6-23-16 DRAFT

TOWN OF CLARKSTOWN
LOCAL LAW NO. 8 - 2016

Be it enacted by the Town Board of the Town of Clarkstown as follows:

Section 1. TITLE.
A local law abolishing the Architecture and Landscape Commission and Historic Review Board and creating the Architectural Historic Review Board of the Town of Clarkstown.

Section 2. LEGISLATIVE INTENT.
It is the intent of the Town Board of the Town of Clarkstown to replace the current Architecture and Landscape Commission and Historic Review Board by combining these boards into a new board entitled "Architectural Historic Review Board".

Section 3. Delete Chapter 5 - Architecture and Landscape Commission in its entirety.

Section 4. Delete Chapter 25 - Historic Review Board in its entirety.

Section 5. Create a new Chapter 5 - Architectural Historic Review Board to read in its entirety as follows:

Chapter 5. Architectural Historic Review Board

Article I. General Provisions

§ 5-1. Legislative intent._

A. The Town Board hereby finds that excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of buildings or signs erected thereon or placed on property in any neighborhood will adversely affect the desirability of the immediate area and neighboring areas for residential and business purposes or other use and impair the benefits of occupancy of existing

property in such areas, impair the stability and value of both improved and unimproved real property in such areas, prevent the most appropriate development of such areas, impair a scenic vista or location of historical interest and produce degeneration of property in such areas with attendant deterioration of conditions affecting the health, safety and comfort and general welfare of the inhabitants thereof.

B. The Town Board hereby finds that the destruction and damage of shade and ornamental trees, the indiscriminate and excessive cutting of trees, the removal, stripping and storing of topsoil and improperly and unsightly seeded lawns in subdivisions and elsewhere all cause barren and unsightly conditions, destruction of barriers to soil erosion, increased surface drainage problems, increased municipal costs to control drainage, impairment of the benefit of occupancy of existing residential property, impairment of stability and value of improved and unimproved real property, damage to public highways and attendant deterioration of the community and adversely affect the health, safety and general welfare of the inhabitants of the Town of Clarkstown.

C. It is the purpose of this chapter to prevent the foregoing problems and other harmful effects of the exterior appearances of signs, fences and buildings erected or altered in any neighborhood and to correct the conditions hereinabove mentioned and thus to promote and protect the health, safety, comfort and general welfare of the community, to promote the public convenience and prosperity, to conserve the value of property and to encourage the most appropriate use of land within the unincorporated portion of the Town. It is also the purpose of this chapter to promote the public welfare, to preserve the historical character of certain areas to be designated within the Town of Clarkstown, to prevent the impairment of or injury to their architectural and cultural value to the community and to provide that a reasonable degree of control may be exercised over the architectural design, construction, alteration and repair of buildings, signs or other structures erected.

§ 5-2. Creation, organization, membership.

A. The Town Board is hereby authorized and empowered to create an Architectural Historic Review Board which shall consist

of seven members, including a Chairperson and a Vice Chairperson, who shall be especially qualified by reason of training or experience in art, architecture, tree planting and preservation, landscaping, history and historical preservation of sites within the Town of Clarkstown, or other relevant business or profession or by reason of civil interest and sound judgment. The Chairperson, Vice Chairperson, and the members of the Architectural Historic Review Board shall be appointed by the Town Board. The Town Board may provide for compensation to be paid to said members, experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding in all the appropriations that may be made by the Town Board for such Architectural Historic Review Board. The Town Board is hereby authorized to make such appropriation as it may see fit for such expenses; however, such expenses shall be a charge upon the taxable property of that part of the Town outside of incorporated villages.

B. Of the member first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, one for the term of six years and one for the term of seven years, from and after his or her appointment. Successive appointments shall be for a term of seven years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of a term, it shall be filled by the Town Board by appointment for the unexpired term. The Chairperson and Vice Chairperson of the Architectural Historic Review Board shall be appointed by the Town Board to serve for one-year terms. Meetings of the Architectural Historic Review Board shall be held at such times as the Chairperson may determine or at the direction of the Town Board. Four members of such Board shall constitute a quorum for the transaction of business. All meetings of such Board shall be open to the public, and the Board shall keep minutes of its proceedings showing the vote of each member upon any question or, if absent or failing to vote, indicating such fact, and shall also keep records of its official action. The Architectural Historic Review Board shall file every decision or determination with the Town Clerk within sixty (60) days which shall be a public record.

§ 5-3. Powers and duties.

The powers of the Board shall include:

1. To review, and where appropriate, give approval or disapproval on applications with respect to all applications for building permits or sign permits as provided in § 5-4A hereof;

2. To ensure compliance with the provisions of Chapter 243 (Signs) and § 290-7.2 (Hamlet Center Overlay Districts); further, provided, that if the Board finds that the building or structure for which the permit is applied would, if erected or altered, result in one or more of the harmful effects set forth in § 5-1A hereof by reason of poor quality of design or excessive uniformity, dissimilarity or inappropriateness in relation to any other structure existing in the surrounding area or for which a permit has been issued or to any other structures included in the same permit application, in respect to one or more of the following exterior design features: apparently identical facade; sign and architectural massing of the building, in width and height, in relation to its surroundings; surface material; color; roof appurtenances; exterior construction attached to the building, such as fire escapes, mechanical equipment, utility boxes and the like; location and visibility of utility boxes and platforms; exposed mechanical equipment; service and storage enclosures; or signs or adopt a master sign program, and building lighting, then the Board shall state the basis for its determination in its decision or minutes. The Architectural Historic Review Board shall have no jurisdiction over matters delegated to the Zoning Board of Appeals or Planning Board pursuant to Town Law §§ 267 and 271, et seq., or pursuant to local law;

3. To review, and where appropriate, give recommendations to the Town Board with respect to referrals from the Superintendent of Highways, public bodies, private groups and individuals who desire to plant or remove trees or shrubs and shall be responsible for the selection of species and placement or the planting of trees or shrubs upon public highways or public places;

4. To review, and where appropriate, give approval or disapproval regarding plans referred to it by the Planning Board, Zoning Board of Appeals and/or Building Inspector

for exterior architecture and landscape approval. The Architectural Historic Review Board shall comment on exterior architecture and landscape plans referred to it by the Planning Board as part of the State Environmental Quality Review Act (SEQRA) process and preliminary site plan process. The Architectural Historic Review Board shall review and approve exterior architecture and landscape plans after a SEQRA determination has been made by the Planning Board as lead agency and preliminary approval has been granted by the Planning Board. Exterior architecture and landscape plans approved by the Architectural Historic Review Board shall not conflict with any mitigation measures imposed under SEQRA or any site plan approved by the Planning Board. The Architectural Historic Review Board and the Planning Board shall work cooperatively, and each body shall take into account the other body's concerns involving landscaping, architectural massing bulk and surface treatment, signs and other architectural features. The Architectural Historic Review Board and Planning Board may hold joint meetings where appropriate to address items of mutual concern. Any decision by the Zoning Board of Appeals requiring landscaping or screening shall be referred to the Architectural Historic Review Board for its review and approval;

5. To adopt criteria for the identification of historic, architectural and cultural landmarks within the Town;

6. To give advisory recommendations to the Town Board the designation of historic landmarks, sites, roads and districts in the Town of Clarkstown for potential elevation to regional, state or national prominence;

7. To give advisory recommendations to the Town Board concerning the utilization of state, federal or private funds or grants to promote the preservation of landmarks within the town.

§ 5-4. Applications and Approvals

A. Powers of review.

In the Town of Clarkstown outside of the incorporated areas, every application for a building permit for the construction, reconstruction or exterior alteration of any commercial or industrial structure, multiple dwelling and/or attached units or for a sign permit, or any site within an historical area or upon

an historical residential structure as designated by the Town Board as such, for the construction, demolition, reconstruction, alteration or repair of any residential structure located therein shall be referred by the Building Inspector; site plans shall be referred by the Planning Board; and variances shall be referred by the Zoning Board of Appeals to the Architectural Historic Review Board. The Building Inspector shall not issue a building permit for any structure, including signs, if any permit application has been disapproved by the Architectural Historic Review Board as provided in this chapter. The Building Inspector may approve any application for a permit approved by the Architectural Historic Review Board with modifications when the modifications specified by the Architectural Historic Review Board have been complied with and thereafter approved by the Architectural Historic Review Board. If the Architectural Historic Review Board shall have approved an application for a sign or building permit, then the Building Inspector may issue such permit, and if the Board has failed to act on an application for such permit within forty-five (45) days after it has been referred to the Board, then such failure to act shall be considered as an approval, and the Building Inspector may issue the sign or building permit. The forty-five (45) day limit may be extended by written mutual consent of the Architectural Historic Review Board and the applicant.

1. The Building Inspector shall notify said applicants, in writing, of the date of the referral and the anticipated hearing date. The applicant or representative shall appear in person at the hearing and supply the following:
   (a) Color photographs of the structure and site.
   (b) Elevation drawings or renderings of the proposed changes.
   (c) Perspective drawings, including relationship to adjacent structures.
   (d) Samples of color and materials to be used.
   (e) For signs: a scale drawing showing type of lettering, dimensions, colors, method of illumination and a plot plan depicting the sign location on the site.
   (f) Any other information that the Board may request or which the applicant feels may be of assistance to the Board's review.

2. In this process, the Architectural Historic Review Board shall not consider changes to architectural features that are not visible from a public street,

sidewalk or thoroughfare, or to interior spaces, unless they are open to the public or contain well-known specific interior features of historic significance. The Architectural Historic Review Board's decision to approve or deny their recommendation process shall be based upon the following principles:

(a) Properties which contribute to the character of the historical district shall be retained with their historical features altered as little as possible.

(b) Any alterations to an existing property shall be compatible with its historical character and the character and appearance of the surrounding district.

(c) New construction shall be compatible with the district in which it is located.

3. In applying the principle of compatibility, the Board shall consider the following factors:

(a) The general design, character and appropriateness to the property of the proposed alteration or new construction.

(b) The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties and the neighborhood.

(c) Texture, materials and color and their relation to similar features of other properties in the neighborhood.

(d) Visual compatibility with the surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape and the rhythm of properties on streets, including setback.

(e) The importance, if any, of historical, architectural or other features as they relate to the significance of the property.

B. Approvals. All applications for approvals hereunder, other than sign permits, building permits or certificates of occupancy or certificates of use, must be first made, in writing, to the Architectural Historic Review Board. The Architectural Historic Review Board shall have forty-five (45) days to approve or disapprove the application. The failure of the Architectural Historic Review Board to act

upon the application within said forty-five (45) days shall be deemed a granting of automatic approval by the Architectural Historic Review Board of the application. After approval or disapproval by the Architectural Historic Review Board, the application shall be made to the Building Inspector for his approval or disapproval. All applications under this chapter shall be accompanied by a detailed plan of the building showing all proposed work and use within the scope of this chapter, including but not limited to proposed tree removals, proposed plantings, proposed movement of topsoil, species of plantings and construction material. The forty-five (45) day limit may be extended by written mutual consent of the Architectural Historic Review Board and the applicant.

C. Building permits. No building permit, for construction activities outlined in § 5-4A, shall be issued by the Building Inspector unless such person, firm or corporation files with the Building Inspector a plan, submitted to the Architectural Historic Review Board, showing all existing planting, architectural renderings and all proposed tree removals in relation to the survey stakes marking out a building foundation, garage, driveway or any site that warrants tree removal. The species and condition of trees to be removed shall be certified by the Architectural Historic Review Board based upon plans furnished by the applicant to the Building Inspector of the Town of Clarkstown. Copies of the approved signed landscaping plan must be provided to the Planning Department and the Department of Environmental Control by the applicant.

D. Certificates of occupancy or use.

1. No certificate of occupancy shall be issued by the Building Inspector of the Town of Clarkstown until respreading of topsoil and seeding of lawn and germination has been completed (when lawn has been established), except that between October 31 and April 1, or in the event of a duly declared water emergency, the developer of the subdivision, development, construction, building or erection site shall submit an agreement, in writing, to the Town, signed by the developer and

the property owner, with a copy to the Building Inspector, that respreading of topsoil and seeding of lawn, as set forth in §§ 5-15 and 5-16 of this chapter, will be done during the immediate following planting season, provided such water emergency, if any, is no longer in effect, and provided further that the developer shall deposit with the Town of Clarkstown a sum sufficient, in the opinion of the Department of Environmental Control, to guarantee compliance with §§ 5-15 and 5-16 of this chapter. Should the person, firm or corporation fail to make the required respreading of topsoil and seeding of lawn on or before the first day of May next following the making of the escrow deposit, or within thirty (30) days after such water emergency shall have ended, the Building Inspector is authorized to release the escrow funds to the Department of Environmental Control for the purpose of respreading of topsoil and seeding of lawn, as required.

2. The Building Inspector shall require that the person, firm or corporation seeking a permit hereunder or a certificate of occupancy or use hereunder deposit in escrow an amount to cover the cost of the planting of trees, as required hereunder, in the event that said person, firm or corporation does not plant the same by reason of weather or other circumstances. The escrow amount is to include the retail costs of such trees, as well as the cost of labor to plant the same, as specified by the Department of Environmental Control. Should the person, firm or corporation fail to make the required plantings on or before the first day of May next following the making of the escrow deposit, the Town Board is authorized to release the escrow funds to the Department of Environmental Control for the purpose of making the plantings required. In the event that a water emergency has been duly declared by the County of Rockland, then the time within which to make the required plantings as required herein shall be extended until thirty (30) days after the emergency.

E. Performance guaranty required. Prior to the issuance of a certificate of occupancy by the Building Inspector, the registered landscape architect will certify that the work on the site has been completed in accordance with the approved plan on file with the Town. A written one-year guaranty shall be provided by the applicant to the Department of Environmental Control/Architectural Historic Review Board, stating that all plants which die or are likely to die within the guaranty period will be replaced. The guaranty period shall commence on the date the certificate of occupancy has been issued. The certificate of occupancy may be revoked for failure to honor the terms of the guaranty.

§ 5-5. Maintenance and repair.

A. Ordinary maintenance and repair of any exterior architectural feature of an historically designated site or property that does not involve a change in design, material, color or outward appearance does not require the review of the Architectural Historic Review Board.

B. The owner or person with an interest in real property designated as an historical site or included within an historical district shall not permit the property to fall into a state of disrepair so as to result in the deterioration of any exterior architectural feature. If, in the judgment of the Architectural Historic Review Board, a detrimental effect upon the character of the historical district as a whole or the life and character of the property itself is produced, it will be considered to be a violation of this chapter. Examples include, but are not limited to, deterioration of exterior walls, vertical supports or columns, roofs, horizontal members, soffits, siding, chimneys and the deterioration of any feature that creates a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

§ 5-6. Appeals.

An officer, department or board of the Town or any person, firm or corporation aggrieved by the provisions of this chapter or by the action of the Architectural Historic Review Board for disapproval of a written permit or by the action of the

Architectural Historic Review Board in modifying and approving or disapproving an application for a sign permit or building permit or of the Building Inspector in denying such permit because of such action of the Board may take an appeal within thirty (30) days from the decision of the Architectural Historic Review Board or the decision of the Building Inspector to the Zoning Board of Appeals in the same manner as provided by law for other appeals to the Zoning Board of Appeals. The Zoning Board of Appeals is hereby empowered to hear and decide such appeals in the same manner as other appeals to such Zoning Board of Appeals. Unless or until the decision is revoked or modified, it shall remain in full force and effect.

§ 5-7. Reports.

The Town Board may, by resolution, ordinance or local law, provide for the reference of any matter to the Architectural Historic Review Board before the final action thereon by the body or officer of the Town having final authority to act thereon, with or without the provision that final action thereon shall not be taken until the Architectural Historic Review Board has submitted its report or has had a reasonable time, to be fixed by the Town Board, to submit the report.

Article II. Regulations

§ 5-8. Permit required for certain acts.

No person, firm or corporation shall do or cause to be done any of the following acts upon a Town highway or Town right-of-way within the Town of Clarkstown without a written permit from the Superintendent of Highways of the Town of Clarkstown or his authorized agent, nor upon a Town park or other Town property within the Town of Clarkstown without a written permit from the Department of Recreation and Parks or the Department of Environmental Control, as the case may be:

A. Cut, trim, break, climb with spikes, disturb the roots of or otherwise injure, misuse or remove any structure or device placed to support or protect any tree or shrub.

B. Plant any tree or shrub.

C. Fasten any rope, wire, electrical attachment, sign, poster, notice or other device to a tree or shrub or to any guard about such tree or shrub.

D. Close or obstruct any open space provided about the base of a tree or shrub to permit the access of air, water or fertilizer to the roots of such tree or shrub.

E. Pile, heap or store any building material, soil, debris or any other matter or make any mortar or cement within the greater distance of six feet of a tree or shrub or within the circumference of the branches of such trees or shrubs.

§ 5-9. Electrical or cable or phone current wires.

Every person, firm or corporation having control over any wire for the transmission of electrical or cable or phone current along a Town highway shall at all times guard all trees through or near which such wires pass against any injury from the wires or from the electrical or cable or phone current carried by them. The device or means used shall in every case be subject to written approval by the Superintendent of Highways of the Town of Clarkstown or his authorized agent.

§ 5-10. Guides around trees.

Throughout the period of erection of or repairs or additions to any building or structure or in the improvement of or repairs to a Town highway, the owner thereof and/or the contractor shall place such guides around all nearby trees on the Town highway as shall effectively prevent injury to such trees. The owner and the contractor shall each be responsible for the placement of such guide or guide rail, and each shall be subject to the penalty provisions of this chapter, without regard to their contractual obligations.

§ 5-11. Injurious chemicals.

No person, firm or corporation shall permit any brine, gas or any other injurious chemical to come in contact with the stem or roots of any tree or shrub upon a Town highway, Town park or other Town property.

§ 5-12. Destruction prohibited.

No person, firm or corporation shall do or cause to be done any damage nor shall litter or destroy any grass, shrub or fence or tree upon Town highways, Town parks or other Town property.

§ 5-13. (Reserved)

§ 5-14. Topsoil removal restricted.

The original six inches of topsoil shall not be removed from property in any subdivision, development, construction, building or erection site, except such topsoil lying within the area where excavation is necessary for the construction of roads or structures or parking areas or drainage, except, further, that no topsoil shall be mounded, stripped or removed from any area encompassed within the circumference of the branches of trees presently on the property, without the written approval of the Architectural Historic Review Board and/or the Department of Environmental Control.

§ 5-15. Treatment of damaged trees.

Any trees damaged during construction or development of property shall be either replaced in kind with a two-and-one-half-inch- to three-inch-caliper shade tree or an evergreen tree, seven feet to eight feet in height, or properly dressed by the party so constructing or developing, as required by the Architectural Historic Review Board and/or the Department of Environmental Control.

§ 5-16. Topsoil.

In areas over which heavy equipment will be operated, such six inches of topsoil shall be stripped and stockpiled on the property, and protected with erosion control measures, and when final grading and construction activities have been completed and the ground scarified to a depth of six inches, except that portion over a septic disposal system, the property shall be suitably regraded and recovered with said six inches of topsoil, which shall contain no construction debris or other foreign material. Tree roots, branches, stumps and stones larger than three inches in diameter shall be removed from the six-inch topsoil covering.

§ 5-17. Seeding of lawns.

A. Where seed is used, lawn grass seed shall be sown in all disturbed areas from any construction activity where other planting is not appropriate. Topsoil shall be tested by a certified soil lab for suitability for establishing lawn. Soil additament shall be added as recommended from soil analysis.

B. All seed shall have been tested for germination within one year of the date of the seeding, and the date of testing shall be on the label containing the seed analysis, which label shall be presented at the request of the Department of Environmental Control. Seeded areas shall be mulched and irrigated during the established period for the grass which shall be forty-five (45) days.

Article III. Enforcement and Scope

§ 5-18. Penalties for offenses.

A. Any person, firm or corporation or their respective agents, servants or employees found guilty of a violation of any provision of this chapter shall be punished by a fine of up to $2,500. Any person, firm or corporation or their respective agents, servants or employees found guilty of a second offense of any provision of this chapter within 18 months from the date of the first conviction shall be punished by a fine of not less than $2,500 and not more than $5,000. Any person, firm or corporation or their respective agents, servants or employees found guilty of a third offense of any provision of this chapter within 18 months from the date of the second conviction shall be punished by a fine of not less than $7,500 and not more than $10,000. Any person, firm or corporation or their respective agents, servants or employees found guilty of a fourth or subsequent offense of any provision of this chapter within 18 months from the date of the third conviction shall be punished by a fine of not less than $10,000 and not more than $15,000. Every week that such person, firm or corporation, or their respective agents, servants or employees, shall fail to comply with the provisions of this chapter shall constitute a separate and additional offense against the provisions thereof.

B. Any person who demolishes, alters, constructs or permits a property, designated as an historical site or included within an historical district, to fall into a state of disrepair resulting in a violation of this chapter shall be required to restore the property and its site to an appearance acceptable to the Architectural Historic Review

Board. Enforcement of this subsection may be brought by the Town Attorney as a civil remedy in addition to any criminal prosecution by Town Code Enforcement Officials.

§ 5-19. Enforcement agency.

The Building Inspector of the Town of Clarkstown shall enforce this chapter except where such enforcement is vested with the Superintendent of Highways by the laws of the State of New York.

§ 5-20. Exceptions.

This chapter shall not apply to any agency of the Town of Clarkstown, the County of Rockland, the State of New York or the United States of America.

§ 5-21. Repealer.

All ordinances and local laws or parts of ordinances and local laws in conflict herewith are hereby repealed.

§ 5-22. Severability.

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part or parts.

Section 6. EFFECTIVE DATE.
This Local Law shall become effective immediately upon filing with the Secretary of State.