

BIRMINGHAM TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 122 OF THE BIRMINGHAM TOWNSHIP CODE, TITLED, "ZONING", SECTION 122-6 TO DELETE DEFINITIONS OF "CLASS I HISTORIC RESOURCE", "CLASS II HISTORIC RESOURCE", "CLASS III HISTORIC RESOURCE" AND "HISTORICAL SIGNIFICANCE"; TO AMEND THE DEFINITION OF "HISTORIC RESOURCE" AND "INVENTORY OF HISTORIC RESOURCES" AND TO AMEND ARTICLE VIIIA TITLED, "HISTORIC PRESERVATION".

BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained by the authority of the Board of Supervisors of Birmingham Township, Chester County, Pennsylvania that Chapter 122 of the Code of the Township of Birmingham titled "Zoning" is amended as follows:

**SECTION 1.** The definitions of "Class I Historic Resource", "Class II Historic Resource", "Class III Historic Resource" and "Historical Significance" in Section 122-6 shall be deleted.

**SECTION 2.** The definition of "Historic Resource" in Section 122-6 shall be amended to state as follows:

**"HISTORIC RESOURCE**— Buildings, structures, or sites that meet the following criteria:

Is of an era that provides important historical value typical of the historical significance of Birmingham Township (such as but not limited to the Colonial Period and Revolutionary War Era); and meets at least one of the following criteria:

- (a) Is associated with events that have made a significant contribution to the broad patterns of our national, state or local history; or

- (b) Is associated with the lives of persons significant to the national, state or local history; or
- (c) Embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master; or
- (d) Has yielded, or may be likely to yield, information in prehistory or history; or
- (e) Is on or eligible for listing on the National Register of Historic Places.”

**SECTION 3.** The definition of “Inventory of Historic Resources” in Section 122-6 shall be amended to state as follows:

**“INVENTORY OF HISTORIC RESOURCES** **ARTICLE VIIIA**  
**HISTORIC PRESERVATION**

**§ 122-36.1. Purpose; statutory authority.**

A.- An inventory of Historic Resources located in Birmingham Township adopted by the Board of Supervisors in order to further the goals and purposes of Article VIIIA of this Ordinance.”

**SECTION 4.** The following definition of “Site” shall be added to Section 122-6:

**“SITE-** Any parcel of land or combination of contiguous lots or parcels of land.”

**SECTION 5.** Article VIIIA shall be amended in whole and replaced with the following new Article VIIIA titled, “Historic Preservation”:

**“ARTICLE VIIIA**  
**HISTORIC PRESERVATION**

**§ 122-36.1. Purpose; statutory authority.**

A. The purpose of this Article is to protect Historic Resources within Birmingham Township as authorized under the Pennsylvania Constitution, Article I+, Section 27, and

Sections 604 and 605 of the Pennsylvania Municipalities Planning Code, 53 P.S.

§§ 10604 and 10605.

B.

~~B.~~ Birmingham Township is nationally significant as one of the location primary locations of the Battle of the Brandywine, one of the most famous and significant battles of the Revolutionary War. The entire Township has been designated as a National Historic Landmark by the Commonwealth of Pennsylvania and the United States of America. In addition, the Township has a rich heritage of Quaker settlement and venerable historic buildings contained in the tiny Village of Dilworthtown and the farmsteads of its early settlers.

~~C. Pursuant~~ C. Early dwellings in Birmingham Township were constructed in plan form and with materials that were already familiar to the Colonial settlers in the 18th and early 19th centuries. Built of log, stone or brick, those comprised of masonry have survived far more than the wooden structures have. They all, however, share a consistent form of structural design and framework through the use of wood beams for interior supports and lintels to span the openings above doors and windows. The roof structure consistently incorporates rafters to form gable roofs- the steeper, the better, to shed snow, ice and rain. Many examples of these early dwellings are scattered throughout the Township and all share these qualities that help unify the architectural landscape.

~~D~~ Pursuant to the authority in the Pennsylvania Historic District Act, Act 167 of 1961, the Township created its first historic district in 1969 which contains the Village of Dilworthtown. The Historic District was expanded in 1978 to include portions of the Birmingham Road corridor. This Article is not intended to supersede or repeal any of the provisions in the Birmingham Township Code which govern the Historic District or the

Historic Commercial District. The Historic District and Historic Commercial District remain in effect and have regulations particular to their own districts. The regulations contained herein shall be in addition to any of the existing provisions in the Code which govern property which is located within the existing Act 167 Historic District.

~~D. It~~It is hereby declared as a matter of public policy that the preservation and protection of Historic Resources in Birmingham Township is a public necessity and is in the interest of the health, prosperity and welfare of the citizens of Birmingham Township.

~~E. The~~The specific purposes of this Article are:

- (1) ~~(1)~~ To promote the general welfare by protecting the integrity of Historic Resources of Birmingham Township;
- (2) ~~(2)~~ To implement the goals of the Pennsylvania Constitution, Article I, Section 27, which establishes the Commonwealth's policy of encouraging the preservation of Historic ~~and aesthetic~~ Resources;
- (3) ~~(3)~~ To establish a clear process by which ~~proposed changes affecting historic resources~~ are the demolition of Historic Resources is reviewed by the Birmingham Township Historical Commission and the Board of Supervisors;
- (4) To establish a clear process by which certain proposed exterior alterations to Historic Resources are reviewed by the Board of Supervisors;
- ~~(5)~~
- (6) To mitigate the negative effects of ~~proposed changes on~~ demolition of Historic Resources, to encourage the continued use of Historic Resources and to facilitate ~~their~~ the appropriate reuse ~~and to tailor protective measures to~~ of those Historic

Resources in Birmingham Township worthy of preservation, if possible and financially viable;

(7) ~~(5)~~ To encourage the preservation of ~~historic settings and landscapes, including preservation of the battlefield landscape~~ landscapes, such as Sandy Hollow and Birmingham Hill; and ~~scenic vistas; and~~

(8) ~~(6)~~ To discourage the unnecessary demolition of Historic Resources.

**§ 122-36.2. Classification of Historic Resources; adoption of Historic Resource Inventory; changes to Inventory.**

A. ~~A.~~ Classification of Historic Resources. ~~Historic resources within~~ Buildings, structures, and sites in Birmingham Township are classified as ~~either Class I, Class II or Class III~~ Historic Resources based on the criteria set forth in the ~~definitions~~ definition of a Historic Resource in § 122-6 ~~122-6.~~ All ~~Class I, Class II and Class III~~ Historic Resources shall be included on the Birmingham Township Inventory of Historic Resources.

B.  
~~B.~~ Adoption of Birmingham Township Inventory of Historic Resources. The Inventory of Historic Resources, which is attached hereto as an appendix, ~~{1}~~ which may be amended and updated from time to time pursuant to the provisions in this section, is hereby adopted. ~~{1} Editor's Note: The Inventory of Historic Resources is on file in the Township offices.~~

C.  
~~C.~~ Procedure for addition or removal of Historic Resources from Inventory of Historic Resources; change of classification.

~~(1)~~ Any building, ~~outbuilding, site,~~ structure, ~~roadway, object, district or a complex of the same (resource) site,~~ may be proposed for addition to or removal from the Inventory of Historic Resources, ~~or for a change in classification (Class I, Class II or Class III)~~ by:

(1) ~~(a)~~ The owner of such resource;

- (2) ~~(b)~~ The Birmingham Township Historical Commission ~~(Historical Commission)~~;
- ~~(c)~~ 3 The Board of Supervisors; or
- (4) ~~(d)~~ Notice from the designating organization (Pennsylvania Historical and Museum Commission or ~~National Register~~ United States Department of Interior) that the Historic Resource ~~qualifies~~ meets the criteria for designation as a ~~Class-I~~ Historic Resource or no longer meets the criteria upon which its classification as a Historic Resource was originally based.

~~D.~~ All proposals for addition to or removal from the Inventory of Historic Resources, ~~or for a change in classification (Class I, Class II or Class III),~~ shall be referred to the Historical Commission. ~~The Historical~~ Before the Historical Commission adds or removes any building, structure, or site from the Inventory of Historic Resources, the Historic Commission shall hold a public meeting ~~following.~~ At least 30-days prior to the public meeting, the Historic Commission shall send written notice ~~sent~~ to the owner(s) of the ~~resource-affected~~ building, structure, or site proposed to be added or removed from the Historic Inventory by regular and certified return receipt requested mail. The Historical Commission shall consider oral testimony and/or documentary evidence regarding the proposal at the public meeting, which may be continued from time to time. The Historical Commission shall present a written report to the Board of Supervisors ~~within 30 days~~ following the ~~close of testimony at the public meetings~~ meeting on the proposal, which report shall state the Commission's recommendation regarding the subject proposal, together with the grounds therefor.

~~E.~~ After receiving the ~~recommendations~~ recommendation of the Historical Commission, the Board of Supervisors ~~may from time to time~~ shall consider the proposal to ~~time, by resolution,~~ add or ~~delete resources to~~ remove a building, structure, or site from the Inventory of Historic Resources ~~or change the classification of an historic resource. The owner of the affected Historic Resource shall be given~~ at a public meeting. At least ~~10 days~~ 30-days prior to the public meeting,

the Board shall send written notice of the meeting of the Board of Supervisors where to the owner(s) of the building, structure, or site proposed to be added or removed from the Historic Inventory by regular and certified return receipt requested mail. The Board will consider such action.

§ 122-36.3 shall consider oral testimony and/or documentary evidence regarding the proposal, as well as the recommendation from the Historical Commission, at the public meeting, which may be continued from time to time. The Board shall notify the owner(s) of the building, structure, or site proposed to be added or removed from the Historic Inventory of the Board's decision which must be made by vote of a majority of the Board at a public meeting.

A.D. The Historical Commission shall periodically review the Inventory of Historic Resources to evaluate if the Inventory includes all buildings, structures, and sites that meet the criteria for a Historic Resource as defined herein.

### **§ 122-36.3. Historical Commission.**

A. Establishment and membership. There shall be an Historical Commission which shall consist of not fewer than five members and not more than ~~nine~~seven members who shall be appointed by the Board of Supervisors. The membership of the Commission shall include individuals who have professional experience or a demonstrated interest in history, architectural history, archeology, historical preservation, or related fields. ~~It is preferred, though not required, that a majority of the sitting~~The members of the Historical Commission shall be residents of the Township. Each Commission member shall serve for a term of five years which shall be so fixed that no more than two terms shall expire each year. The Commission shall notify the Board of Supervisors of any vacancies in the Commission, and the Board of Supervisors shall act within 90 days to fill those vacancies. Appointments to fill vacancies for unexpired terms shall be only for the unexpired portion

of the term. Members shall serve without pay, but shall be reimbursed for any personal expenditures in the conduct of Commission business when authorized by the Board of Supervisors.

B.

~~B.~~ Organization. The Commission shall annually elect, from its own membership, a Chairman who will direct the activities of the Commission and such other officers as may be required for the conduct of its business. ~~A quorum shall be not less than a majority of the current membership.~~ The Commission may make, alter and rescind rules and forms for its procedures consistent with the ordinances of the Township and laws and regulations of the Commonwealth. The Commission shall conduct business at regular public meetings. An agenda of each public meeting shall be available for inspection a minimum of one business day prior to the meeting. The Commission shall keep minutes of its meetings and shall submit an annual report of its activities to the Board of Supervisors ~~by March of~~ each year.

C.

~~C.~~ Quorum of Historical Commission. A majority of the sitting members of the Historical Commission shall constitute a quorum thereof.

D.

~~D.~~ Expenditures for services. Within the limits of funds appropriated by the Board of Supervisors, the Commission may employ staff or contract for clerical, consulting, or other technical services.

E.

~~E.~~ Functions and duties. In accordance with the purposes of this Article, the Historical Commission shall have the following functions and duties:



- (1) ~~(1)~~ Maintain a system for the survey and inventory and photographic documentation of historic buildings, sites, structures, objects and established historic districts in the Township;
- (2) ~~(2)~~ Conduct research on and nominate significant resources to the National Register of Historic Places and any other appropriate lists or programs;
- (3) ~~(3)~~ Advise the ~~Zoning Officer and~~ Board of Supervisors on the issuance of demolition ~~and/or building~~ permits for Historic Resources, as set forth in this Article VIII A;
- (4) ~~(4) Review and comment on subdivision or land development applications which affect historic resources, in accordance with the requirements and procedures of the Township Subdivision and Land Development Ordinance; [1] [1] Editor's Note: See Ch. 103, Subdivision and Land Development.~~  
~~(5)~~ Make recommendations to the Board of Supervisors concerning revisions, updates or corrections to the Inventory of Historic Resources ~~and related~~ ~~documentation~~;
- (5) ~~(6)~~ Maintain an updated ~~list which clearly identifies buildings, sites, structures, objects and districts and their respective classifications as Class I, Class II or Class III~~ Inventory of Historic Resource;
- ~~(7) Advise Resources; as identified by the Board of Supervisors or Zoning Hearing Board on all requests for conditional uses or variances affecting historic resources;~~  
~~(8)~~ Review applications for criteria established in the ~~rehabilitation, enlargement or~~ ~~alteration~~ definition of Historic ~~resources for compliance with the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings,"~~ ~~as required by § 122-36.8 of this Article VIII A;~~ Resource in Section 122-6; and
- (6) ~~(9)~~ Photograph ongoing changes to the physical landscape throughout the Township; ~~and~~ and maintain an electronic/digital photographic database of all pictures collected.

**§ 122-36.4. Demolition of Historic Resources.**

A. ~~(10) Perform any other lawful activities which shall be deemed necessary to further the purposes of this article.~~

~~§ 122-36.4. Demolition, alteration or modification of historic resources.~~

A. Compliance. Any demolition, ~~alteration or modification~~ of a ~~Class I, Class II or Class III~~ Historic Resource which is listed on the Inventory of Historic Resources shall occur only in full compliance with the terms of this Article and other applicable regulations.

B.

~~B. Permit requirements. No Class I, Class II or Class III historic resource~~ Historic Resource which is listed on the Inventory of Historic Resources shall be permitted by the owner thereof to be

demolished by neglect. Demolition by neglect includes, but is not limited to, leaving a building or structure open or vulnerable to vandalism or decay by the elements.

Unoccupied structures should be tightly sealed and fenced off to standards set forth in the

Township Building Code ~~and Property Maintenance Code~~. No ~~Class I, Class II or Class III~~

Historic Resource shall be demolished, ~~altered or modified~~ in whole or in substantial part,

including the indiscriminate removal or stripping of any significant interior or exterior

architectural features, unless a demolition ~~and/or building~~ permit is obtained from the ~~Zoning~~

~~Officer~~ Building Code Official of Birmingham Township in accordance with the requirements

of this section and other applicable standards and procedures of the Township Building

~~and Fire Codes~~ Code.

C.

~~C. Application for building or demolition permit. In addition to applicable requirements under~~

the Township Building ~~and Fire Codes~~ Code, an applicant seeking a permit to demolish,

~~modify or alter a Class I, Class II or Class III~~ a Historic Resource shall submit an application for a

demolition ~~and/or building~~ permit on forms supplied by the Township. The application shall

include the following information with regard to the Historic Resource which is proposed to

be demolished:

- (1) ~~(1)~~ Owner of record;
- (2) ~~(2)~~ Location upon the Cultural Resources Map ~~and documentation regarding whether the historic resource is a Class I, Class II or Class III historic resource;~~
- (3) ~~(3)~~ Site plan showing all buildings and structures on the property where the Historic Resource is located;
- (4) ~~(4)~~ Recent photographs of the Historic Resource proposed for demolition, ~~alteration or modification;~~
- ~~(5)~~ ~~(5)~~ Reasons for the demolition, ~~alteration;~~
- ~~(5)~~ (6) Discussion of potential alternative uses for the building or structure including beneficial reuse, relocation, and/or modification; other potential options in lieu of demolition, as well as, potential reuse of the materials on site or in other historic type applications (i.e., dismantling a barn and reusing the wooden post and beams in another structure).
- ~~(6)~~ (7) (6) Method of demolition, alteration or modification; and
- ~~(7)~~ (8) (7) Future uses of the site and of the materials recovered from the demolished resource; and.

D. ~~(8) Names and addresses of all property owners within a five-hundred-foot radius of the property on which the historic resource is located.~~

~~D.~~ Proposed demolition, ~~alteration or modification~~ of Historic Resources. The Zoning Officer will review all applications for demolition ~~and/or building~~ permits and confirm that the application concerns a ~~Class I, Class II or Class III historic resource.~~ Historic Resource that is listed on the Township Inventory of Historic Resources. If the application proposes to demolish a ~~Class I, Class II or Class III historic resource~~ an Historic Resource listed on the Township Inventory of Historic Resources, the Zoning Officer will advise the applicant that ~~he must comply full~~

compliance with the procedures and requirements set forth in this Article must be met prior to issuance of the demolition, ~~alteration or modification~~ permit.

E.

~~E.~~ Notice requirements. At least 14 days prior to the Historical Commission's public meeting at which the ~~applicant's~~ application for a demolition ~~and/or building~~ permit will be considered, the applicant shall ~~forward~~ provide a notice to all property owners who own property within a ~~five-hundred-~~ 200 foot radius of the ~~property line~~ Historic Resource by certified ~~mail~~, return receipt ~~requested. This~~ United States mail. The notice shall ~~include~~ state the tax parcel number on which the Historic Resource is located, the name of the Historic Resource if one exists, and the scheduled meeting date and time when the Historical Commission will review and accept public comment on the application. Additionally, the applicant shall post the property which is the subject of the application with a copy of the written notice that was mailed to all property owners within a 200 foot radius of the Historic Resource. The notice shall be placed in a conspicuous location on the property where the Historic Resource is located at least 14 days prior to the Historical Commission meeting and shall remain on the property until after the Board of Supervisors acts on the application. The applicant shall provide to the Township proof of mailing and posting and a photograph evidencing posting prior to the Historical Commission meeting where the matter will be discussed.

F.

~~F.~~ Review by the Birmingham Township Historical Commission. The Zoning Officer or Township Secretary shall notify the Historical Commission of the application for a demolition ~~or building~~ permit ~~within five days of~~ upon acceptance of a properly completed application (with the required documentation set forth in the above section), including the necessary filing fee. ~~Within 30 days of the date of receipt of the application, at its regular or a special~~

~~meeting,~~ The Historical Commission shall consider the application for a demolition,~~alteration~~~~or modification~~ permit at a public meeting held after the applicant has provided proof of compliance with the notice and posting requirements required by Section 122-36.4.E above. The applicant shall be notified of the meeting and encouraged to present written and photographic evidence or testimony pertaining to the proposed ~~demolition,~~~~alteration or modification.~~ In reviewing the application for a ~~demolition~~ ~~and/or building~~ permit, the applicant shall present evidence with regard to, and the Historical Commission shall consider, the following criteria:

- (1) ~~(1)~~ The effect of ~~demolition,~~~~alteration or modification~~ on the historical significance and architectural integrity of neighboring Historic Resources;
- (2) ~~(2)~~ The feasibility of adaptively reusing the Historic Resource proposed for ~~demolition,~~~~alteration or modification~~;
- (3) ~~(3)~~ All practical alternatives to ~~demolition,~~ ~~modification or alteration of the resource,~~ including relocation of the structure ~~or sale thereof or,~~ beneficial reuse of the entire structure or the component parts of the ~~property on which the same is located~~ structure;
- (4) ~~(4)~~ Any ~~expert~~ qualified testimony, such as ~~a certified,~~ but not limited to, an engineering report regarding the structural stability of the Historic Resource, documenting threats to public safety;
- (5) ~~(5)~~ The archaeological potential of the site;
- (6) ~~(6)~~ ~~Cogent~~ Public comment regarding the Historic Resource or surrounding Historic Resources which may be impacted by the proposed demolition, ~~alteration or modification,~~ including, without limitation, information in response to that submitted by the applicant;

- (7) ~~(7)~~ Economic feasibility of adaptive reuse of the Historic Resource proposed for demolition, ~~alteration or modification~~;
- (8) Whether the resource in its current condition presents an imminent threat to public safety;
- (9) ~~(9)~~ Whether the Historic Resource has been demolished by neglect or the owner thereof has otherwise created or contributed to the state of the Historic Resource and/or any financial hardship associated with the preservation, rehabilitation or retention thereof; and
- (10) ~~(10)~~ Whether the required retention of the Historic Resource would represent an unreasonable economic hardship and/or whether the Historic Resource can be so preserved, rehabilitated and/or retained, as applicable, so as to allow a reasonable rate of return from the ~~operation~~use of the Historic Resource and/or the property on which the same is located.

G.

~~G.~~ Initial recommendation by the Historical Commission.

- (1) ~~(1)~~ The Commission may recommend immediate approval of the demolition ~~and/or building~~ permit and may so advise the Board of Supervisors in writing.  
~~(2) Time periods for decision.~~
  - (a) Alternatively, the Commission may elect to ~~use~~ take an additional 60 days from the following time periods date of the first meeting where the demolition application is discussed to provide adequate opportunity for documentation of the Historic Resource as set forth in Subsection J ~~↓~~ below, preparation of a financial analysis as described in Subsection K ~~↘~~ below, or dialogue with the applicant on alternatives to demolition, ~~alteration or modification~~.

[1] ~~Class I Historic resources: a maximum of 90 days from the date the Township receives a complete application for a demolition and/or building permit.~~

~~{2} Class II Historic resources: a maximum of 60 days from the date the Township receives a complete application for a demolition and/or building permit.~~

~~{3} Class III Historic resources: a maximum of 60 days from the date the Township receives a complete application for a demolition and/or building permit.~~

~~(b) Upon or prior to~~ Before the expiration of the time ~~periods~~period provided above,

the Historical Commission shall recommend to the Board of Supervisors either approval or denial of the demolition ~~and/or building~~ permit. The Historical Commission shall communicate its recommendation(s) to the Board of Supervisors in a written report which specifically addresses the items set forth in Subsection F ~~-F above to the Board of Supervisors~~, either recommending approval of the application as submitted, recommending approval of the application with conditions, or recommending denial of the application. If the Commission recommends denial, clear and relevant information must support the decision as set forth in Subsection F above.

H.

~~H. Board of Supervisors meeting. Within 30 days after receiving the~~ After receipt of the Historical Commission's recommendation ~~from the Historical Commission~~, the Board of Supervisors shall ~~consider~~ schedule the matter to be considered at the ~~application for demolition and/or building permit at a~~ next regularly scheduled public meeting ~~and shall consider the criteria set forth at Subsection F of this section and shall vote either to approve the application, approve the application with conditions, or deny the application.~~ of the Board. The applicant shall be notified of the meeting ~~at least 10 days~~ prior to its date, at which time the applicant shall have the right to present evidence in support of the application. The Board of Supervisors ~~will~~ shall consider any evidence, reports or testimony from interested parties ~~and will~~ including the Historical Commission's recommendation and shall render a final decision either to deny or approve the demolition ~~and/or building permit within 30 days of the public meeting where the application for~~

~~demolition and/or building permit is considered. This period may be extended by consent of the applicant.~~

The Board of Supervisors may, at its election, deny the application or approve the same with conditions if the Board of Supervisors ~~shall determine~~determines that the applicant shall have failed to present substantial evidence with regard to the criteria set forth at Subsection F ~~of~~ of this section or that, based on such criteria, demolition,~~modification and/or alteration~~ of the Historic Resource will be contrary to the purposes of this Article.

I.  
~~I.~~ Issuance or denial of demolition ~~and/or building~~ permit. Where the Board of Supervisors acts to either approve or deny the demolition permit application, it shall authorize the Zoning Officer to either issue the permit or give written notice of denial, as applicable. Where the approval is authorized to be granted with conditions attached, the Zoning Officer shall be authorized to issue the permit upon his/her receipt from the applicant of ~~his~~ written acceptance of those conditions; otherwise, the permit shall be denied.

J.  
~~J.~~ Documentation. Prior to the issuance of a demolition ~~and/or building~~ permit, the Historical Commission ~~or~~ may recommend to the Board of Supervisors or the Board itself may require the applicant to provide documentation of the Historic Resource proposed for demolition,~~alteration and/or modification.~~ Such documentation may include photographs, floor plans, measured drawings, ~~archeological surveys,~~ and other comparable forms of documentation.

K.  
~~K.~~ Financial analysis. In its review of an application to demolish,~~alter and/or modify~~ an Historic Resource and so as to allow the Historical Commission to analyze the application's compliance with the criteria set forth at Subsection F ~~of~~ of this section, the Historical Commission or the Board of Supervisors may, at the Historical Commission's



and/or the Board of Supervisors' election, require the applicant to prepare a financial analysis which shall include ~~and~~an analysis of the cost to renovate, rehabilitate, restore or adaptively reuse the Historic Resource and the profitability of adaptive reuses of the Historic Resource. The financial analysis shall be prepared by a qualified professional.

L.

~~↳~~ Reimbursement of costs. Any reasonable costs incurred by the ~~Historic~~Historical Commission or Board of Supervisors to review plans and studies relating to the demolition,~~alteration or modification~~ of the Historic Resource, including fees for consultants specifically retained for this purpose, shall be reimbursed to the Township by the applicant prior to the issuance of the demolition ~~and/or building permit.~~permit. In the event the Historical Commission or Board of Supervisors elects to retain consultants to assist in the review of the demolition permit application, the applicant shall be required to execute a professional consultants' reimbursement agreement in the form provided by the Township.

### **§ 122-36.5. Landscaping and screening.**

A.

#### ~~§ 122-36.5. Violations and penalties; enforcement.~~

~~Any person who violates the terms of this article shall be subject to the enforcement procedures, fines and penalties provided for in § 122-141 as well as applicable enforcement procedures, fines and penalties provided for in Chapter 47 of the Birmingham Township Code governing building construction. In addition:~~

~~A. In the event any person demolishes, alters or modifies an historic resource in violation of the provisions of this article or in violation of any conditions or requirements specified in a permit issued under the terms of this article or suffers or permits the same, the Board of Supervisors may institute any proceeding, at law or in equity, necessary to enforce the provisions of this article, including, but not limited to, an action to compel the reconstruction and/or restoration of the historic resource to its condition and appearance as existed immediately prior to the violation. Such restoration shall be in addition to, and not in lieu of, any penalty or remedy available under this § 122-36.5 or any other applicable law.~~

~~B. In the event that the Board of Supervisors authorizes the commencement of an action pursuant to Subsection A of this § 122-36.5, the Zoning Officer or Building Code Official shall not issue any building permit for the construction of any building or structure proposed to be located in any location on the property which would preclude reconstruction or restoration of the historic resource demolished, altered or modified in violation of this article or intended to replace such historic resource, unless issued for the purpose of restoring the historic resource to its condition and appearance as existed immediately prior to the violation.~~

~~C. In addition to, and not in lieu of, the foregoing, the Zoning Officer or Building Code Official, as applicable, shall issue a stop work order with regard to any demolition, alteration and/or modification of an historic resource for which a permit has not been obtained pursuant to this article.~~

**~~§ 122-36.6. Landscaping and screening.~~**

~~A. A landscape plan shall be required for subdivision or land development applications, conditional use applications, special exception or variance applications which involve:~~ a tract of land which is itself designated as ~~a Class I, Class II or Class III~~ an Historic Resource; a tract of land which contains ~~a Class I, Class II or Class III~~ an Historic Resource; or a tract of land whose property lines are ~~within 500 feet~~ adjacent to a tract of ~~a Class I, Class III~~ land which is itself designated or ~~Class III~~ contains an Historic Resource. The landscape plan shall be prepared in accordance with the standards contained in § 122-102C ~~122-102C~~ of this chapter, in addition to other standards of this section. The landscape plan shall be ~~submitted to~~ reviewed and approved by the Board of Supervisors as part of the subdivision and land development process. The Board of Supervisors may, in its discretion, seek input from the Historical Commission ~~for review and comment based on the general purposes and objectives of this article prior to the respective hearing or meeting before the Board of Supervisors or Zoning Hearing Board.~~ on the landscape plan for the following applications: (i) subdivision or land development applications which involve a tract of land which is itself designated as an Historic Resource; (ii) a tract of land which contains an Historic Resource; or (iii) a tract of land whose property lines are within 200 feet of the property lines of a tract of land which is itself designated or contains an Historic Resource.

~~B. There shall be a minimum building setback of 200 feet from any Class I, Class II or Class III historic resource for any new buildings or structures. This minimum setback requirement may be reduced at the discretion of the Board of Supervisors if it can be demonstrated to the satisfaction of the Board of Supervisors that the historic resource can be adequately protected through existing or proposed landscaping, topography, architectural controls, or other features.~~

~~C.B.~~ The applicant shall demonstrate preservation of sufficient ~~landscaped~~landscaping or buffer area surrounding ~~Class I, Class II or Class III~~ Historic Resources to retain the integrity of the historical landscape setting. ~~The applicant shall also demonstrate mitigation of any impacts to the historical landscape setting through plans showing the introduction of vegetation or other screening in harmony with such landscape setting and through retention of view lines which visually link historic structures to their landscape setting.~~

~~D.C.~~ The landscape plan shall be prepared by a registered landscape architect and shall strive to minimize the impact of the proposed development on the Historic Resource through screening, buffering, building locations and orientations, and plant material selection. The plan shall strive to save existing mature trees ~~within the development~~ and utilize native species. The landscape plan shall show all pertinent information, including the location, sizes, and species of all individual trees and shrubs to be removed, planted, or preserved.

~~E.D.~~ Provisions of this section shall not be construed to conflict with or override any of the provisions of the Township Subdivision and Land Development Ordinance. ~~[1]~~ When there is a conflict, the more restrictive of the provisions shall govern. ~~[1] Editor's Note: See Ch. 103, Subdivision and Land Development.~~

~~§ 122-36.7. Changes to historical resources.~~ **6. Minimum Building Setbacks.**

There shall be a minimum building setback for any new buildings or structures equal to two times the otherwise required setback if the lot upon which the new building or structure is proposed to be built is located adjacent to a lot with a Historic Resource. For

example, if the required minimum side yard setback for the new building or structure would be 30 feet, the setback shall be increased to 60 feet for the side yard that abuts the lot with the existing Historic Resource. The minimum setback requirements may be reduced at the discretion of the Board of Supervisors if it can be demonstrated to the satisfaction of the Board of Supervisors that the Historic Resource can be adequately protected through existing or proposed landscaping, topography, architectural controls, or other features.

### **§ 122-36.7. Alterations to Historical Resources.**

A. ~~A. Compliance. Except as provided herein, any additions, to or alterations, renovations, rehabilitation, preservation, reconstruction, restoration, stabilization or improvements to a Class I, Class II or Class III historic resource shall be~~ of a Historic Resource which is listed on the Inventory of Historic Resources shall occur only in substantial~~full~~ compliance with the Secretary of the U.S. Department of the Interior's Standards for Rehabilitation which are reproduced below: terms of this section and other applicable regulations.

~~1. Every reasonable effort should be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.~~

~~2.~~ B. The provisions of this section shall not apply to: (i) ordinary maintenance or repair of a Historic Resource where such work does not require a building permit and where the purpose and effect of such work is to correct any deterioration or decay of, or damage to, a building or structure and to restore the same to its condition prior to the occurrence of such deterioration, decay or damage; or (ii) any exterior alteration that does not involve a change in or addition to the exterior structure of a building.

C. Permit requirements. In addition to applicable requirements under the Township Building Code, an applicant seeking a permit to construct an addition or exterior alteration

of an Historic Resource shall submit an application for a building permit on forms supplied by the Township. The application shall include the following information:

- (1) Owner of record;
- (2) Location upon the Cultural Resources Map;
- (3) Site plan showing all buildings and structures on the property where the Historic Resource is located;
- (4) Recent photographs of the Historic Resource;
- (5) Reasons for the addition or alteration;
- (6) Method of construction;

D. Notice requirements. Prior to the Board of Supervisors' public meeting at which the application for a building permit will be considered, the applicant shall provide a notice to all property owners who own property within a 200 foot radius of the Historic Resource by certified, return receipt United States mail. The notice shall state the tax parcel number on which the Historic Resource is located, the name of the Historic Resource if one exists, and the scheduled meeting date and time when the Board of Supervisors will review and accept public comment on the application. Additionally, the applicant shall post the property which is the subject of the application with a copy of the written notice that was mailed to all property owners within a 200 foot radius of the historic structure. The notice shall be placed in a conspicuous location on the property where the Historic Resource is located at least 14 days prior to the Board of Supervisors meeting and shall remain on the property until after the Board of Supervisors acts on the application. The applicant shall provide to the Township proof of mailing and posting and a photograph of the posting prior to the Board of Supervisors meeting where the matter will be discussed.

E. Review by the Birmingham Township Board of Supervisors. Upon receipt of a complete application, the Zoning Officer shall send a copy of the application seeking a building permit for an addition to or alteration of a Historic Resource to the Board. The Board shall have the right to forward the application to the Historical Commission for its review and recommendations. The Board shall consider the application at a public meeting held after the applicant has provided proof of compliance with the notice and posting requirements in Section 122-36.7.D above. In reviewing the application, the Board of Supervisors shall consider, the following criteria and information:

(1) Whether the distinguishing original qualities or character of ~~a building, structure, or site and its environment should not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible~~the Historic Resource are maintained.

~~3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance should be discouraged.~~

~~4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired historic significance in their own right, and this significance should be recognized and respected.~~

5. (2) Whether distinctive stylistic features or ~~examples of skilled~~ craftsmanship which ~~characterize a building, structure, or site should be~~ characterizes the Historic Resource are treated with sensitivity.

~~6. Deteriorated architectural features should be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of difference architectural elements from other buildings and structures.~~

~~7. The surface cleaning of structures should be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials should not be undertaken.~~

~~8. Every reasonable effort should be made to protect and preserve archeological resources affected by, or adjacent to any project.~~

~~9. Contemporary design for alterations and~~ (3) Whether any additions to existing properties should not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

~~10. New additions or alterations to structures should be done in such a manner that if~~ are being planned such alterations and additions that if they were later to be removed ~~in the future,~~ they would impair the essential form and integrity of the ~~structure would be unimpaired~~ original Historic Structure.

(4) The effect of the addition or alteration to the historical significance and architectural integrity of the Historical Resource and neighboring Historic Resources;

(5) Any testimony, such as a certified engineering report regarding the structural stability of the Historic Resource, documenting threats to public safety and the impact that the proposed addition would have on same;

(6) Public comment regarding the Historic Resource or surrounding Historic Resources which may be impacted by the proposed addition or alteration, including, without limitation, information in response to that submitted by the applicant;

(7) Any recommendation it sought from Historical Commission.

(8) Whether the proposed alteration is consistent with Secretary of Interior's Guidelines for Rehabilitating Historic Buildings.

F. Issuance or denial of building permit. Where the Board of Supervisors acts to either approve or deny the permit application, it shall authorize the Zoning Officer to either issue the permit or give written notice of denial, as applicable. Where the approval is authorized

to be granted with conditions attached, the Zoning Officer shall be authorized to issue the permit upon his/her receipt from the applicant of written acceptance of those conditions; otherwise, the permit shall be denied.

G. Documentation. Prior to the issuance of a building permit, the Board of Supervisors may require the applicant to provide documentation of the Historic Resource. Such documentation may include photographs, floor plans, measured drawings, and other comparable forms of documentation.

H. Reimbursement of costs. Any reasonable costs incurred by the Board of Supervisors to review plans and studies relating to the addition or alteration of the Historic Resource, including fees for consultants specifically retained for this purpose, shall be reimbursed to the Township by the applicant prior to the issuance of the building permit. In the event the Board of Supervisors elects to retain consultants to assist in the review of the building permit application, the applicant shall be required to execute a professional consultants' reimbursement agreement in the form provided by the Township.

#### **§ 122-36.8. Historic resource impact study.**

A. ~~A.~~ Applicability. An historic resource impact study ("HRIS") shall be submitted to the Township, unless waived or modified by the Board of Supervisors, in the following situations:

- (1) ~~(1)~~ As part of a preliminary plan submission for any subdivision or land development application which proposes new construction of buildings, structures, roads, driveways, parking areas, or other land disturbance within ~~500~~200 feet of the property line of a property upon which is situated a ~~Class I, Class II or Class III~~ historic resource.
- (2) ~~(2)~~ As part of a preliminary plan submission for any subdivision or land development application which proposes adaptive reuse or demolition, alteration or modification of a ~~Class I, Class II or Class III~~ historic resource.



(3) ~~B.~~ As part of a preliminary plan submission for any subdivision or land development application which proposes new construction of buildings, structures, roads, driveways, parking areas, or other land disturbance which is adjacent to or within the Sandy Hollow Battlefield (Chester County Tax Parcel No. 65-4-49.1E and 65-4-49E) or Birmingham Hill (Chester County Tax Parcel No. 65-4-25.1).

B. Contents. The HRIS shall be prepared by a qualified professional in historic preservation, historical architecture, planning, or related disciplines and shall contain the following information, unless waived or modified by the Board of Supervisors:

(1) ~~(1)~~ Background information.

(a) ~~(a)~~ If not otherwise provided by the applicant, a general description of the site subject to the application, including topography, watercourses, vegetation, landscaping, existing drives, etc.

(b) ~~(b)~~ General description and classification of all historic resources located within ~~500~~200 feet of any proposed land development or land disturbance.

(c) ~~(c)~~ Physical description of all historic resources.

(d) ~~(d)~~ Narrative description of the historical significance of each historic resource, relative to both the Township and to the region in general.

(e) ~~(e)~~ Sufficient number of black and white or color eight-inch-by-ten-inch photographs to show each historic resource in its setting.

- (2) ~~{2}~~ Assessment of potential impacts to historic resources.
  - (a) ~~{a}~~ Description of potential impact(s) to each historic resource with regard to architectural integrity, historic setting, and future use.
- (3) ~~{3}~~ Mitigation measures.
  - (a) ~~{a}~~ Suggested approaches to mitigate potentially negative impacts to Historic Resources, including design alternatives, buffering, landscaping, conservation of existing vegetation, and any other appropriate measures permitted under the terms of this chapter and other Township ordinances.

C. ~~c.~~ The Board of Supervisors shall consider the HRIS ~~will be reviewed by the~~ in its decision approving or denying the land development or subdivision. The Board shall have the right to forward the HRIS to the Historical Commission. ~~Prior to the issuance of preliminary plan approval for a subdivision or land development, the Historical Commission shall set forth its evaluation~~ its review and recommendations.

**§ 122-36.9. Violations and penalties; enforcement.** ~~concerning the impact of the proposed development or subdivision upon~~

Any person who violates the ~~historic resource in a written report~~ terms of this Article shall be subject to the enforcement procedures, fines and penalties provided for in § 122-141 ~~Board~~ as well as applicable enforcement procedures, fines and penalties provided for in Chapter 47 of the Birmingham Township Code governing building construction. In addition:

A. ~~Supervisors.~~ In the event any person demolishes an Historic Resource in violation of the provisions of this Article or in violation of any conditions or requirements specified in a permit issued under the terms of this Article or permits the same, the Board of Supervisors may institute any proceeding, at law or in equity, necessary to enforce the provisions of this Article, including, but not limited to, an action to compel the reconstruction and/or restoration of the Historic Resource to its condition and appearance as existed immediately prior to the violation. Such restoration shall be in addition to, and not in lieu of, any penalty or remedy available under this § 122-36.8 or any other applicable law.

B. In the event that the Board of Supervisors authorizes the commencement of an action pursuant to

Subsection A of this § 122-36. ~~shall consider~~ 8, the Zoning Officer or Building Code Official shall not issue any building permit for the construction of any building or structure proposed to be located in any location on the property which would preclude reconstruction or restoration of the Historic Resource demolished in violation of this Article or intended to replace such Historic Resource, unless issued for the purpose of restoring the Historic Resource to its condition and appearance as existed immediately prior to the violation.

C. ~~report in its decision approving or denying the land development or subdivision.~~ In addition to, and not in lieu of, the foregoing, the Zoning Officer or Building Code Official, as applicable, shall issue a stop-work order with regard to any demolition of an Historic Resource for which a permit has not been obtained pursuant to this Article.”

**SECTION 6. Severability.** The provisions of this Ordinance are severable, and if any article, section, subsection, clause, sentence, or part thereof shall be held or declared illegal, invalid or unconstitutional by any court of competent jurisdiction, the decision shall not affect or impair any of the remaining articles, sections, subsections, clauses, sentences or parts thereof of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid or unconstitutional article, section, subsection, clause, sentence or part thereof had not been included herein.

**SECTION 7. Repealer.** All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed insofar as the same affects this ordinance.

**SECTION 8. Effective Date.** This Ordinance shall become effective five days after enactment as by law provided.

ENACTED AND ORDAINED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

**ATTEST:** \_\_\_\_\_ **BIRMINGHAM TOWNSHIP**  
\_\_\_\_\_ **BOARD OF SUPERVISORS**

\_\_\_\_\_  
Quina Nelling, Secretary

\_\_\_\_\_  
Scott C. Boorse, Chairman

\_\_\_\_\_  
Michael T. Shiring, Vice-Chairman

\_\_\_\_\_  
J. Dan Hill, Member