

ORDINANCE NUMBER 2019-02

TOWN OF NASHVILLE HISTORIC PRESERVATION ORDINANCE

WHEREAS, the Town Council of the Town of Nashville, Indiana, declares that the protection, maintenance, restoration, rehabilitation, reconstruction, or development of historic districts and structures is in the public interest; and,

WHEREAS, it is the intent of this ordinance to provide a means to promote the cultural, economic, and general welfare of the public through the preservation and protection of structures and areas of historic and cultural interest within the Town of Nashville; and,

WHEREAS, it is the intent of this ordinance to implement a comprehensive program of historic preservation by the appointment of a Historic Preservation Commission and by the establishment of a historic preservation district or districts in accordance with the provisions set forth below, now therefore;

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NASHVILLE, INDIANA:

Section 1. Purpose

a. Purpose of historic preservation and protection:

- (1) To promote the educational, cultural and general welfare of the citizens of Nashville and to ensure the harmonious and orderly growth and development of the municipality;
- (2) To maintain established residential neighborhoods in danger of having their distinctiveness destroyed;
- (3) To enhance property values and attract new residents;
- (4) To ensure the viability of the traditional Village area and to enhance tourism within the Town of Nashville;
- (5) It is deemed essential by the Town of Nashville that qualities relating to its history and harmonious outward appearance of its structures be preserved.

b. These purposes are advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and ensurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design.

c. It is the intention of the Town of Nashville, through this ordinance to preserve and protect historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares and neighborhoods of the historic districts created in accordance with this ordinance.

Section 2. Definitions

The following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. The word “shall” is always mandatory. The word “person” includes a firm, a partnership, a limited liability company, or a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

a. **Alteration:** a material or change in the external architectural features of any building, structure, or site within a historic district.

b. **Classifications:**

- (1) **Outstanding:** the “O” classification means that the property has sufficient historic or architectural significance such that it is listed, or is eligible for individual listing, in the National Register of Historic Places (the “National Register”). Outstanding resources can be of local, state, or national importance.
- (2) **Notable:** the “N” classification means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.
- (3) **Contributing:** the “C” classification means that the property is at least 50 years old, but does not meet the criteria for an “O” or “N” classification. Contributing properties are important to the density or continuity of the area’s historic fabric. Contributing properties can be listed in the National Register only as part of a historic district.
- (4) **Non-Contributing:** property classified as “NC” is not included in a historic sites and structures inventory unless it is located within the boundaries of a historic district. Such properties may be less than 50 years old, or they may be older properties that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

c. **Commission:** the historic preservation commission established by this ordinance.

d. **Demolition:** the complete or substantial removal of any building or structure located in a historic district.

e. **Historic District:** a single building, structure, site, monument, streetscape, or square, or a concentration of buildings, structures, sites, monuments, streetscapes, squares or neighborhoods, the boundaries of which are described or delineated on a map approved in an ordinance adopted by the Town Council.

f. **Interested Party:** means one of the following:

- (1) The Town Council
- (2) the Development Review Commission (DRC)

- (3) the plan commission or other agency having land use planning jurisdiction over a historic district designated by ordinance.
- (4) a neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted by the Town Council.
- (5) an owner or occupant of property located in a historic district established by an ordinance adopted by the Town Council.
- (6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
- (7) the state historic preservation officer designated under I.C. 14-21-1-19.

g. **Preservation:** The act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.

h. **Preservation Guidelines:** locally developed criteria which identify design concerns to assist property owners in maintaining the character of the historic district or buildings during the process of rehabilitation or new construction.

i. **Primary Area:** the principal area of historic and/or architectural significance within a historic district as delineated on the map establishing the boundaries of the historic district.

j. **Routine Maintenance:** work for which no Certificate of Appropriateness is required.

k. **Secondary Area:** an area in a historic district delineated on the map establishing the boundaries of the historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent, primary area.

l. **Streetscape:** appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e.g., street lights, trash receptacles, benches, etc.) use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

m. **Visual Compatibility:** those elements of design that meet the guidelines set out in Section 9 of this ordinance.

Section 3. Historic Preservation Commission Establishment and Designation

The existing Development Review Commission, created pursuant to Section 153.023 of the Town of Nashville Code of Ordinances is hereby designated as the Historic Preservation Commission established by this ordinance.

Section 4. Powers and Duties of the Commission

a. The Commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a historic district. The Commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district.

b. The Commission shall conduct a survey to identify historic buildings, sites and structures located within the Town. Based on its survey, the Commission shall submit to the Town Council a map or list of addresses describing the boundaries of a historic district or districts, or the location of a historic structure or building. A district may be limited to the boundaries of a property containing a single building, structure, or site. The map may divide a district into primary and secondary areas.

c. The Commission may also classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures and sites shall be classified as historic or non-historic in the manner set forth in subsections (d) and (e) below.

d. Buildings, structures and sites classified as historic must possess identified historic or architectural merit of a degree warranting their preservation. They may be further classified as Outstanding, Notable, or Contributing (as defined in Section 2 of this ordinance). In lieu of these further classifications, the Commission may devise its own system of further classification for historic buildings, structures and sites.

e. Non-historic buildings and structures are those not classified on the map as historic under subsection (b).

f. The Commission may conduct additional surveys, and draw and submit additional maps for approval of the Town Council, as the Commission considers appropriate.

g. The Commission may adopt preservation guidelines for architectural review. If adopted, preservation guidelines shall be published and made readily accessible to the general public.

h. The Commission has the authority to receive funds in order to promote its stated purposes.

i. The Commission shall promote public interest in historic preservation by initiating and carrying on a public relations and community education program.

j. The Commission shall have the authority to:

- (1) acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission;
- (2) hold title to real and personal property; and,

- (3) sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the Commission considers best.;
- (4) establish procedures that the Commission must follow in acquiring and disposing of property.

k. Each official of the Town who has responsibility for building inspection, building permits, planning, or zoning shall provide any technical, administrative, or clerical assistance requested by the Commission. The attorney for the Town shall serve as the attorney for the Commission. However, the Commission may employ other legal counsel authorized to practice law in Indiana if it considers it necessary or desirable.

Section 5. Historic Districts and Guidelines

a. Town Council approval of historic districts: Before a historic district is established the boundaries and/or the locations of the district must be approved in an ordinance by the Town Council.

b. Preliminary designation: As a preliminary, subject to amendment after further review by the Commission and the Town Council. The area defined as the “Village District” as established by Section 153.040 is hereby designated and ordained a “Historical District” for the purpose of this ordinance.

c. Recording the fact of designation: The Ordinance approving the map establishing boundaries of a historic district or list of addresses shall be recorded in the Office of the Brown County Recorder.

Section 6. Interim Protection

a. When submitting a map to the Town Council to create a historic district under this ordinance, the Commission may declare one (1) or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

b. Not more than two (2) working days after declaring a building or structure to be under interim protection under this section, the Commission shall, by personal delivery or first-class mail, provide the owner and/or occupant of the building or structure with a written notice of the declaration. The written notice must:

- (1) Cite the authority of the Commission to put the building or structure under interim protection under this section;
- (2) Explain the effect of putting the building or structure under interim protection; and,
- (3) Indicate that the interim protection is temporary.

c. A building or structure put under interim protection under subsection (a) remains under interim protection until the map is:

- (1) Submitted to; and

- (2) Approved in an ordinance or rejected by the Town Council.
- d. While a building or structure is under interim protection:
 - (1) The building or structure may not be demolished or moved; and,
 - (2) The exterior appearance of the building or structure may not be conspicuously changed by:
 - (a) Addition;
 - (b) Reconstruction; or
 - (c) Alteration.

Section 7. Certificates of Appropriateness

a. Certificates of Appropriateness required: a Certificate of Appropriateness must be issued by or on behalf of the Commission before a permit is issued for, or work is begun on, any of the following:

- (1) Within all areas of a historic district:
 - (a) The demolition of any building;
 - (b) The moving of any building;
 - (c) A conspicuous change in the exterior appearance of historic buildings by additions, reconstruction, alteration, or maintenance involving exterior color change; or
 - (d) Any new construction of a principal building or accessory building or structure subject to view from a public way.
- (2) Within a primary area of a historic district:
 - (a) A change in walls and fences, or the construction of walls and fences along public ways;
 - (b) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration and/or maintenance involving exterior color change.

b. Application for Certificates of Appropriateness: Application for a Certificate of Appropriateness shall be made in the office of the Commission on forms provided by that office. Detailed drawings, plans, or specifications are not required. However, to the extent reasonably required for the Commission to make a decision, each application must be accompanied by sketches, drawings, photographs, descriptions, or other information showing the proposed exterior alterations, additions, changes, or new construction.

c. Approval or denial of Certificates of Appropriateness: the Commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness. If an application for a Certificate of Appropriateness is approved by the

Commission, or is not acted on by the Commission within thirty (30) days after it is filed, a Certificate of Appropriateness shall be issued. If the certificate is issued, the application shall be processed in the same manner as applications for building or demolition permits required by the Town, are processed. If no building or demolition permits are required, the applicant may proceed with the work authorized by the certificate. If the Commission denies an application for a certificate of appropriateness within thirty (30) days after it is filed, the certificate may not be issued. The Commission must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied may not be processed as an application for a building or demolition permit and does not authorize any work by the applicant. The Commission may grant an extension of the thirty (30) limit if the applicant agrees to it.

d. Criteria for considering effect of actions on historic buildings: the Commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of a historic building or any part of or appurtenance to such building, including walls, fences, light fixtures, steps, paving, and signs shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:

- (1) Purposes of this ordinance;
- (2) Historical and architectural value and significance of the building, structure, site or appurtenance;
- (3) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;
- (4) The texture, material, color, style, and detailing of the building, structure, site or appurtenance;
- (5) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;
- (6) The relationship of buildings, structures, appurtenances, or architectural features similar to one within the same historic district, including for primary areas, visual compatibility as defined in Section 8(b) of this ordinance; and,
- (7) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

e. Procedure for demolition upon denial of a Certificate of Appropriateness. The purpose of this subsection is to preserve historic buildings that are important to the education, culture, traditions and economic values of the Town, and to afford the Town, historical organizations, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings. If a property owner demonstrates that a historic building is incapable of earning an economic return on its value, as established by the average of two qualified real estate appraisers, one chosen and paid for by the property owner and one chosen and paid for by an interested party as defined herein (in the event no interested party chooses to submit an appraisal, the appraisal of the property owner shall be sufficient) and the Commission fails to approve the issuance of a Certificate of Appropriateness,

the building may be demolished. However, before a demolition permit is issued or demolition proceeds, the following requirements for notice must be met:

- (1) Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission's classification on the approved map, but not less than sixty (60) days nor more than one (1) year.
- (2) Notice must be posted on the premises of the building proposed for demolition in a location clearly visible from the street.
- (3) Notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.

The Commission may approve a Certificate of Appropriateness at any time during the notice period under this subsection. If the Certificate of Appropriateness is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

Section 8. Staff Approvals

a. The staff of the commission is authorized to grant or deny a Certificate of Appropriateness for the following types of applications:

- (1) Repainting
- (2) Change of existing signage
- (3) Roofing

b. The staff may not grant or deny a Certificate of Appropriateness for the following

- (1) The demolition of a building.
- (2) The moving of a building.
- (3) The construction of an addition to a building.
- (4) The construction of a new building.

Section 9. Visual Compatibility

a. For new construction, contemporary design, and non-historic buildings: to preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work, the construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance, or repair involving a color change conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area of a historic district must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district, particularly with buildings designated as historic, and with squares and places to which it is visually related.

b. Criteria for considering visual compatibility: within the primary area of a historic district, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings, squares and places to which they are visually related generally in terms of the following visual compatibility factors:

- (1) Height: the height of proposed buildings must be visually compatible with adjacent buildings.
- (2) Proportion of building's front facade: the relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares, and places to which it is visually related.
- (3) Proportion of openings within the facility: the relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.
- (4) Rhythm of solids to voids in front facades: the relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.
- (5) Rhythm of spacing of buildings on streets: the relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares, and places to which it is visually related.
- (6) Rhythm of entrances and porch projections: the relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares, and places to which it is visually related.
- (7) Relationship of materials, texture, and color: the relationship of the materials, texture, and color of the facade of a building must be visually compatible with the predominant materials used in the buildings to which it is visually related.
- (8) Roof shapes: the roof shape of a building must be visually compatible with the buildings to which it is visually related.
- (9) Walls of continuity: appurtenances of a building such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings, squares, and places to which it is visually related.
- (10) Scale of a building: the size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares, and places to which it is visually related.
- (11) Directional expression of front elevation: a building must be visually compatible with buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.

Section 10. Preservation of Historical and Architectural Character Upon Alteration or Relocation Mandated

a. A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

b. A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection (a).

Section 11. Maintenance

a. Historic buildings shall be maintained to meet the applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

b. Ordinary repairs and maintenance: nothing in this section shall be construed to prevent the ordinary repairs and maintenance of any historic building, provided that such repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof.

Section 12. Relationship with Zoning Districts

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is a conflict between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements shall apply.

Section 13. Enforcement by Interested Parties

a. An interested party (as defined in Section 2) has a private right of action to enforce and prevent violation of this Ordinance or an ordinance adopted by the Town under this Ordinance, and with respect to any building, structure, or site within a historic district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating this ordinance or an ordinance adopted under this ordinance.

b. The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.

c. The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

d. The interested party who brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without

good faith or without a reasonable belief that a provision of this ordinance, or an ordinance adopted by the Town Council pursuant to this ordinance, had been, or was about to be violated.

e. An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.

f. An action arising under this section must be brought in the Circuit Court of Brown County and no change of venue from the county shall be allowed in the action.

g. The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

Section 14. Enforcement, Penalties, and Judicial Review

a. Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this ordinance shall be subject to a fine as follows, for each offense:

- (1) not less than ten dollars (\$10.00) nor more than twenty-five hundred dollars (\$2,500.00) for demolition; and,
- (2) not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300.00) for all other offenses.
- (3) demolition in violation of the provisions of this ordinance shall be subject to a fine of not less than one thousand dollars (\$1,000.00) nor more than twenty-five hundred dollars (\$2,500.00).

b. Each day of the existence of any violation of this ordinance shall be a separate offense. In case of demolition violations, the maximum number of days to be counted as a separate offense shall not exceed the maximum notice period established by the Commission pursuant to Section 7, (e) (1).

c. The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this ordinance is hereby declared to be a nuisance and in violation of this ordinance and unlawful. The Town may institute a suit for injunction in the Circuit Court of Brown County to restrain any person or government unit from violating any provision of this ordinance and to cause such violation to be prevented, abated, or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter.

d. The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

e. Any person or party aggrieved by a decision of the Commission shall be entitled to judicial review in accordance with I.C.4-21.5-1.

Section 15. Severability and Repealer

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

This ordinance specifically **REPEALS** and replaces subsections (C) (2) (a through j) of Section 150.16 of the Town of Nashville Code of Ordinances and all other provisions of said code that are in conflict herewith.

IT IS SO ORDAINED THIS _____ DAY OF _____, 2019

	_____	yea	nay	abstain
	President Jane Gore			
	_____	yea	nay	abstain
	Vice-President Alisha Gredy			
	_____	yea	nay	abstain
	Council Member Nancy Crocker			
ATTEST:	_____	yea	nay	abstain
	Council Member Anna Hofstetter			
_____	_____	yea	nay	abstain
Clerk-Treasurer, Brenda K. Young	Council Member Dave Rudd			