

**ORDINANCE NO. 182**  
**NEW GARDEN TOWNSHIP**

**AN ORDINANCE AMENDING THE NEW GARDEN TOWNSHIP  
ZONING ORDINANCE BY ADDING A NEW ARTICLE XX-A. –  
HISTORIC PRESERVATION WITH A HISTORIC RESOURCES MAP**

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the New Garden Township Board of Supervisors, Chester County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by adding a new Article XX-A. as follows:

**Section 200-165. Historic Preservation.** The New Garden Township Zoning Ordinance is amended to provide a new Article XX-A – Historic Preservation.

**Section 200-166. Purpose; Statutory Authority.** The purposes of this Article are:

A. To protect Historic Resources in New Garden Township as authorized under the Pennsylvania Constitution, Article I, §27, and §§604 and 605, of the Pennsylvania Municipalities Planning Code, 53 P.S. §10604 and §10605;

B. To identify all buildings and structures which are important to the culture, history and tradition of the citizens of New Garden Township (hereafter "Historic Resource(s)"), and to create a Historic Resources Map designating the categories of all such identified Historic Resources;

C. To confirm the establishment of a Historical Commission in and for New Garden Township;

D. To establish a process by which proposed changes or demolition affecting Historic Resources are reviewed by both the New Garden Township Historical Commission and the New Garden Township Board of Supervisors; and

E. To encourage the continued use and preservation of Historic Resources consistent with preserving the historic character of those resources and to facilitate their appropriate re-use.

**Section 200-167. Historic Resources Map.** Effective upon the adoption of this Article, buildings and structures identified on the Historic Resources Map shall be deemed Historic Resources.

**Section 200-168. Compliance required; other restrictions.**

A. Compliance. Any demolition, rehabilitation, enlargement, alteration or relocation of a Historic Resource shown on the Historic Resources Map shall occur only in full compliance with the terms of this Article and other applicable regulations. For any Historic Resource shown on the Historic Resources Map, the requirements of this Chapter shall apply, in addition to applicable zoning and other ordinances.

B. Preservation of Other Restrictions. It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants or deed restrictions.

C. Definitions. As used in this Article, the following terms shall have the meanings indicated:

ADAPTIVE REUSE – A Historic Resource which undergoes a process of rehabilitation thus making possible a compatible new use for the property through repair, alteration, and additions, which retain the historic character of the property by retention of distinctive material and features of the structure which convey its historical cultural or architectural value.

CONVERSION – An alteration of a Historic Resource by change of use, theretofore existing, to a new use, which imposes other special provisions of law governing adaptive reuse rehabilitation and zoning regulations.

CONVERSION RESIDENTIAL – A change in density and dwelling type of an existing Historic Resource, by creating party walls and independent cooking, eating, bathing, housekeeping and sleeping areas, thus creating a building containing two or more dwelling units with independent or common outside access.

HISTORIC RESOURCE – Any building or structure which historically is representative and contributing to an understanding of the broad patterns of local, state or national history and identified as an historic building on the Historic Resources Map adopted by this Ordinance.

HISTORIC RESOURCES MAP – The map and supporting materials more particularly described herein.

REHABILITATION – The process of returning a Historic Resource to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the resource which are significant to its historical, architectural and cultural values.

**Section 200-169. Identification of Historic Resources; Historic Resources Map ("Map")**

A. Historic Resources Map

The Board of Supervisors authorizes the research and creation of a Historic Resources Map for the Township ("Map"). The Map shall locate and identify all Historic Resources located within New Garden Township. The Map, as amended, shall be retained in the records of the Township at the Township Office.

B. Classifications

The Map shall delineate one classification of Historic Resources located in the Township. These resources are those Historic Resources designated by the Township as meriting a review prior to the Township issuing a permit for any relocation, rehabilitation, enlargement, alteration or demolition.

Such Historic Resources:

- a. shall have been constructed, or had any portion thereof constructed, prior to January 1, 1940; and
- b. shall have significant character, interest or value as an example of development, heritage or character of New Garden Township, or
- c. shall reflect the environment in an era of history characterized by a distinctive architectural style, or
- d. shall embody distinguishing characteristics of an architectural style or engineering specimen.

C. Revisions

1. The Historic Resources Map may be revised by resolution or other action of the Board of Supervisors.
2. Official List. An official list of all Historic Resources regulated hereunder showing the classification of each resource shall be maintained by the Township Historical Commission and staff and be updated on a regular basis to reflect any changes in classifications.

**Section 200-170. New Garden Township Historical Commission.**

A. Membership.

1. There shall be a Historical Commission, which shall consist of not less than five members who shall be appointed by the Board of Supervisors.

2. The membership of the Commission shall meet the requirements as may be established from time to time by the Board of Supervisors. All members shall be residents of the Township.

3. Each Commission member shall serve for a term of three years. The Board of Supervisors shall fill any vacancies in the Commission. Appointments to fill vacancies for unexpired terms shall be only for the unexpired portion of the term. Members may be re-appointed for successive three year terms.

B. Organization. The Commission shall annually elect a Chairman who will direct activities of the Commission. The Commission shall conduct business at regular public meetings. The Commission shall keep minutes of its meeting, public records of its business and shall submit a report of its activities to the Board of Supervisors by March 1 of each year.

**Section 200-171. Powers and Procedures of the New Garden Historical Commission.**

Powers allocated to the New Garden Township Historical Commission shall include review of proposed rehabilitations, enlargements, alterations, demolition, landscaping, buffering, modifications to bulk and area or use regulations, and relocation of a Historic Resource. Additionally, it shall be called to review and provide recommendations with regard to, revisions or updates to the Historic Resources Map, and subdivision or zoning applications involving impacts upon an identified Historic Resource.

**Section 200-172. Review of Proposed Relocations, Rehabilitations, Enlargements and Alterations.**

A. Building, Zoning, and Other Permits

No building permit, zoning permit or other permit for the relocation, rehabilitation, enlargement or alteration of a Historic Resource shall be issued by the Zoning Officer until the New Garden Historical Commission has reviewed and commented thereon as herein set forth.

B. Zoning Officer

The Zoning Officer shall provide the Historical Commission with a complete copy of the permit application, together with any plans or diagrams required by this Ordinance, within five (5) working days of receipt of a completed application.

C. New Garden Historical Commission

The Commission shall, within thirty (30) days of receipt of the application from the Zoning Officer, review the plans for compliance with the standards contained herein and prepare a written report to the Zoning Officer with a copy to be sent to the Applicant, indicating whether the plans are in substantial compliance with the provisions hereof. The report shall make written suggestions as to what specific changes in the plans would bring them into substantial compliance.

D. Issuance of Building/Zoning Permit

Upon receiving a report of substantial compliance from the Historical Commission, and provided that the plans satisfy all other requirements of the Township, the Zoning Officer shall issue appropriate permit(s).

E. Delaying or Denial of a Building/Zoning Permit

If the Historical Commission's report indicates that the plans are not in substantial compliance with the standards contained herein the Zoning Officer shall not issue permits until:

1. the plans have been revised by Applicant in accordance with the Historical Commission's recommendations, or
2. the Historical Commission documents a compromise that has been worked out with the Applicant, or
3. ninety (90) days have elapsed from the date of the filing of the completed application with the Township, and the Applicant has advised the Zoning Officer and the Board of Supervisors (at a public meeting) that the recommendations of the Historical Commission will not be implemented.

F. Requirement of Good Faith

The Applicant shall work, in good faith, with the Historical Commission to evaluate the Historical Commission's recommendations for changes in the application needed to bring the Application in substantial compliance with this Ordinance.

### **Section 200-173. Landscaping.**

When a Historic Resource is located within a tract proposed for subdivision or land development, a landscape plan for the grounds surrounding the Historic Resource shall be required by the Township as part of the preliminary plan submission.

1. The plan shall be prepared by a registered landscape architect, or by a nurseryman or other individual deemed qualified by the Board of Supervisors.
2. The plan shall show all pertinent information, including the location, size and species of all individual trees and shrubs to be removed, planted or preserved.
3. Through screening, buffering and selection of plant material, the plan shall minimize the impact of the proposed development on the Historic Resource and protect its integrity of setting and any significant vegetation.
4. The landscape plan shall be submitted to the New Garden Historical Commission for its review and comments prior to any decision by the Board of Supervisors on the subdivision or land development plan.

### **Section 200-174. Modified Area and Bulk and Special Use Provisions.**

In the interest of preserving the Township's Historic Resources and the historic context of these resources, and to encourage appropriate use/reuse of a resource, modifications to the lot size, dimension, and yard size and/or use may be permitted, by the Board of Supervisors, through the grant of a Conditional Use, provided the standards, conditions and procedures of this section are met.

#### **A. Allowable Modifications.**

1. **Lot Standards.** In a subdivision proposing to use the Lot Averaging or Cluster Development option in accordance with Articles XV and XVI of the Zoning Ordinance, the lot size authorized in those Articles may be adjusted downward for an identified Township Historic Resource in cases where the Historic Resource contains two or more contributing structures (barns, springhouses, etc.) to accommodate conversion of these structures to residential use to preserve the integrity of the Historic Resource.
2. **Number of Dwellings.** In subdivisions proposing to use the Lot Averaging or Cluster Development option, an additional Dwelling Unit may be created in excess of the maximum number of Dwelling Units otherwise permissible under this ordinance for each contributing structure in a Township Historic Resource to be preserved as a Dwelling Unit in the subdivision plan.

3. Setbacks. In proposed subdivisions, setback requirements may be modified if necessary to preserve the integrity of an identified Historic Resource.

B. Special Use Provision for Adaptive Reuse or Conversion.

1. Bed and Breakfast. Conversion to a Bed and Breakfast use of a Historic Resource (or contributing structure) may be allowed even if the building is not an owner-occupied single-family dwelling or does not meet the minimum lot size and setback requirements of the Zoning Ordinance.

2. Residential. Conversion of a currently non-residential Historic Resource (barn, springhouse, etc.) into residential use, may be allowed even if the lot does not meet the size requirement of the base zoning. Multiple family use may also be allowed as long as the property meets the area and bulk requirements of the Zoning Ordinance.

3. Professional Office. Conversion to professional office use of a Historic Resource may be allowed in a residential area without requiring all of the constraints of a home business.

C. Procedures. The Zoning Officer shall provide a copy of the plan to the Historical Commission which shall issue its recommendation to the Board of Supervisors within thirty (30) days and whose report shall be admissible into evidence at a Conditional Use hearing.

**Section 200-175. Relocation of a Historic Resource.**

In the case of a proposed relocation of a Historic Resource, the Historical Commission shall consider:

A. whether or not the proposed relocation will have a detrimental effect on the Historic Resource;

B. whether or not the proposed relocation will provide an environment that will be a compatible cultural landscape, that is, one that is harmonious with the historic and/or architectural aspects of the building or structure;

C. whether or not the proposed relocation will further the achievement of the purposes described herein.

**Section 200-176. Design Standards for Historic Resources.**

A. New Garden Township strongly recommends that any proposed rehabilitation, alteration or enlargement of a Historic Resource be in substantial compliance with the standards for rehabilitation which are then currently adopted by the Township. At the time of enactment

of this Article, those standards are as printed in Appendix "A", attached hereto and incorporated herein. The standards for rehabilitation, alteration or enlargement of Historic Resources may be amended from time to time by Resolution of the Township.

B. For an application to rehabilitate, alter or enlarge a Historic Resource to be eligible for any additional use or zoning opportunities, it shall meet the following standards:

1. Floor area: No Historic Resource may be enlarged beyond what is minimally necessary to accommodate the expanded use.

2. Additions. For a Historic Resource, an addition shall only be permitted if it does not negatively impact the front or major façade of the historic resource.

3. Signs. Signs for Historic Resources shall adhere to the following standards:

a. Number: No more than one sign may be erected on any one street frontage of any lot.

b. Format:

i. a sign may be placed flat upon the wall of the building to which it relates, or constitute part of the architectural design of such building; the size of such sign shall not exceed ten (10) square feet; or

ii. a sign may project from the building to which it relates a maximum of six (6) feet; such sign shall be limited to two faces and shall not exceed ten (10) square feet per face; or

iii. a sign may be free-standing, with two faces, with an area not exceeding ten (10) square feet per face, with the stop of the sign not to exceed eight (8) feet from the ground level.

c. Lighting of Signs: Free-standing signs shall only be illuminated from ground level.

d. Materials: Natural materials are preferred for signs relating to Historic Resources. Under no circumstances will plastic, internally illuminated signs be allowed in relation to an identified Township Historic Resource.

## **Section 200-177. Demolition of Historic Resources**

No Historic Resource may be demolished until the Applicant obtains a permit and complies with the following additional procedures.

### **A. Application:**

The Applicant shall file with the Zoning Officer, who shall forward the same to the Historical Commission within five (5) days, the following items:

1. one copy of the application for demolition,
2. complete documentation of the resource proposed for demolition, including recent interior and exterior photographs, exterior measurements, and plans of each level.
3. a site plan showing all buildings on the property, and
4. an explanation of (1) the reasons for demolition, and (2) the future use of the site. This must include:
  - a. a statement of whether the property is capable of generating a reasonable return with the resource left in place,
  - b. a statement of whether the resource is adaptable to some other use which would result in a reasonable return,
  - c. a financial statement of whether rental or other use of the property in its current or an improved condition can provide a reasonable rate of return,
  - d. a statement that a demonstrable, good-faith attempt has been made to sell the resource to someone interested in preserving it, and
  - e. a proposed site plan for development after the demolition.
5. No permit for demolition may be issued until the Applicant has obtained Township approval of plans for the development.

### **B. Documentation of Historic Resources**

Within thirty (30) days of the Township's receipt of a completed application for demolition of any Historic Resource, the Applicant shall permit the Historical Commission, at a mutually agreeable time and date, to enter the Historic Resource and document, for the

Township records, the Historic Resource and the property associated therewith. Such documentation may include, but is not limited to photographic and video documentation. Documentation authorized by this section shall be conducted on a date and time agreeable to both the Historical Commission and the Applicant. All such documentation shall become the property of the Township. The Historical Commission will not disturb or move any personal property of the applicant during such documentation.

C. Review Meeting

Within thirty (30) days of receipt of a complete application, the Historical Commission shall at a regular or special meeting review the application for demolition. The Applicant will be notified in writing of the meeting and encouraged to present written and photographic evidence in support of his application. In reviewing the application, the Historical Commission shall take into account:

1. The effect of demolition on the historical significance and architectural integrity of neighboring contributing Historic Resources;
2. Economic feasibility of adaptively reusing the resource proposed for demolition;
3. All conceivable alternatives to demolition of the resource, including relocation of the structure;
4. Any expert testimony, such as, but not limited to, certified engineering report regarding the structural stability of the resource, that would indicate threats to public safety.

D. Historical Commission Written Recommendation

Within fifteen (15) days following conclusion of the meeting, the Historical Commission shall set forth its recommendation in a written report to the Board of Supervisors and the Applicant.

1. In specific cases as will not be contrary to the public interest, where, owing to demonstrated special conditions, as determined herein, a literal enforcement of the provisions of this Section would result in unnecessary hardship, the Historical Commission may recommend that the Board grant an exemption from the requirements of this Section, subject to such terms and conditions as the Historical Commission may recommend so that the spirit of this Article shall be observed and substantial justice done.

2. Every recommendation of the Historical Commission shall be in writing and shall state the reasons for the decision. The decision shall contain the findings of fact that

constitute the basis for the decision. In any case where the Historical Commission objects to the issuance of a permit required under this Section, the Historical Commission shall furnish the Applicant with a copy of the Historical Commission's decision, together with a copy of any recommendations the Historical Commission may have made for changes necessary to be made before the application will be reconsidered by the Historical Commission.

3. In case of hardship, the Historical Commission may contribute to the documentation prescribed by the Board.

E. Township's Response

Within thirty (30) days of the review of the demolition application by the Historical Commission, or such extended time as may be agreed by the Applicant, the Township shall approve the demolition application consistent with applicable law.

F. Demolition by Neglect

1. Demolition by neglect shall not be used as an automatic excuse by an Applicant as justification for an active demolition application.

2. When an owner has held an identified Historic Resource property for at least five years and allowed the property to fall into the category of demolition by neglect due to lack of routine maintenance, and cannot provide that the negligence has occurred due to lack of financial ability to provide maintenance, such owner shall be deemed in violation of the terms of this Section.

3. Enforcement and penalties that pertain to active demolition shall also pertain to passive (by neglect) demolition.

G. Enforcement

1. Violations and Penalties. Any person who violates the terms of this Ordinance shall be subject to the penalties imposed under Article 200-146, as well as applicable penalties imposed under Township Building and Fire Codes.

H. Appeal Procedures

1. Any person aggrieved by a recommendation of the Historical Commission and decision by the Board may, within thirty (30) days after receiving notice of the decision, either (a) file an appeal therefrom to the Zoning Hearing Board, or (b) apply for reconsideration of the initial decision, by filing with the Zoning Officer a written notice requesting the Board to review said decision. In such event, the Board's decision shall be considered a final adjudication under the MPC.

**Ratification.** Except as specifically amended hereby, the New Garden Township Zoning Ordinance is hereby ratified and confirmed in its entirety.

**Severance.** If any sentence, clause, section or part of this Zoning Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Zoning Ordinance. It is hereby declared to be the express intent of the Board of Supervisors that this Zoning Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or parts thereof had not been included herein.

**Repealer.** All Zoning Ordinances, or parts thereof, conflicting or inconsistent herewith are hereby repealed.

**Effective Date.** This Zoning Ordinance shall become effective five (5) days after the adoption and enactment hereof.

**ORDAINED** and **ENACTED** this 10<sup>th</sup> day of August, 2009.

**ATTEST:**

**BOARD OF SUPERVISORS OF  
NEW GARDEN TOWNSHIP**

BY: James M. Neal  
James Neal, Chairman

BY: Robert Perrotti  
Robert Perrotti, Member

BY: \_\_\_\_\_  
Stephen E. Allaband, Member

BY: Robert Norris  
Robert Norris, Member

BY: C. Barclay Hoopes  
C. Barclay Hoopes, Member

H. Puhler  
Secretary

## **APPENDIX "A"**

### **STANDARDS FOR REHABILITATION**

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.