

Village of Berrien Springs
Berrien County, Michigan
Ordinance Number 371

An Ordinance to Add Article VII entitled “Historic Preservation” to Chapter 12, entitled “Building and Building Regulations” and Division 1, entitled “Historic District Ordinance”

Sec. 12-1-1 **Short title.**

This Ordinance shall be known as the “Historic District Ordinance of the Village of Berrien Springs.

Sec. 12-1-2 **Statement of purpose.**

Historic preservation is hereby declared to be a public purpose and the Village Council of the Village of Berrien Springs may hereby regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the Village limits. The purpose of this Ordinance is to:

- A. Safeguard the heritage of the Village of Berrien Springs by preserving districts which reflect elements of its history, architecture, archaeology, engineering, or culture.
- B. Stabilize and improve property values in each district and surrounding areas.
- C. Foster civic beauty.
- D. Strengthen the local economy.
- E. Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the Village of Berrien Springs and of the State of Michigan.

The Village of Berrien Springs may by Ordinance establish one or more historic districts. The historic district(s) shall be administered by the Historic District Commission pursuant to this Ordinance.

Sec. 12-1-3 **Definitions.**

- A. “Alteration” means work that changes the detail of a resource but does not change its basic size or shape.
- B. “Certificate of Appropriateness” means the written approval of a permit application for work that is appropriate and does not adversely affect a resource.
- C. “Commission” means the Historic District Commission of the Village of Berrien Springs.”

- D. “Demolition” means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.
- E. “Demolition by Neglect” means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.
- F. “Denial” means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.
- G. “Fire Alarm System” means a system designed to detect and annunciate the presence of fire or by-products of fire. Fire alarm systems includes smoke alarms.
- H. “Historic District” means an area, or group of areas, not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.
- I. “Historic Preservation” means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.
- J. “Historic Resource” means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archaeology, engineering, or culture of the Village of Berrien Springs, State of Michigan, or the United States.
- K. “Notice to Proceed” means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under Section 399.205(6) of Public Act 169 of 1970, as amended.
- L. “Open Space” means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or buffer between other resources.
- M. “Ordinary Maintenance” means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for the purposes of this Ordinance.
- N. “Proposed Historic District” means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

- O. “Repair” means to restore a decayed or damaged resource to good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for the purposes of this Ordinance.
- P. “Resource” means one or more publicly or privately owned historic or non-historic buildings, structures, sites, objects, features, or open spaces located within a historic district.
- Q. “Smoke Alarm” means a single station or multiple-station alarm responsive to some and not connected to a system. As used in this subdivision, a “single-station alarm” means an assembly incorporating a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation. “Multiple-station alarm” means 2 or more single-station alarms that are capable of interconnection such that actuation of 1 alarm causes all integrated separate audible alarms to operate.
- R. “Work” means construction, addition, alteration, repair, moving, excavation, or demolition.

Sec. 12-1-4 Historic district study committee and the study committee report.

Before establishing a historic district(s), the Village Council shall appoint a Historic District Study Committee. A majority of the persons appointed to the Study Committee shall have a clearly demonstrated interest in or knowledge of historic preservation. The Study Committee shall contain representation of at least one member appointed from one or more duly organized local historic preservation organizations. The Study Committee shall do all of the following:

- A. Conduct a photographic inventory of resources within each proposed historic district following procedures established by the State Historic Preservation Office of the Michigan Historical Center.
- B. Conduct basic research of each proposed historic district and historic resources located within that district.
- C. Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the Committee shall be guided by the selection criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR part 60, and criteria established or approved by the State Historic Preservation Office of the Michigan Historical Center.
- D. Prepare a preliminary Historic District Study Committee report that addresses at a minimum all of the following:
 - a. The charge of the Committee.
 - b. The composition of Committee membership.

- c. The historic district(s) studied.
 - d. The boundaries of each proposed historic district in writing and on maps.
 - e. The history of each proposed historic district
 - f. The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.
 - g. Transmit copies of the preliminary report for review and recommendations to the local planning body, the State Historic Preservation Office of the Michigan Historical Center, the Michigan Historical Commission, and the State Historic Preservation Review Board.
 - h. Make copies of the preliminary report available to the public pursuant to Section 399.203(4) of Public Act 169 of 1970, as amended.
- E. Not less than sixty (60) calendar days after the transmittal of the preliminary report, the Historic District Study Committee shall hold a public hearing in compliance with Public Act 267 of 1976, as amended. Public notice of the time, date and place of the hearing shall be given in the manner required by Public Act 267. Written notice shall be mailed by first class mail not less than fourteen (14) calendar days prior to the hearing to the owners of properties within the proposed historic district, as listed on the most current tax rolls. The report shall be made available to the public in compliance with Public Act 442 of 1976, as amended.
- F. After the date of the public hearing, the Committee and the Village Council have not more than one year, unless otherwise authorized by the Village Council, to take the following actions:
- a. The Committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the Village Council as to the establishment of a Historic District(s). If the recommendation is to establish a Historic District(s), the final report shall include a draft of the proposed ordinance(s).
 - b. After receiving a final report that recommends the establishment of a Historic District(s), the Village Council, at its discretion, may introduce and pass or reject an ordinance(s). If the Village Council passes an ordinance(s) establishing one or more Historic Districts, the Village shall file a copy of the ordinance(s), including a legal description of the property or properties located within the Historic District(s) with the Register of Deeds. The Village Council shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

- G. A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function of the Historic District Commission should be made available to the public in compliance with Public Act 442 of 1976, as amended.

Sec. 12-1-5 Establishing additional, modifying or eliminating historic districts.

- A. The Village Council may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, a historic district study committee appointed by the Village Council shall follow the procedures as stated in Section 399.203 (1-3) of Public Act 169 of 1970, as amended. To conduct these activities, the Village Council may retain the initial committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved. The committee shall consider any previously written committee reports pertinent to the proposed action.
- B. In considering elimination of a historic district, a committee shall follow the procedures set forth in Section 399.203 (1-3) of Public Act 169 of 1970, as amended for the issuance of a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:
- a. The historic district has lost those physical characteristics that enabled the establishment of the district.
 - b. The historic district was not significant in the way previously defined.
 - c. The historic district was established pursuant to defective procedures.

Sec. 12-1-6 The historic district commission.

The Village Council may establish by ordinance a commission to be called a historic district commission. The Commission may be established at any time, but not later than the time the first historic district is established. Each member of the Commission shall reside within the Village limits. The Commission shall consist of five (5) members. Members shall be appointed by the Village Council. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. Members shall be appointed for a term of three (3) years, except the initial appointments of three (3) members for a term of two (2) years and two (2) members for a term of one year. Subsequent appointments shall be for three-year terms. Members shall be eligible for reappointment. In the event of a vacancy on the Commission, interim appointments shall be made by the Village Council within sixty (60) calendar days to complete the unexpired term of such position. If such a person is available for appointment, one member shall be a graduate of an accredited school of architecture who has 2 years of architectural experience or who is an architect registered in this state.

The Village Council may prescribe powers and duties of the Commission, in addition to those prescribed in this Ordinance, that foster historic preservation activities, projects, and programs in the local unit.

Sec. 12-1-7 Historic district commission meetings, recordkeeping & rules of procedure.

- A. The Historic District Commission shall meet at least quarterly or more frequently at the call of the Commission.
- B. The business that the Commission may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, as amended. Public notice of the date, time, and place of the meeting shall be given in the manner required by Public Act 267. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the Commission.
- C. The Commission shall keep a record of its resolutions, proceedings and actions. A writing prepared, owned, used, in the possession of, or retained by the Commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information, Public Act 442 of 1976, as amended.
- D. The Commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines to carry out its duties under this act.

Sec. 12-1-8 Delegation of minor classes of work.

The commission may delegate the issuance of Certificates of Appropriateness for specified minor classes of work to its staff, or to another delegated authority. The Commission shall provide to its delegated authority specific written standards for issuing Certificates of appropriateness under this subsection. The Commission shall review the Certificates of Appropriateness issued by the delegate on at least a quarterly basis to determine whether or not the delegated responsibilities should be continued.

Sec. 12-1-9 Ordinary maintenance.

Nothing in this Ordinance shall be construed to prevent ordinary maintenance or repair of a resource within a historic district or to prevent work on any resource under a permit issued by the inspector of buildings or other duly delegated authority before the Ordinance was enacted.

Sec. 12-1-10 Review by the commission.

The Commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the Village Council or unless interior work will cause visible change to the exterior of the resource. The Commission shall not disapprove an application due to considerations not prescribed in subsection 399.205(3) of Public Act 169 of 1970, as amended.

Sec. 12-1-11 Design review standards and guidelines.

- A. In reviewing plans, the Commission shall follow the U.S. Secretary of Interior's *Standards for Rehabilitation* and guidelines for rehabilitating historic buildings as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the Commission may be followed if they are equivalent in guidance to the Secretary of Interior's *Standards* and guidelines and are established or approved by the State Historic Preservation Office of the Michigan Historical Center.
- B. In reviewing plans, the Commission shall also consider all of the following:
- a. The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.
 - b. The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
 - c. The general compatibility of the design, arrangement, texture, and materials proposed to be used.
 - d. Other factors, such as aesthetic value, that the commission finds relevant.
 - e. Whether the applicant has certified in the application that the property where the work will be undertaken has, or will have before the proposed project completion date. A fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

Sec. 12-1-12 Permit applications.

- A. A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings. Upon receipt of a complete application, the inspector of buildings shall immediately refer the application, along with all required supporting materials that make the application complete to the commission. A permit shall not be issued and proposed work shall not proceed until the Commission has acted on the application by issuing a Certificate of Appropriateness or a Notice to Proceed as prescribed in this Ordinance. A commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

- B. The Commission shall file Certificates of Appropriateness, Notices to Proceed, and Denials of applications for permits with the inspector of buildings. A permit shall not be issued until the Commission has acted as prescribed by this Ordinance.
- C. If an application is for work that will adversely affect the exterior of a resource the Commission considers valuable to the Village of Berrien Springs, the State of Michigan, or the nation, and the Commission determines that the alteration or loss of that resource will adversely affect the public purpose of the city, state, or nation, the Commission shall attempt to establish with the owner of the resource an economically feasible plan for the preservation of the resource.
- D. The failure of the Commission to act on an application within sixty (60) calendar days after the date a complete application is filed with the Commission, unless an extension is agreed upon in writing by the applicant and the Commission, shall be considered to constitute approval.
- E. The Commission may charge a reasonable fee to process a permit application.

Sec. 12-1-13 Denials.

If a permit application is denied, the decision shall be binding on the inspector or other authority. A Denial shall be accompanied by a written explanation by the Commission of the reasons for denial and, if appropriate, a notice that an application may be re-submitted for Commission review when the suggested changes have been made. The Denial shall also include the notification of the applicant's right to appeal to the State Historic Preservation Review Board and to the circuit court.

Sec. 12-1-14 Notice to proceed.

Work within a historic district shall be permitted through the issuance of a Notice to Proceed by the Commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the Commission to be necessary to substantially improve or correct any of the following conditions:

- A. The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- B. The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- C. Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value

or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

- D. Retaining the resource is not in the interest of the majority of the community.

Sec. 12-1-15 Work without a permit.

When work has been done upon a resource without a permit, and the Commission finds that the work does not qualify for a Certificate of Appropriateness, the Commission may require an owner to restore the resource to the condition that the resource was in before the inappropriate work or to modify the work so that it qualifies for a Certificate of Appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the Commission may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a Certificate of Appropriateness. If the owner does not comply or cannot comply with the order of the court, the Commission or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a Certificate of Appropriateness in accordance with the court's order. The costs of the work done shall be charged to the owner, and may be levied by the Village of Berrien Springs as a special assessment against the property. When acting pursuant to an order of the circuit court, the Commission or its agents may enter a property for purposes of this section.

Sec. 12-1-16 Demolition by neglect.

Upon a finding by the Commission that a historic resource within a historic district or a proposed historic district subject to its review and approval is threatened with Demolition by Neglect, the Commission may do either of the following:

- A. Require the owner of the resource to repair all conditions contributing to demolition by neglect.
- B. If the owner does not make repairs within a reasonable time, the Commission or its agents may enter the property and make such repairs as necessary to prevent Demolition by Neglect. The costs of the work shall be charged to the owner, and may be levied by the Village of Berrien Springs as a special assessment against the property. The Commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

Sec. 12-1-17 Review of work in proposed districts.

Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the Village Council may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the Historic District Commission as prescribed in Section 12 of the Ordinance. The Historic District Commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may

continue in the proposed historic district for not more than one year, or until such time as the Village Council approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

Sec. 12-1-18 Emergency moratorium.

If the Village Council determines that pending work will cause irreparable harm to resources located within an established or proposed historic district, the Village Council may by resolution declare an emergency moratorium on all such work for a period not to exceed six (6) months. The Village Council may extend the emergency moratorium for an additional period not to exceed six (6) months, upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

Sec. 12-1-19 Penalties for violations.

- A. A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act is responsible for a civil violation and may be fined not more than \$5,000.00.
- B. A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated or demolished.

Sec. 12-1-20 Acceptance of gifts or grants.

The Village Council may accept state or federal grants for historic preservation purposes; may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The Village Council may appoint the Historic District Commission to accept and administer grants, gifts, and program responsibilities.

Sec. 12-1-21 Acquisition of historic resources.

If all efforts by the Commission to preserve a resource fail, or if it is determined by the Village Council that public ownership is most suitable, the Village Council, if considered to be the public interest, may acquire the resource using public funds, public or private gifts, grants or proceeds from the issuance of revenue bonds. The acquisition shall be based upon the recommendation of the Commission. The Commission is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the Village Council. Upon recommendation of the Commission, the Village may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

Sec. 12-1-22 **Severability.**

If any portion of this Ordinance or the application thereof shall be found to be invalid by a Court, such invalidity shall not affect the remaining portions of the applications of the Ordinance which can be given effect without the invalid portion or applications provided that such remaining portions or applications are not determined by said Court to be inoperable, and to this end this Ordinance is declared to be severable.

Sec. 12-1-23 **Publication.**

The Village Clerk shall certify to the adoption of this ordinance and cause the same to be published as required by law.

Sec. 12-1-24 **Effective Date**

This ordinance shall take effect 20 days after publication.

Yeas: Roll call vote: Jim Allred, Jesse Hibler, Sandy Swartz, Barry Gravitt, Lonna Johnson, Kristin von Maur and President Milt Richter.

Nays: None

Dated: November 19, 2018




Milt Richter, Village President

Ordinance declared adopted:



Sheryl A. Kesterke, Village Clerk

I hereby certify that the above and foregoing Ordinance was duly adopted by the Village Council of Berrien Springs and published in the Journal Era, a weekly newspaper published in the Village of Berrien Springs, in the issue of said newspaper dated and published on the 21st day of November, 2018.



Sheryl A. Kesterke, Village Clerk