

**TOWNSHIP OF MILLBURN  
ORDINANCE 2658-24  
ORDINANCE AMENDING AND SUPPLEMENTING THE TOWNSHIP OF MILLBURN  
DEVELOPMENT REGULATIONS AND ZONING ORDINANCE**

**WHEREAS**, the 2018 Master Plan Reexamination and Update provides goals and objectives for future land use policy in the Township; and

**WHEREAS**, the Goal 1 of the Master Plan Reexamination and Update seeks to, “Encourage appropriate land uses that promote the character of the Township as a small suburb of the highest quality;” and

**WHEREAS**, Objective 1.01 of the Master Plan Reexamination and Update recommends the Township, “Protect the character of established residential neighborhoods and encourage land use and development at an appropriate scale and density;” and

**WHEREAS**, the Master Plan Reexamination and Update recommends the Township, “Monitor recent tear downs and new construction in single-family districts to determine whether additional zoning modifications are necessary to protect neighborhood character.”

**WHEREAS**, the Millburn Township Planning Board adopted a new Historic Preservation Element of the Master Plan on August 16, 2023; and

**WHEREAS**, the Township seeks to provide for enhanced protection of the Township’s historic resources and districts, as well as such structures or districts identified as potentially historic; and

**WHEREAS**, regulations requiring approval by the Historic Preservation Commission for partial or total demolition or relocation of historic resources are considered to be an effective tool to protect the Township’s historic assets and character.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLBURN, IN THE COUNTY OF ESSEX AND STATE OF NEW JERSEY, AS FOLLOWS** (additions are underlined and deletions appear as strikethroughs):

**Section 1: DRZ 805 – Certificates of Appropriateness**

§DRZ 805.1 – When Required. A Certificate of Appropriateness (or "CA") issued by the Commission shall be required before any work is commenced on any historic landmark or within any historic district, whether or not a construction permit is required for such work, including but not limited to the following activities listed below. Work associated with a development application requiring ultimate approval by the Planning Board or the Zoning Board of Adjustment is not exempt from this requirement.

- a. Changing the exterior appearance of any building, structure, site, object or improvement by addition, reconstruction, alteration, or replacement, including, but not limited to, the addition or alteration of windows, doors, roofing, fences, signs, awnings, porches, railings, steps, materials, finishes, exterior lighting, solar panels, communication devices, sidewalks, paving, or streetscape work except for the activities described in Section 805.2 below.
- b. ~~Demolition of any building, structure, site, object or improvement.~~ Demolition of less than substantially all of any building or the façade of any building. Activity in this category shall be reviewed according to the criteria and standards in § DRZ 807 and § DRZ 811.e.3.
- c. Relocation of a principal or accessory building, structure, site, object, or improvement.

- d. Any addition to or new construction of a principal or accessory building, structure, site, object, or improvement
- e. Total demolition of any landmark or any building, structure, site or object located within a landmark district, including total demolition associated with a development application either pending before or approved by the Planning Board or Zoning Board of Adjustment, or of an historic resource as defined in § DRZ 811.a, is governed by § DRZ 811.

## **Section 2: DRZ 811 - Demolition of Historic Resources.**

Article XXIII – Historic Preservation is hereby supplemented to include the following §DRZ 811 – Demolition of Historic Resources.

### §DRZ 811 - Demolition of Historic Resources.

#### a. Purpose.

1. This article aims to preserve the integrity and authenticity of historic resources and the character, ambience, and stability these structures bestow on the neighborhoods and the community. The Township's historic resources are woven into the fabric and identity of the community. The demolition of an historic resource is a tear in that fabric that qualitatively changes the ambience and environment.
2. It is the Township Committee's intent that this article provide notice to current owners and those who in the future will own historic resources that the Township regulates and protects its historic resources, including prohibiting demolition in cases where the application of the criteria and standards set forth in this article support that conclusion.
3. The Township Committee recognizes that the Township's property owners and public officials are stewards of the lands and historic resources, committed to encouraging and managing appropriate growth while preserving and protecting the historic and natural environment.
4. The authority and procedures of the Planning Board and Board of Adjustment are intended to regulate what can be built on a particular property, and not whether an historic resource should or should not be demolished. As authorized by the Municipal Land Use Law, N.J.S.A. 40:55D-111, the Historic Preservation Commission has approval power concerning historic preservation over those aspects of a development application not determined by either land use board.
5. The Historic Preservation Commission is constituted by statute with the expertise and judgment to determine the impact of the demolition of an historic resource. It is the intention of this section to confer the maximum authority consistent with the Municipal Land Use Law, particularly N.J.S.A. 40:55D-111, to review and approve or disapprove applications to demolish an historic resource.
6. The Township Committee recognizes that many applications subject to review because of the property location or the broad definition of "demolition" will have little or no impact on the historic context or character of the Township. To minimize the delays and costs to both the applicant and the Township associated with such review, this article also provides for an expedited procedure for low-impact cases.
7. It is not the intent of this article to discourage contemporary architectural expression or to encourage new construction that emulates existing buildings of historical or architectural interest or of a certain period or architectural style, but to preserve historic

resources and the integrity of historic districts for the purposes enumerated in this article.

- b. Definitions. As used in this section, the following terms shall have the meanings indicated.

**HISTORIC RESOURCES**

Includes any property historic building, structure, or site 1) located in a federally, state- or locally designated historic zoning district; or 2) located on a federally, state- or locally designated historic site identified on the Zoning or Official Map; or 3) identified as historic or potentially historic in the Historic Preservation Element of the Master Plan with a documented historic survey filed with the New Jersey State Historic Preservation Office. The Township Building Department shall maintain a list of properties deemed to be historic resources, and a notation to that effect added to the property record in the Tax Assessor's office.

**PARTIAL DEMOLITION and PARTIALLY DEMOLISHED**

Any razing, dismantling, destruction, removal, or demolition of less than 50% of the total building, site or structure as calculated by the surface area of any visible facade, exterior wall and/or architectural element, including removal of a building, site, or structure, which may or may not include the foundation.

**TOTAL DEMOLITION and TOTALLY DEMOLISHED**

This section shall be applicable to the razing, dismantling, destruction, removal, or demolition (collectively referred to as "demolition") of all or substantially all of any historic resource, including any publicly visible facade, including removal of a building, site, or structure from its site, which may or may not include the foundation. "Total demolition," which is subject to this section, is to be distinguished from "demolition" as defined in this section, which is a broader category that includes total demolition. "Substantially all" of a building, site or structure means at least 50% of the exterior walls or publicly visible facade wall, as measured by the exterior surface area of the building, site or structure. Any demolition (partial or total) proposed within five years of a previous demolition permit issuance for the same property will be considered cumulatively with respect to the percentage of exterior walls or facade demolished or removed when determining whether total demolition is sought.

**TOTAL DEMOLITION PERMIT**

A separate permit distinct from a construction or building permit issued by the Construction Official, specific to enforcement of the Millburn Code zoning provisions concerning historic preservation.

- c. Notice to property owners. No later than 90 days after the effective date of this section, and no later than 90 days after this section becomes newly applicable to a property by way of a documented historic survey being filed with the New Jersey State Historic Preservation Office, adoption of an ordinance by the Township Committee designating a new individual landmark property or district, or otherwise, the Township shall notify the owner of each property that as of said date is or contains an historic resource as defined in § DRZ 811.b that said property is subject to the requirements of this section. Notice may be provided by regular mail to the last-known address of the owner of record as found on the Tax Assessor's records. Failure to receive notice shall not relieve the property from compliance with the provisions hereof.

d. Permits for total demolition or removal of historic resources.

1. No historic resource shall be totally demolished unless a total demolition permit has been issued as provided in this article. This article is applicable regardless of whether a demolition permit issued by the Construction Official is required.
2. This article applies to all historic resources, including those that would be totally demolished in connection with a development application to the Zoning Board or Planning Board.
3. No permit shall be issued by the Construction Official to totally demolish an historic resource unless the proposed total demolition is approved by the administrative officer. Applications to the Building Department to totally demolish an historic resource shall be referred by the administrative officer to the Historic Preservation Commission for review and approval prior to the issuance of a total demolition permit.
4. A permit to totally demolish an historic resource where a development application has been filed with the Planning Board or Zoning Board of Adjustment shall not be issued during the pendency of the development application or thereafter unless approved pursuant to the requirements of this article. If the development application is denied, withdrawn, or terminated for any reason, the total demolition permit shall not be issued until the requirements of this article have been followed and completed.
5. An order issued by the Fire Official or the Construction Official to demolish an unsafe structure is exempt from the requirements of this article.

e. Procedure and criteria for total demolition approval.

1. Supplementary application. An application, or supplementary application, as the case may be, for approval to totally demolish or remove an historic resource shall be completed and submitted on an application form maintained by the Township Building Department. Such application shall be submitted in cases where:
  - (a) An application for a total demolition permit of a historic resource has been submitted to the Construction Official.
  - (b) The administrative officer finds that any other permit application to the Construction Official involves total demolition of an historic resource as defined herein.
  - (c) An application for development is filed with the Planning Board or the Board of Adjustment that if approved would require the total demolition or removal of an historic resource.
2. Required contents of application for total demolition or removal. The application for total demolition or removal shall include:
  - (a) Complete photographic record of all exterior elevations, interior spaces, and details of all existing buildings, sites or structures and any adjacent properties pertinent to the history of the building, site, structure, or surrounding neighborhood.
  - (b) Statement of the need/purposes for the proposed total demolition or removal.

(c) Written documentation by a qualified historic preservation architect or other design professional as defined by the Secretary of the Interior of:

- (1) the estimated cost and timing of restoration or rehabilitation of the building, site, or structure to allow for its reasonable use.
- (2) evidence of good faith offers of the historic building, site, or structure for sale at a price that does not exceed its reasonable and comparable value to purchasers willing to remove and relocate the historic building, site or structure, at the purchaser's expense, to another location within the Township and/or to preserve, rehabilitate or restore the building, site or structure, and
- (3) the time frame for such alternatives to take place.

A reasonable and comparable price shall be demonstrated by the applicant by providing evidence such as recent appraisals, comparable sales of buildings similar in location, character, and condition to the building, site or structure proposed to be totally demolished or removed or such other evidence as the Historic Preservation Commission determines to be a reasonable indication of its value. At the request of the applicant, the HPC shall grant a waiver of this requirement upon a finding of good cause, including, but not limited to, instances the property's historic use as a non-profit institution or charitable organization is proposed to continue on-site, or continuous ownership since the period of significance.

- (d) Written and pictorial record of the building's, site's or structure's history and architectural features for archival purposes, including, without limitation, all exterior facades as a whole, a street view with surrounding properties, pictures of all features identified in all historical/architectural surveys of the property on file with the Township, the dates of original construction of the building, site or structure to be totally demolished or removed; original documents, maps, drawings, and photographs; the square footage or dimensions of the building or structure to be totally demolished or removed; a brief description of the materials, configuration and use of the existing building, site or structure; significant events and occupants associated with the history of the building or property who are historically significant; architectural features; and a description of the building, site or structure through photographs, plans, and maps.
- (e) Archaeological study of the land that is the subject of the building, site, or structure before and/or during total demolition if the property falls within the area demonstrated to have a medium or high probability to contain archaeological resources.
- (f) Preservation or salvage of architectural elements that are proposed for removal and photographic documentation. The Department of Planning and Community Development will provide applicants with local service directories of centers.

- (g) Cost estimate of the proposed total demolition or removal, categorized by site preparation, abatement, physical demolition work, disposal of materials and any other relevant costs.
  - (h) Conceptual, design or other plans for any building or structure proposed or planned by the applicant to replace the historic building, site, or structure sought to be totally demolished or removed, including a design of the replacement building or structure, and a statement of how the replacement structure will affect the character of the neighborhood. At the request of the applicant, the HPC shall grant a waiver of this requirement upon a finding of good cause.
3. Review criteria for total demolition. Regarding applications to totally demolish or remove an historic resource, such application to demolish shall be granted if the applicant demonstrates that: 1) the preservation of the historic resource is not warranted; or 2) the preservation of the historic resource would impose an undue burden or hardship on the applicant.
- (a) The first element may be demonstrated by evidence that the building's, site's, or structure's historic characteristics do not warrant its preservation, based on the following factors:
    - (1) Its historical, architectural, cultural, and aesthetic significance.
    - (2) Its use, its intended use and/or the use for which the building, structure or site was originally designed and the feasibility of the continuation of its designed use.
    - (3) Its importance to the Township and the extent to which its historical or architectural value is such that its removal will or will not be detrimental to the landmark district and/or to the public interest.
    - (4) The extent to which it is of such age, unusual or uncommon design, craftsmanship, texture, or material that it could not be reproduced or could be reproduced only with great difficulty and cost.
    - (5) The extent to which its retention would promote business, create new positions, attract tourists, students, writers, historians, artists, or artisans, encourage study and interest in American history, stimulate interest and study in architecture and design, educate citizens in American culture and heritage or make the Township a more attractive and desirable place in which to live.
    - (6) The probable impact of its removal upon the character and ambience of the landmark district.
    - (7) The extent to which the replacement building, site or structure proposed would preserve or not adversely affect the neighborhood's character.
  - (b) The second element may be demonstrated by evidence, in consideration of the following factors, that preservation of the building or structure or denial of the permit would impose an undue burden or hardship upon applicant:

- (1) The condition, structural soundness, and integrity of the historic resource and the economic feasibility of its restoration or rehabilitation to allow for its reasonable use.
  - (2) The threat posed to the public health and safety due to deterioration or disrepair of the historic resource.
  - (3) The technological feasibility of structural rehabilitation.
  - (4) Interference with the charitable purposes of any nonprofit or charitable organization if total demolition is not permitted.
  - (5) Such other information and evidence regarding the burdens upon applicant of preservation as the Historic Preservation Commission may reasonably request in writing.
- (c) Criteria regarding removal and relocation of historic resources. An application to move the building, site or structure to a new location shall be granted if the applicant demonstrates that:
- (1) The preservation of the historic resource is not warranted under the criteria of Subsection d.2(a)(1) through (7) above; and,
  - (2) Moving the historic resource is technically feasible and would not pose a substantial negative impact to the site, the present historic district, or the proposed district of relocation. The following factors shall be considered in the determination of this second part.
    - i. The condition, structural soundness, and integrity of the building, site or structure and the economic feasibility of its restoration or rehabilitation to allow for its reasonable use at another site in the Township.
    - ii. Interference with the charitable purposes of any nonprofit or charitable organization if relocation is not permitted.
    - iii. The compatibility, nature, and character of the areas adjacent to both the present location and the proposed location as they relate to the protection of historic properties and districts as regulated by this article.
    - iv. If a proposed new location is in an historic district, the impact on the visual compatibility of adjacent buildings, structures, or sites, as set forth in § DRZ 807.
    - v. The likelihood of significant damage to the physical integrity of the building, site, or structure itself.

f. Notice of hearing.

1. The applicant for total demolition or for removal and relocation of an historic resource shall give notice of the date, time, and location of the public hearing before the Historic Preservation Commission during which the application is to be heard as follows:
  - (a) Public notice shall be given by publication in the municipality's official newspaper at least 10 days before the hearing date.

(b) Notice shall be given to the owners of all real property as shown on the current tax duplicates located within 200 feet in all directions of the property which is the subject of such hearing and all adjoining property which is under common ownership and whether located within or without this municipality. Such notice shall be given by serving a copy thereof on the owner as shown on said current tax duplicate or his or her agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his or her address as shown on said current tax duplicate. A return receipt is not required. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its President, a Vice President, Secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a limited-liability company may be made by service upon any member thereof. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property, which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners or homeowners on account of such common elements or areas. The requirement of service shall be satisfied by notice to the condominium association, in the case of any unit owner whose unit is above or below it, or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it.

g. Review.

1. The Historic Preservation Commission shall review the application for total demolition according to the standards set forth in § DRZ 807 and § DRZ 811.e.2, and the standards set forth in 36 CFR 60.4, entitled "Criteria for Evaluation" as promulgated by the U.S. Secretary of the Interior, which is adopted and incorporated by reference herein.
2. The Historic Preservation Commission shall report and certify its conclusion to the administrative officer as to whether the subject building or structure possesses cultural, historical, or architectural significance which merits its preservation. The Historic Preservation Commission shall present its certification in a written report within 45 days of receipt of a complete application for total demolition. The report shall include, but shall not be limited to:
  - (a) A description of the age (noting if the building, site, or structure was constructed more than 50 years ago), architectural style, historical associations and significance of the building, site, or structure.
  - (b) Certification that the building, site or structure is historic as defined in this chapter.
  - (c) Certification as to whether the building, site or structure is associated with events that have made a significant contribution to the broad patterns of our local, state, and/or national history.
  - (d) Certification as to whether the building, site or structure was associated with the life of a person who made a significant contribution to local, state and/or national history.



- (e) Certification as whether the building, site or structure embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction, most especially if no other, or very few, buildings with the same association have survived.
- (f) Certification as to whether the building, site or structure has yielded, or may be reasonably likely to yield, information important in prehistory or history.
- (g) Certification as to whether the building, site or structure maintains integrity of:
  - (1) Location: the place where the historic property was constructed or the place where the historic event occurred; and/or
  - (2) Design: the combination of elements that create the form, plan, space, structure, and style of a property; and/or
  - (3) Setting: the physical environment of an historic property; and/or
  - (4) Materials: the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form an historic property; and/or
  - (5) Workmanship: the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory; and/or
  - (6) Experience: the property's expression of the historic sense of a particular period of time; and/or
  - (7) Association: the property's direct link between an important historic event or person and an historic property.
- (h) The applicant is required to arrange site access for the Township and the Township's contracted professional consultants, as needed, to prepare a complete review as outlined in this section.

h. Findings and decision.

1. If, after the consideration of the standards and criteria set forth above, the Historic Preservation Commission concludes that the building or structure possesses no cultural, historical or architectural significance which would merit its preservation, or if the Historic Preservation Commission fails to file its findings with the administrative officer within 45 days of referral, the administrative officer shall approve, and the Construction Official may issue a total demolition permit.
2. If, after the consideration of the standards and criteria set forth above, the Historic Preservation Commission concludes that the subject building and/or structure possesses sufficient cultural, historical or architectural significance which merits its preservation, and the Historic Preservation Commission files its report within the required forty-five-day period, containing its findings and recommendation against the issuance of the total demolition permit or recommendation that the total demolition permit be issued with conditions, then the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be.

3. In cases where the approval of a development application by the Zoning Board or Planning Board would result in the total demolition of an historic resource, issuance of a total demolition permit pursuant to this article shall be included as a condition in the Board's resolution of approval.
4. The applicant for a total demolition permit may appeal the administrative officer's decision to the Zoning Board pursuant to N.J.S.A. 40:55D-70 and 40:55D-70.2. The Historic Preservation Commission, by one or more authorized representatives, shall appear at the appeal hearing and provide testimony as to the basis for the disapproval. Any person aggrieved by the decision of the Zoning Board may appeal to a court of competent authority as permitted by applicable law.
5. In cases of an appeal of the administrative officer's denial of a total demolition permit or imposition of conditions thereon, the Zoning Board may, in its discretion, hear the appeal together with the development application.

Ordinance 2658-24

ATTEST:

MILLBURN TOWNSHIP

\_\_\_\_\_  
Christine A. Gatti, Municipal Clerk

By: \_\_\_\_\_  
Annette Romano, Mayor

*1<sup>st</sup> Reading and Introduction: 1/16/2024*  
*1<sup>st</sup> Publication: 1/25/2024*  
*Referral to Planning Board: 1/18/2024*  
*Notice to County Planning Board Prior to Adoption: 1/18/2024*  
*Notice to Clerks of Adjoining Municipalities: 1/18/2024*  
*Notice to Affected Property Owners: N/A*  
*Public Hearing: 2/6/2024*  
*Adoption: 2/6/2024*  
*2<sup>nd</sup> Publication: 2/15/2024*  
*Filing with County Planning Board: 2/9/2024*

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the 6<sup>th</sup> day of February, 2024.

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Christine A. Gatti, RMC  
Municipal Clerk