approve or reject an application for a Certificate of Appropriateness within forty-five (45) days after the filing thereof by the owner or

occupant of a historic property, or of a historic structure, site, object or work of art located within a historic district. Evidence of approval shall be by a Certificate of Appropriateness issued by the Commission. Notice of the issuance or denial or a Certificate of Appropriateness shall be sent by United States Mail to the applicant and all other persons who have requested such notice in writing filed with the Commission.

2. Failure of the Commission to act within said forty-five (45) days shall constitute approval and no other evidence of approval shall be needed.

N. Necessary Actions to be Taken by Commission upon Rejection or Application for Certificate of Appropriateness.

1. In the event the Commission rejects an application, it shall state its reasons for doing so, and shall transmit a record of such actions and reasons, in writing, to the applicant. The Commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she so desires, may make modifications to the plans and may resubmit the application at any time after doing so.
2. In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of the application for a Certificate of Appropriateness by the Commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such cases, no building permit shall be issued.

O. Appeals.

Any person having a request for a Certificate of Appropriateness denied by the Commission, or Architectural Review Board as hereinafter provided, may appeal such denial to the circuit court within forty-five (45) day of the Commission decision.

P. Certificate of Economic Hardship.

1. **Substantial Economic Hardship.** If the Commission denies an application for a Certificate of Appropriateness, a property owner may apply for a Certificate of Economic Hardship. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this chapter would otherwise impose a substantial economic hardship.
2. **Burden of Proof.** The burden of proof rests on the applicant to show that the denial of the Certificate of Appropriateness will result in a Substantial Economic Hardship.
3. **Applications.** The applicant shall provide such information as may reasonably be required by the Commission to establish the owner's claim of substantial economic hardship. The data provided by the applicant must be substantiated by either professionals in an applicable field or by through documentation of how the information was obtained. The Commission may request additional information was obtained. The Commission may request additional information from the applicant as necessary to make informed decisions. Certificates of Economic Hardship are granted only to the applicant and are not transferable.
4. **Standards for Consideration.** In making its determination, the Commission may consider, but is not limited to, the following described factors, evidence, and testimony
 - a. Date property was acquired and status of the property under this ordinance at the time of acquisition, e.g. whether property was protected by this chapter, condition, etc.
 - b. The structural soundness of the building, or any structures on the property and their suitability for rehabilitation.
 - c. The current level of economic return on the property.
 - d. The economic feasibility of rehabilitation or reuse of the existing property.
 - e. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received, if any, within the previous town (2) years. This determination can include testimony and relevant documents regarding: (1) Any real estate broker or firm engaged to sell or lease the property; (2)

Reasonableness of the price or rent sought by the applicant; and (3) Any advertisements placed for the sale or rent of the property by the owner or applicant.

- f. Comments and/or reports from any community organizations, preservation groups, other associations and private citizens that wish to comment on a submission made under the financial hardware provision; and,
- g. The extent to which the owner is responsible for his or her own economic hardship, if any, such as the owner(s) failure to:

- 1. Perform normal maintenance repair;
- 2. The failure to diligently solicit and retain tenants;
- 3. The failure to prescribe a rental amount which is reasonable;
- 4. The failure to provide normal tenant improvements; and
- 5. The owner's purchase of the subject property after the enactment of the relevant provisions of this Chapter without making said purchase contingent upon the owner(s) first obtaining the approvals required by this Chapter.

5. **Hearing.** The commission shall hold a public hearing as soon as practical but not longer than forty-five (45) days of receipt of a completed application for a Certificate of Economic Hardship. Notice shall be provided in the same manner the Commission uses for hearings on Certificates of Appropriateness. At the hearing, the Commission shall take testimony presented by the owner and any other interested parties on the standards set forth above. The Commission shall issue its decision within forty-five (45) days of the hearing.

- a. If the Commission fails to timely hold a public hearing, or having conducted a hearing fails to render a decision within forty-five (45) days, the applications for a Certificate of Economic Hardship shall be deemed granted.

6. **Denial.** If the Commission determines to deny the application for a Certificate of Economic Hardship, the applicant shall be notified in writing and shall be provide a copy of the Commission's final order.

7. **Initial Determination.** If the Commission makes an initial determination that the applicant has presented a case which may establish substantial economic hardship, but finds that reasonable alternatives may exist which should be addressed by the applicant, the Commission may delay its final order for a period of no more than six (6) months. The applicant shall be notified of the initial determination and shall be provided a copy of the Commission's findings and reasons for the postponement.

8. **Postponement.** Within the period of postponement, the Commission, in cooperation with the Town and the owner, may explore alternatives that will assure reasonable use of the property including, but not limited to loans or grants from public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, or relaxation of the provisions of this chapter sufficient to allow reasonable use of the property.

9. **Issuance of Certificate.** Upon the expiration of the period of postponement, the Commission shall issue the certificate of economic hardship. The certificate may be subject to conditions including design guidelines for subsequent construction not inconsistent with the standards set forth in this chapter and the Commission's design guidelines. The Certificate of Economic hardship shall be valid for a period of one hundred twenty (120) days from approval by the Commission.

Q. Recording of Applications for Certificate of Appropriateness.

The Commission shall keep a public record of all applications for Certificates of Appropriateness and of all the Commission's proceedings in connection with said application.

R. Certificate of Appropriateness Void if Construction not Commenced.

A Certificate of Appropriateness shall become void unless construction is commenced within six (6) months of date of issuance. Certificates of Appropriateness shall be issued for a period of eighteen (18) months and are renewable.

S. Requirements of Conformance with Certificate of Appropriateness.

1. All work performed pursuant to an issued Certificate of Appropriateness shall conform to the requirements of such certificate. In the event work is performed not in accordance with such certificate, the Commission shall issue a cease and desist order and all work shall cease.
2. The Town Council or the Commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this ordinance or to prevent any illegal act or conduct with respect to such historic property or historic district.

T. Technical Advice.

The Commission shall have the power to seek technical advice from outside its members on any application.

Section VI. Maintenance of Historic Properties.

A. Expedited Review Procedures for Approval of Routing Maintenance.

The Commission may adopt expedited review procedures for approval of routine maintenance to historic properties or to buildings or structures in historic districts. Routine maintenance to historic properties includes ordinary maintenance or repair of any exterior architectural or environmental feature in or on a historic property to correct deterioration, decay or damage, or to sustain the existing form that does not involve a material change in design, material or outer appearance. Expedited review procedures shall waive the requirements for submission of an application for a Certificate of Appropriateness and for consideration at a public hearing.

B. Failure to Provide Ordinary Maintenance or Repair.

Property owners of historic properties or properties within historic districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. The Commission shall be charged with the following responsibilities regarding deterioration by neglect;

1. The Commission shall monitor the condition of historic properties and existing buildings in historic districts to determine if they are being allowed to deteriorate by neglect. Such conditions as broken windows, doors and openings which allow the elements and vermin to enter, the deterioration of exterior architectural features, or the deterioration of a building's structural system shall constitute failure to provide ordinary maintenance or repair.
2. In the event the Commission determines a failure to provide ordinary maintenance or repair, the Commission will notify the owner of the property and set for the steps which need to be taken to remedy the situation. The owner of such property will have thirty (30) days in which to do this.
3. In the event that the condition is not met in thirty (30) days, the owners shall be punished as provided in Section IX of the Ordinance and, at the direction of the Town Council; the Commission may perform such maintenance or repair as is necessary to prevent deterioration by neglect. The owner of property shall be liable for the cost of such maintenance and repair performed by the Commission

Section VII. Creation of an Architectural Review Board.

A. Creation of the Board

The Town Council may elect to create an Architectural Review Board, hereinafter called the "Board", to perform the duties and responsibilities of the Commission in accepting,

considering and approving or rejecting applications for Certificates of Appropriateness, as set out in Sections V and VI of this Ordinance.

B. Board Members: Number, appointment, Terms, Compensation, Officers, Rule, and Regulation.

1. If such board is created, it shall be composed of not less than five (5) members who shall have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law. Members of the Board need not be residents of the Town of Magnolia Springs. No member of the Town Council or the Mayor shall serve as members of the Board. Members of the Board shall be nominated by the Mayor of Magnolia Springs and appointed by the Town Council. Except for the original members of the Board, members of the Board shall serve three (3) year terms and shall be appointed in such manner as to serve overlapping terms. Two (2) of the original members of the Board shall be appointed to serve one (1) year terms and the remainder of the original members of the Board shall be appointed to serve three (3) year terms. Members of the Board may be reappointed.
2. Members of the Board may be removed for cause by the Town Council.
3. Vacancies on the Board shall be filled by persons nominated by the Mayor of Magnolia Springs and appointed by the Town Council. Such appointments shall be for the unexpired term of the member replaced.
4. Members of the Board shall elect a chairman and vice chairman and such other officers as the members deem necessary. The Board shall adopt rules of procedure and shall communicate those rules of procedure to the Town Council and Mayor. The rules of procedure of the Board shall specify what number of members of the Board shall constitute a quorum.
5. Members of the Board shall serve without compensation, but may be reimbursed for reasonable expenses incurred on behalf of the board, in accordance with the rules and regulations for the reimbursement of expenses adopted by the Board.
6. The Board may employ such professional, technical, office and other personnel, as may be necessary, to carry out the purposes and responsibilities of the Board.
7. Meetings of the Board shall be public meetings and shall be held at designated times and places as are specified in the Commission's resolution creating the Board.
8. If, in the opinion of the Town Council, the work load of the Board is, or is contemplated to be excessive, the Town Council may create more than one Board, and designate the historic properties and historic districts with which each Board will be concerned. Each historic property and each historic district designated by the Town Council shall be subject to the control of only one Board. Each such Board created shall have all of the powers and authority set forth in this ordinance with respect to the historic properties and historic districts with which it is concerned.

Section VIII. Building and Zoning Code Provision.

A. Affirmation of Existing Building and Zoning Codes.

Nothing in this Ordinance shall be construed as to exempt property owners from complying with existing town building and zoning codes, nor to prevent any property owner from making any use of his property not prohibited by other statutes, ordinances or regulations.

Section IX. Penalty Provisions.

Violations of any provision of this Ordinance shall be punished in the same manner as provided for punishment of violations of other validly enacted Ordinance of the Town.

Section X. Severability.

In the event that any section, subsection, sentence, clause or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and

effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

Section XI. Repealer.

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Section XII. Effective Date

This Ordinance shall become effective on this the 1st day of October, 2007

THEREFORE, BE IT RESOLVED, that the Town Council does hereby ordain, resolve, and enact the foregoing Historic Preservation Commission Ordinance for the Town of Magnolia Springs, Alabama.

Adopted this the 25th day of September, 2007

Date of Implementation: 25th day of September, 2007

Approved:



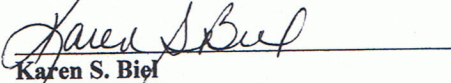
Charles S. Houser - Mayor

ATTEST:



Karen S. Biel - Town Clerk

TOWN OF MAGNOLIA SPRINGS, ALABAMA Certificate of Publication. This is to certify that **Ordinance Number 2007-13**, Town of Magnolia Springs, Alabama was published by posting on at least three (3) Bulletin Boards in the Town from **September 26, 2007 to September 30, 2007**.



Karen S. Biel