

First Reading 5/21/08

Second Reading 6/4/08

Passed 6/4/08

ORDINANCE NO. 375

AN ORDINANCE REPEALING ORDINANCE NO. 191 WHICH ADOPTED PROVISIONS FOR HISTORIC PRESERVATION, AND ADOPTING A NEW ORDINANCE FOR ESTABLISHING A HISTORIC PRESERVATION COMMISSION; PROVIDING FOR THE DESIGNATION OF HISTORIC PROPERTIES AND HISTORIC DISTRICTS; REQUIRING A CERTIFICATE OF APPROPRIATENESS FOR CERTAIN ACTIVITIES WITHIN HISTORIC DISTRICTS OR ON HISTORIC PROPERTIES; PROVIDING FOR APPEALS, SEVERABILITY, AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS; the historical, architectural, cultural, and aesthetic heritage of Flowery Branch is among the city's most valued and important assets; and

WHEREAS; protection of that heritage is essential to the promotion of the health, prosperity, and general welfare of the city, county, region, state, and nation; and

WHEREAS; the City is enabled by the Georgia Historic Preservation Act, O.C.G.A. Section 44-10-20 et seq. to establish a Historic Preservation Commission and designate historic districts and historic properties; and

WHEREAS; the City has previously adopted an Ordinance establishing a Historic Preservation Commission (Ordinance No. 191) and pursuant to its authority established local historic districts by Ordinance No. 225; and

WHEREAS; the City desires to repeal Ordinance No. 191 and replace it with a new Historic Preservation Ordinance reflecting necessary changes; and

WHEREAS; the Flowery Branch Historic Preservation Commission has had an opportunity to review this Ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

"HISTORIC PRESERVATION"

ARTICLE I	TITLE, PURPOSE AND AUTHORITY
ARTICLE II	INTERPRETATIONS AND DEFINITIONS
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ARTICLE I
TITLE, PURPOSE, AND AUTHORITY

SECTION 1.1 TITLE

This Ordinance shall be known and may be cited in short title as the “Historic Preservation Ordinance” of the City of Flowery Branch.

SECTION 1.2 PURPOSE

This Ordinance is enacted to:

- (a) Support and further findings and determinations that the historical, cultural, and aesthetic heritage of the City of Flowery Branch is among its most valued and important assets, and that the preservation of this heritage is essential to the promotion of public health, prosperity and general welfare; and
- (b) Stimulate revitalization of the business districts and historic neighborhoods as well as protect and enhance local historical and aesthetic attractions to tourists, thereby promoting and stimulating business; and
- (c) Enhance the opportunities for federal tax relief of property owners under relevant provisions of the Economic Recovery Tax Act of 1981, allowing tax investment credits for rehabilitation of certified historic structures (26 U.S.C.A., Section 191); and
- (d) Establish a uniform procedure for use in providing for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, and works of art having a special historical, cultural, or aesthetic interest or value, in accordance with the provisions of the Ordinance.

SECTION 1.3 AUTHORITY

This Ordinance is adopted pursuant to the requirements of and authority granted to local governments by the Georgia Historic Preservation Act, O.C.G.A. Section 44-10-20 et seq.

ARTICLE II INTERPRETATIONS AND DEFINITIONS

SECTION 2.1 INTERPRETATIONS

- (a) **Zoning Administrator.** The Zoning Administrator shall be responsible for the interpretation of the requirements, standards, definitions, or any other provision of this Ordinance.
- (b) **Zoning Ordinance Definitions May Apply.** Where the Flowery Branch Zoning Ordinance provides a definition of a particular term, word or phrase which has meaning in the context of this Ordinance, the Zoning Administrator may assign the same meaning of such term, word or phrase to this Ordinance.
- (c) **Minimum Requirements.** In the interpretation and application of this Ordinance, all provisions shall be considered as minimum requirements.
- (d) **Literal Interpretation Where Clarity Exists.** Where the literal interpretation is clear to the Zoning Administrator, it shall be construed literally.
- (e) **Where Ambiguity May Exist.** Where ambiguity exists or may exist, the Zoning Administrator shall interpret this Ordinance in favor of the least restrictive use of property.

SECTION 2.2 DEFINITIONS

Appeal: A request for a review of the Zoning Administrator's interpretation of any provision of this Ordinance, or a request to appeal any decision made on a certificate of appropriateness by the Historic Preservation Commission.

Applicant: A property owner or their authorized representative who has petitioned the City for approval of an application under the terms of this Ordinance.

Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

Building, accessory: A building subordinate to the main (principal) building on a lot and used for purposes incidental to the main or principal building and located on the same lot therewith.

Certificate of appropriateness (COA): A document evidencing approval by the Historic Preservation Commission of an application to make a material change in the appearance of a designated historic property or of a property located within a designated historic district.

Commission: The Historic Preservation Commission of the City of Flowery Branch, Georgia, as established in this Ordinance.

Condition of approval: A requirement adopted by the Historic Preservation Commission at the time of approval of a certificate of appropriateness, or the Zoning Administrator as the case may be; placing greater or additional requirements or restrictions on the property than provided in this Ordinance in order to reduce an adverse impact of the request or to further protect the public health, safety, or general welfare, or to further the purposes of this Ordinance.

Design guideline: A standard of appropriate activity that will preserve or enhance the architectural character and site design and function of a building, structure, or development.

Development: Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials; any land-disturbing activity which alters the elevation of the land, removes significant vegetation, or causes structures of any kind to be erected or removed.

Elevation drawing: An architectural drawing of a building or building façade, intended to illustrate its design, characteristics and major features.

Exterior architectural features: The architectural style, general design, and general arrangement of the exterior of a building or other structure, including, but not limited to, the type and/or texture of the building material, and the type and/or style of windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.

Exterior environmental features: All those aspects of the landscape or the development of the site that affect the historical character of the property.

Historic district: A geographically definable area which contains structures, sites, works of art or a combination thereof which exhibit a special historical, architectural, or environmental character as designated by the Flowery Branch City Council.

Historic property: An individual structure, site, or work of art which exhibits a special historical, architectural, or environmental character as designated by the Flowery Branch City Council.

Improvements: The physical addition and changes to land that may be necessary to produce usable, desirable and acceptable lots or building sites.

Landscaping: The modification of the landscape for an aesthetic or functional purpose. The area within the boundaries of an individual lot that includes the preservation of existing vegetation and the continued maintenance thereof, as well as, the installation of trees, shrubs, ground covers, grass, and flowers. Landscaping areas may also include decorative rock, bark, mulch and other similar approved materials in addition to vegetation and live plant material.

Massing: The overall visual impact of a structure's volume; a combination of height and width and the relationship of the heights and widths of the building's components.

Material change in appearance: A change that will affect either the exterior architectural or environmental features of a historic property or any structure, site or work of art within a historic district (except exterior paint alterations), and may include any one or more of the following:

- (a) A reconstruction or alteration of the size, shape, or façade of a historic property, including any of its architectural elements or details.
- (b) Demolition of a historic structure.
- (c) Commencement of excavation for construction purposes.
- (d) A change in the location of advertising visible from the public right-of-way.
- (e) The erection, alteration, restoration, or removal of any building or other structure within a historic property or district, including walls, fences, steps and pavements, signs, or other appurtenant features.

Major Work: Any "material change in appearance" to an "exterior architectural feature" of a building in a "historic district" or on a "historic property" and which requires a "certificate of appropriateness" pursuant to this Ordinance, involving:

1. The construction, demolition or relocation of a building, structure, or part thereof, or which involves an addition of building space to a building or structure; or construction/installation of accessory buildings and/or structures on site.
2. Any grading, land disturbance, and/or paving or improvement for additional parking involving five or more parking spaces or 2,000 square feet or more of area.

Minor Work: Any "material change in appearance" to an "exterior architectural feature" of a building in a "historic district" or on a "historic property" and which requires a "certificate of appropriateness" pursuant to this Chapter, which does not meet the definition of "major work," as determined by the Zoning Administrator." A sign is hereby defined as a "minor work."

Object: A material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Proportion: Balanced relationship of parts of a building, signs and other structures, and landscape to each other and to the whole.

Sign: A lettered, numbered, symbolic, pictorial, illuminated, or colored visual display, device, or communication designed or used for the purpose of identifying, announcing, directing,

informing, or bring to the attention of others the subject thereon, that is visible from the public right-of-way, a driveway or parking lot with access to a public right-of-way, or from an adjacent property, except as specifically noted otherwise in this Article 24 of the Flowery Branch Zoning Ordinance. The term “sign” includes but is not limited to “banners,” “balloons,” “flags,” “pennants,” “streamers,” “windblown devices,” and “advertising devices.” Furthermore, the term “sign” includes the sign structure, supports, lighting system, and any attachments, ornaments, or other features used to draw the attention of the observers.

Site: The location of a significant event, a prehistoric or historical occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing structures.

Structure: Anything built, constructed or erected, or established or composed of parts joined together in some definite manner, the use of which requires location on the ground or which is attached to something having permanent location on the ground. For purposes of this ordinance, swimming pools, tennis courts, signs, dog houses, and outdoor fenced animal runs are considered structures. Tents, vehicles, trailers, and play equipment attached to the ground in some permanent or temporary way shall be considered structures. A structure may or may not be easily moved from a given location on the ground. Walls and fences are considered structures.

Use, accessory: A use of land subordinate to the principal building or use on a lot for purposes incidental and related to the principal building or use and located on the same lot therewith.

Zoning Administrator: The Manager of Planning and Community Development of the City of Flowery Branch (or any similar position as it may be retitled), or authorized designee.

Zoning map: The official Zoning Map or maps of the City of Flowery Branch, Georgia.

ARTICLE III HISTORIC PRESERVATION COMMISSION

SECTION 3.1 ESTABLISHMENT OF HISTORIC PRESERVATION COMMISSION

A Historic Preservation Commission is hereby established. The members of the Historic Preservation Commission, as it existed on the effective date of this Ordinance, shall remain members of the Historic Preservation Commission for the duration of their appointments or until or unless provided otherwise by the City Council through appointment.

SECTION 3.2 JURISDICTION

The jurisdiction of the Commission shall be the city limits of the City of Flowery Branch.

SECTION 3.3. COMPOSITION OF THE COMMISSION

- (a) **Number of Members.** The Historic Preservation Commission shall consist of three (3) members appointed by the City Council.
- (b) **Terms.** Members shall serve three-year terms. Members may not serve more than two consecutive terms.
- (c) **Residency Required.** All the members shall reside within the city limits of the City of Flowery Branch.
- (d) **Required Qualifications.** A majority of the voting members of the commission shall have demonstrated special interest, experience, or education in history or architecture.
- (e) **Desired Qualifications.** To the extent available in the City of Flowery Branch, at least one member shall be appointed from among professionals in the disciplines of architectural history, planning, archaeology or related professions and at least one member shall be appointed from among professionals in the disciplines of building construction or real property appraisal.
- (f) **Salary and Compensation.** Members shall not receive a salary, although they may be reimbursed for expenses.

SECTION 3.4. EX OFFICIO MEMBERS OF THE COMMISSION

- (a) **Optional Appointment.** In addition to the members of the Commission, the city may appoint one or two “ex officio” members to the Commission. Ex-officio members shall not be members per se, for purposes of this Ordinance and actions of the Commission.

- (b) **Requirements and Qualifications.** A person is eligible to serve as an ex-officio member if he or she is a resident of the city, or if he or she owns property or a business in the city limits.
- (c) **Terms.** If appointed, ex-officio members shall serve three-year terms.
- (d) **Roles and Responsibilities.** Ex-officio Members shall advise the Commission and may participate in discussion during meetings of the Commission, but ex-officio members shall not make motions or participate in votes of the Commission.
- (e) **Interpretation.** This Section shall not be construed in any manner inconsistent with the requirements of O.C.G.A. 44-10-24 for membership of the Commission.

SECTION 3.5. RULES AND PROCEDURES

- (a) **Rules.** The Commission may adopt rules and procedures for the transaction of its business and consideration of applications. The Commission shall have the flexibility to adopt rules of procedure without amendment to this Ordinance. Unless adopted otherwise, the latest edition of Roberts' Rules of Order shall determine questions of procedure of the Commission.
- (b) **Public Hearings.** Unless other procedures are adopted by the Commission, when a public hearing is held by the Commission, it shall follow the procedures of Article 35 of the Flowery Branch Zoning Ordinance for conducting said meeting. Posting and notice requirements for issuance of COA's shall fall under Section 5.5 and 5.6 respectively.
- (c) **Meetings.** The Commission shall provide for the time and place of regular meetings, and procedures for the calling of special meetings.
- (d) **Quorum.** A quorum shall consist of a majority of all voting members.
- (e) **Public Records.** A public record shall be kept of the Commission's resolutions, proceedings, and actions.
- (f) **Conflict of Interest.** The Commission and individual members, including any ex-officio members if appointed, shall be subject to any applicable conflict of interest provisions of the City of Flowery Branch City Charter or Code of Ordinances.

SECTION 3.6. POWERS OF THE COMMISSION

The Historic Preservation Commission shall be authorized to:

- (a) Prepare an inventory of all property within its respective historic preservation jurisdiction having the potential for designation as historic property.

- (b) Recommend to the City Council specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts.
- (c) Review applications for Certificates of Appropriateness, and grant or deny the same in accordance with the provisions of this Ordinance.
- (d) Recommend to the City Council that the designation of any place, district, site, building, structure, or work of art as a historic property or as a historic district be revoked or removed.
- (e) Restore or preserve any historic properties acquired by the City.
- (f) Promote the acquisition by the City of facade easements and conservation easements in accordance with the provisions of the Georgia Uniform Conservation Easement Act, O.C.G.A. 44-10.1 et seq.
- (g) Conduct an educational program on historic properties located within its historic preservation jurisdiction.
- (h) Make such investigations and studies of matters relating to historic preservation as the City Council or the Commission itself may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources.
- (i) Seek out state and federal funds for historic preservation, and make recommendations to the City Council concerning the most appropriate uses of any funds acquired.
- (j) Submit to the Historic Preservation Division of the Department of Natural Resources a list of historic properties or historic districts designated.
- (k) Perform historic preservation activities as the official agency of the City's historic preservation program.
- (l) Employ persons, if necessary, to carry out the responsibilities of the Commission.
- (m) Receive donations, grants, funds, or gifts of historic property, and acquire and/or sell historic properties. The Commission shall not obligate the City Council without prior consent.
- (n) Review and make comments to the Historic Preservation Division of the Georgia Department of Natural Resources concerning the nomination of properties within its jurisdiction to the National Register of Historic Places.

**ARTICLE IV
DESIGNATION OF HISTORIC DISTRICTS AND PROPERTIES**

SECTION 4.1 DESIGNATION OF HISTORIC DISTRICTS AND PROPERTIES

- (a) **Commission Authority.** The Commission shall have the authority to compile and collect information, conduct surveys of historic resources within the city, and recommend districts, buildings and properties to City Council for designation as being “historic.” The Commission shall present to the City Council any such nominations for historic districts and historic properties.
- (b) **Application.** A historical society, neighborhood association, or group of property owners may apply for historic district designation. A historical society or property owner may apply for designation as a historic property.
- (c) **Reports.** The Commission shall prepare formal reports when nominating historic districts or local properties. These reports shall describe the historic, cultural, architectural, or esthetic significance of the place, districts, site, building, structure, or work of art proposed for designation as historic. The report shall be submitted to the Historic Preservation Division of the Georgia Department of Natural Resources, which will be allowed 30 days to prepare written comments concerning the report.

SECTION 4.2 CRITERIA FOR SELECTION OF HISTORIC DISTRICTS

The Commission may recommend and City Council may approve by ordinance as a historic district any geographically definable area which contains structures, sites, works of art, or a combination thereof, which:

- (a) Has special character or special historic/aesthetic value or interest; and/or
- (b) Represents one or more periods or styles of architecture typical of one or more eras in the history of the municipality, county, state or region; and/or
- (c) Causes such area, by reason of such factors, to constitute a visibly perceptible section of the municipality.

SECTION 4.3 CRITERIA FOR DESIGNATION OF PROPERTIES

The Commission may recommend, as a historic property, and City Council may approve by ordinance as historic any structure, site, work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the City of Flowery Branch, Hall County, the State of Georgia, or the local region, for one or more of the following reasons:

- (a) It is an outstanding example of a structure representative of its era; and/or

- (b) It is one of the few remaining examples of past architectural style; and/or
- (c) It is a place or structure associated with an event or person of historic or cultural significance to City of Flowery Branch, Hall County, the State of Georgia, or the local region.

SECTION 4.4 PUBLIC HEARING AND NOTICE REQUIREMENTS FOR DESIGNATION OF PROPERTIES OR DISTRICTS

- (a) **Public Hearing Required.** The Commission and the City Council shall hold a public hearing on the proposed Ordinance to designate a historic district or historic property.
- (b) **Notice.** Notice of the hearing shall be published in at least three times in the principal newspaper of general circulation within the municipality or county in which the property or properties to be designated or acquired are located; and written notice of the hearing shall be mailed to all owners and occupants of properties included within the proposed designation. All such notices shall be published or mailed not less than 10, nor more than 20, days prior to date set for the public hearing. A letter sent via the United States mail to the last known owner of the property shall constitute legal notification of property owners under this Ordinance.

SECTION 4.5 REVIEW BY STATE HISTORIC PRESERVATION DIVISION

Upon the recommendation that any property or district be considered “Historic,” and prior to consideration by the City Council of any ordinance to officially designate such historic district or historic property, the Commission shall submit a report on the historic, cultural, architectural, or aesthetic significance of each place, district, site, building/structure, or work of art, to the Historic Preservation Division of the Georgia Department of Natural Resources. The Historic Preservation Division shall have at least 30 days to prepare written comments on the proposed designation or designations.

SECTION 4.6 ACTION BY CITY COUNCIL AND ORDINANCE CONTENTS

Following its public hearing, the City Council may adopt the ordinance as prepared, adopt the ordinance with any amendments it deems necessary, or reject the proposal. Any Ordinance designating any property or district as historic shall:

- (a) Require that the designated property or district be shown on the official zoning map of the city; and
- (b) Describe the property to be designated; and
- (c) Set forth the names or names of the owner or owners of each property; and
- (d) Require that a certificate of appropriateness be obtained from the Historic Preservation Commission prior to any material change in appearance of the

designated historic property or any structure, site, or work of art located within a designated historic district; except as otherwise may be exempted by this Ordinance.

SECTION 4.7 NOTIFICATION FOLLOWING ORDINANCE ADOPTION

Within 30 days immediately following the adoption of an ordinance designating a historic district or historic property, the owners and occupants of each designated historic property, and the owners and occupants of each structure, site, or work of art located within a designated historic district shall be given written notice of such designation which shall apprise said owners and occupants of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated.

SECTION 4.8 AMENDMENT TO DISTRICT AND PROPERTY DESIGNATIONS

The boundary of any district or property may be amended in conformance with the provisions of this Ordinance relative to public hearings and notice and in conformance with all applicable provisions of the Georgia Historic Preservation Act, O.C.G.A. Section 44-10-20 et seq. The boundary amendment shall also be subject to public hearing and notice requirements of the Zoning Procedures Act, O.C.G.A. 36-66-1 et seq. and applicable provisions of the Flowery Branch Zoning Ordinance relative to public hearing and notice.

**ARTICLE V
CERTIFICATE OF APPROPRIATENESS**

SECTION 5.1 CERTIFICATE OF APPROPRIATENESS REQUIRED

After the designation by ordinance of a historic district or property, no “material change in the appearance,” of such historic property, or of a structure, site, or work of art within such historic district, as defined by this ordinance, shall be made or be permitted to be made by the owner or occupant thereof, unless or until application for a certificate of appropriateness has been submitted to and approved by the Commission, except as otherwise specifically provided by this ordinance. A certificate of appropriateness must be issued by the Zoning Administrator, after approval by the Historic Preservation Commission, prior to any material change in appearance in such district or to any property, unless an exemption is granted by the Zoning Administrator as provided in this Article. A building permit shall not be issued without a Certificate of Appropriateness (COA).

The Georgia Department of Transportation (GDOT) and the contractors, including cities and counties, performing work funded by GDOT are exempted from this article. Local governments are exempted from the requirements of obtaining certificates of appropriateness; provided, however, that local governments shall notify the Historic Preservation Commission forty-five business days prior to beginning any undertaking that would otherwise require a certificate of appropriateness and allow the commission an opportunity to comment.

SECTION 5.2 EXEMPTED EXTERIOR ENVIRONMENTAL FEATURES

Notwithstanding the requirement to obtain a certificate of appropriateness from the Commission, the Zoning Administrator shall be authorized to administratively authorize and approve the following “exterior environmental features,” as defined, without the need to obtain a certificate of appropriateness from the Historic Preservation Commission:

- (a) Window air conditioning units installed on the side or rear façade of a building, provided they do not cause the removal, replacement, or damage to the window or window sash.
- (b) Air conditioning, heating, or mechanical systems located on the ground, in a side or rear yard.
- (c) Satellite dishes, provided they are not mounted on front or side building facades or in front yards or readily visible side yards.
- (d) Ramps or other equipment required for handicapped accessibility, if placed at a side or rear entrance.

- (e) Dumpsters, when located in rear yards, subject to compliance with the screening requirements of the Flowery Branch Zoning Ordinance.
- (f) Grading, land disturbance, and/or paving or improvement for additional parking for four or less parking spaces or less than 2,000 square feet of area, within a rear yard.
- (g) Fences and walls in side or rear yards, constructed of wood, brick, concrete, stone, or vinyl coated chain-link, provided that they do not exceed eight feet in height.
- (h) Ground signs, unlighted, not exceeding four square feet in area, on property used for a detached, single-family residential use or non-residential or permitted principal use.
- (i) Window signs and door signs, unlighted.
- (j) Special event signage, unlighted, upon permit issued by the Zoning Administrator in accordance with the Flowery Branch Zoning Ordinance.
- (k) Temporary ground signs, unlighted, during the time when a space, unit, building, or land is for sale, rent, or lease, not exceeding four square feet of area.
- (l) Temporary wall signs, unlighted, during the time when a space, unit, building, or land is for sale, rent, or lease, or under construction, not to exceed four square feet of area.

The Zoning Administrator is authorized to prepare administrative forms and to provide evidence, upon application and for a fee if authorized, that a proposed action is exempted from the requirement to obtain a certificate of appropriateness pursuant to this Ordinance.

SECTION 5.3 PRE-APPLICATION CONFERENCE

All applicants for a certificate of appropriateness are strongly encouraged, but not required, to schedule a pre-application conference with the Zoning Administrator, or his or her designee. A pre-application conference is a time where applicants can familiarize themselves with the application requirements and processes, and gain preliminary input from staff as to the suitability of the proposed material change in appearance. Typically, the Commission is not represented at a pre-application conference, although this does not preclude one or more members of the Commission from attending and participating in a pre-application conference.

SECTION 5.4 APPLICATION REQUIREMENTS

All applications for a certificate of appropriateness shall be made as required by the Zoning Administrator, and shall at a minimum contain the following information.

- (a) **Elevation Drawings, Color and Material Samples.** Every application or review involving the construction of a new building or structure and alterations and/or additions to existing structures in any historic district or within a property designated as a historic property shall be accompanied by exterior elevation drawings drawn to a

specified scale and signed by an architect, engineer or other appropriate professional and submitted in sufficient number of copies as required by the Zoning Administrator. Said exterior elevation drawings shall clearly show in sufficient detail the exterior appearance and architectural design of proposed change(s) to buildings or structures and new construction, as applicable. Each application shall also indicate proposed materials, textures and colors, and provide samples of materials and colors.

- (b) **Photographs.** Photographs of all sides of the affected existing building(s) or structure(s) visible from the street shall accompany all applications, as well as adjoining properties. Photographs of all sides of the building visible from the street shall accompany applications for the demolition of structures under consideration for demolition, as well as photographs showing contiguous properties. Photographs shall be submitted in printed copy and in digital form unless otherwise specified by the Zoning Administrator.
- (c) **Site Plan and Landscaping Plan.** For every application, a plot plan or site plan drawn to a specified scale shall be submitted which shows all improvements affecting appearances visible from the street, such as walls, walks, terraces, plantings, tree protection areas, accessory buildings, signs, lights, and other elements. In the case of a building or structure demolition, the site plan and landscaping plan shall show how the foundation area will be restored.
- (d) **Fee.** A fee, as may be established by the City Council, shall be submitted for said application.
- (e) **Additional Information.** Any additional information as may reasonably be required by the Zoning Administrator, shall be submitted with the application.
- (f) **Variations or waivers.** Where, in the opinion of the Zoning Administrator, a requested change would be considered minor, the Zoning Administrator, may vary or waive any of the information requirements of this section for applications for a certificate of appropriateness.

SECTION 5.5 PUBLIC HEARING AND NOTICE FOR MAJOR WORKS

The Historic Preservation Commission shall hold a public hearing on all applications for a “major work” as defined, at the time and place and on the date so advertised. Nothing in this Section shall be construed as preventing the Zoning Administrator or the Historic Preservation Commission from holding a public hearing or providing notice beyond the minimum requirements of this Section.

When a completed application for a “major work” is received, the Zoning Administrator shall cause the following notices of public hearing be accomplished at least ten (10) days prior to the public hearing scheduled before the Historic Preservation Commission:

- (a) A sign shall be posted in a conspicuous, visible location on the property which shall indicate the nature of the proposed material change in appearance and the time, date, and place of the public hearing before the Historic Preservation Commission; and
- (b) In writing to the applicant and abutting property owners; and
- (c) By publication at least once in the form of an advertisement in a newspaper of general circulation within the city or the legal organ.

SECTION 5.6 NOTICE FOR MINOR WORKS

When a completed application for a “minor work” is received, the Zoning Administrator shall cause a sign to be posted, at least ten (10) days prior to the meeting of the Historic Preservation Commission at which the application will be considered. Said sign shall be posted in a conspicuous, visible location on the property and shall indicate the nature of the proposed material change in appearance and the time, date, and place of the meeting before the Historic Preservation Commission. The Commission may hear from any individual attending the meeting and who would like to voice their concerns or opinions concerning applications for certificate of appropriateness involving minor works.

SECTION 5.7 CRITERIA FOR ACTING ON CERTIFICATES OF APPROPRIATENESS

In passing judgment on applications for certificates of appropriateness, the Commission shall consider the appropriateness of any proposed material change in appearance in the context of the following criteria.

New Construction, Reconstruction, Alterations and/or Renovations: A Decision by the Commission approving or denying a Certificate of Appropriateness for new construction, reconstruction, alterations and/or renovations shall be guided by:

- (a) Consistency with the U.S. Secretary of the Interior’s “Standards of Rehabilitation and Guidelines for Rehabilitating Historic Buildings.”
- (b) Consistency with any adopted design guidelines for historic districts or historic properties as may be identified within the Zoning Code or Community Agenda.
- (c) Expert advice, if any is sought on the matter.
- (d) The nature and character of the surrounding areas and the consistency of the proposed application with such nature and character.
- (e) The general design; character, and appropriateness of design; scale of buildings; arrangement, texture, materials, and colors of the structure in question; and the

relation of such elements to similar features of structures in the immediate surrounding area, including site and landscaping.

- (f) The Commission shall not consider interior arrangement or use as having any effect on exterior architectural features.

Relocation: A Decision by the Commission approving or denying a Certificate of Appropriateness for the relocation of a building, structure, or object shall be guided by:

- (a) The historic character and aesthetic interest the building, structure or object contributes to its present settings.
- (b) Whether there are definite plans for the area to be vacated and what the effect of those plans on the character of the surrounding area will be.
- (c) Whether the building, structure or object can be moved without significant damage to its physical integrity.
- (d) Whether the proposed relocation area is compatible with the historical and architectural character of the building, structure, site or object.

Demolition: A decision by the Commission approving or denying a Certificate of Appropriateness for the demolition of buildings, structures, sites, trees judged to be 50 years old or older, or objects shall be guided by:

- (a) The historic, scenic or architectural significance of the building, structure, site, tree or object.
- (b) The importance of the building, structure, site, tree or object to the ambiance of a district.
- (c) The difficulty or the impossibility of reproducing such a building, structure, site, tree or object because of its design, texture, material, detail, or unique location.
- (d) Whether the building, structure, site, tree, or object is one of the last remaining of its kind in the neighborhood or the city.
- (e) Whether there are definite plans for use of the property if the proposed demolition is carried out, and what the effect of those plans on the character of the surrounding area would be.
- (f) Whether reasonable measures can be taken to save the building, structure, site, tree, or object from collapse.
- (g) Whether the building, structure, site, tree, or object is capable of earning reasonable economic return on its value.

SECTION 5.8. ACTION BY THE COMMISSION

- (a) **Time Frame for Action.** The Historic Preservation Commission shall approve or reject an application for a certificate of appropriateness within 45 days after the filing of a complete application. Failure of the Commission to act within the 45-day period shall constitute approval, and no other evidence of approval shall be needed. Additional time may be taken where the applicant and the Commission have made a mutual agreement for said extension.
- (b) **Approval.** The Historic Preservation Commission shall approve the application and direct the Zoning Administrator to issue a certificate of appropriateness, if:
- 1) it finds that the proposed material change in appearance would not have a substantial adverse effect on the aesthetic, historical, or architectural significance and value of the historic property or the historic district; and
 - 2) the Commission finds the application is consistent with the criteria for judging applications for certificates of appropriateness as established in this Ordinance.
- The Commission shall keep a public record of all certificate of appropriateness applications and their actions relating to said applications.
- (c) **Denial.** The Historic Preservation Commission may deny an application for a certificate of appropriateness when, in the opinion of the Commission, such proposed change would be detrimental to the interests of the historic district or historic property and the public. In the event the Commission rejects an application, it shall state its reason(s) for doing so and shall transmit a record of such action and the reasons therefor, in writing, to the applicant. The Commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he or she so desires, may make modifications to the plans and may resubmit the application. **The denial of an application for a certificate of appropriateness shall be binding on the Zoning Administrator and, in such a case of denial, no building permit shall be issued.**
- (d) **Void for Inactivity.** A certificate of appropriateness (COA) shall become void unless construction is commenced within eighteen (18) months of the date of issuance. An extension on the COA approval may be authorized at the discretion of the Historic Preservation Commission.

SECTION 5.9 CHANGES AFTER COMMISSION APPROVAL

No material change in the appearance of a historic property, structure, site or work of art within the historic district shall be made or permitted to be made by the owner or occupant thereof, after the issuance of a certificate of appropriateness, unless and until all requirements of this Ordinance are met.

SECTION 5.10 EXCLUSION

Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property, which maintenance or repair does not involve a material change in design, material, or outer appearance thereof, nor to prevent the property owner from making any use of his property not prohibited by other laws, ordinance, or regulations.

ARTICLE VI ADMINISTRATION AND ENFORCEMENT

SECTION 6.1. APPEALS

- (a) **Who May Appeal.** Any person adversely affected by any determination made by the Historic Preservation Commission relative to the issuance or denial of a certificate of appropriateness, or by the Zoning Administrator in the administration, interpretation, or enforcement of this Ordinance, may appeal such determination to the City Council.
- (b) **Timing of Appeal.** The appeal must be filed within 30 days of the decision of the Commission, or Zoning Administrator, as the case may be, and must be made by petition delivered to the Zoning Administrator. In the case of a failure of the Commission to act, an appeal must be made within fifteen (15) days of the expiration of the forty-five (45) day period allowed for the Commission action.
- (c) **Content of Appeal.** The appeal shall be on the application exactly as presented to the Commission or the Zoning Administrator, as the case may be.
- (d) **Notice.** The appeal shall be advertised for public notice in accordance with applications for certificates of appropriateness as required by this Ordinance.
- (e) **Action on Appeal.** The City Council may approve, modify and approve, or reject the determination made by the Commission or the Zoning Administrator, as the case may be, if it finds that the Commission or Zoning Administrator abused their discretion in reaching a decision.
- (f) **Appeal of Council Action.** Appeals of decisions of the City Council made pursuant to this section, may be taken to Superior Court of Hall County in the manner provided by law.

SECTION 6.2. VARIANCES

Where the strict application of any provision of this Ordinance would result in exceptional practical difficulty or undue hardship upon any owner of any specific property, by reason of unusual circumstances, the Historic Preservation Commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions of this Ordinance or to interpret the meaning of this Ordinance to relieve such difficulty or hardship. However, such variance, modification, or interpretation shall remain in harmony with the general purpose and intent of the provisions of this Ordinance so that the architectural or historic integrity or character of the property shall be conserved and substantial justice done.

In granting variances, the Commission may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this Ordinance. Neither financial constraints alone, nor a situation of a person's own making, shall be considered an undue hardship.

SECTION 6.3 ENFORCEMENT

After a certificate of appropriateness has been authorized and notification of such has been transmitted to the Zoning Administrator, the Zoning Administrator shall from time to time inspect the construction approved by such authorization. The City, through the Zoning Administrator or City Attorney, shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this Ordinance, or to prevent any illegal act or conduct with respect to such historic property or historic district.

SECTION 6.4 PENALTIES

Violation of any provision of this Ordinance shall be punished in the same manner as provided for the punishment of violations in the City of Flowery Branch Zoning Ordinance and adopted Nuisance Ordinance.

**ARTICLE VII
LEGAL STATUS PROVISIONS**

SECTION 7.1 INCORPORATION CLAUSE

This Ordinance is intended to comply with the provisions of the Georgia Historic Preservation Act, O.C.G.A. § 44-10-20 et. seq., which Act is incorporated by reference in its entirety into this Ordinance. Where any provision of this Ordinance is in conflict with any provision of the Act, the Act shall control. Or where this Ordinance is incomplete in having failed to incorporate a provision necessarily required for the implementation of the Act, such provision of the Act, so as to meet the mandate of the Act, shall be fully complied with.

SECTION 7.2 REPEALER

Ordinance No.191, adopted by the City of Flowery Branch on January 25, 2000, is hereby repealed. All ordinances, resolutions or parts thereof in conflict with this Ordinance are repealed.

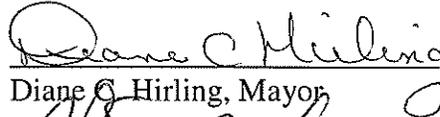
SECTION 7.3 SEVERABILITY

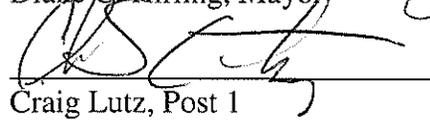
Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

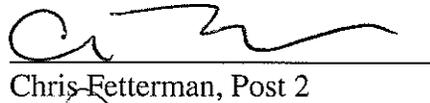
SECTION 7.4 EFFECTIVE DATE.

The effective date of this ordinance shall be upon approval by the Council of the City of Flowery Branch, Georgia.

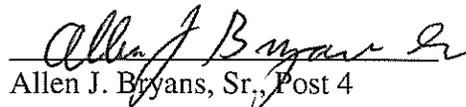
Adopted this 4 day of JUNE, 2008.


Diane C. Hirling, Mayor


Craig Lutz, Post 1


Chris Fetterman, Post 2


Pat Zalewski, Post 3


Allen J. Bryans, Sr., Post 4

Mary Jones
Mary Jones, Post 5

ATTEST:

Melissa McCain
Melissa McCain, City Clerk

APPROVED AS TO FORM:

E. Red Benary
City Attorney

