

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF SCHWENKSVILLE, ORDINANCE 258, ZONING, TO ADD A NEW ZONING DISTRICT, ADD NEW DEFINITIONS AND TO ADD A NEW ARTICLE NO. ----- PROVIDING FOR THE CREATION OF THE HISTORIC OVERLAY DISTRICT

The Borough Council of Schwenksville hereby ordains:

ARTICLE __, HISTORIC OVERLAY DISTRICT

SECTION 1.

The Code of the Borough of Schwenksville, Ordinance 258 thereof, entitled *Zoning*, Article II, Establishment of Districts, Section 176-8, "Classes of districts" shall be amended as follows:

Section 176-8. Classes of districts

HO Historic Overlay District

SECTION 2.

The Code of the Borough of Schwenksville, Ordinance 258 thereof, entitled *Zoning*, is revised as follows:

ARTICLE __, HISTORIC OVERLAY DISTRICT

Section 2.1 Purpose and Intent

It is the purpose of this Article:

- A. To protect those historic resources within Schwenksville Borough which have a distinctive character recalling the architectural, residential, commercial, aesthetic and historical heritage of the Borough, of Montgomery County, and of the Commonwealth of Pennsylvania. The preservation and protection of historic resources are public necessities and promote the health, safety and welfare of the citizens of the Borough.

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- B. To establish a clear process by which proposed changes affecting historic resources are reviewed by the Schwenksville Borough Historical Commission (the Historical Commission), the Schwenksville Borough Council, and/or the Borough's Code Enforcement Officer.
- C. To mitigate the impact of new development or changes to historic resources.
- D. To encourage the continued use of historic resources and facilitate their appropriate reuse.
- E. To discourage the unnecessary demolition of historical resources.
- F. To encourage the preservation of historic settings, landscapes, and other similar features.
- G. To tailor protective measures to preserve the historic resources of the Borough.
- H. To implement the goals of the Pennsylvania Constitution at Article I, Section 27, which establishes the Commonwealth's policy of encouraging the protection of historic and aesthetic resources. The Article asserts "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment."

Section 2.2 Definitions

The following terms, when used in this Ordinance, shall be defined as follows:

- A. Addition – An extension or increase in the footprint, floor area, height or other dimension of a Historic Resource.
- B. Alteration – A change or rearrangement in the structural parts of a Historic Resource or in the means of egress; or by moving from one location or position to another.
- C. Construction – The erection or installation of a new building, structure, or object, as well as modifications or improvements to existing buildings, structures, or objects.
- D. Demolition or Demolish – The removal or destruction of all or part of a Historic Resource, such that the historic or structural integrity of the Historic Resource is threatened, reduced, or lost. Demolition includes, but is not limited to,
 - 1) Moving the Historic Resource to another location.
 - 2) Permanent removal of any portion of any structural element such as a roof or

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exterior wall, or any significant building elements such as cornices, doors, windows, doorways, porches, or chimneys.

- 3) Permanently covering or obscuring any portion of any roof or exterior wall, or any significant exterior building elements.
 - 4) Removing all or part of a Historic Resource that has been damaged by a fire, flood, or other disaster.
 - 5) Modifying or otherwise altering the character or appearance of a historical setting.
- E. Demolition by Neglect – The deliberate disregard of routine maintenance and repair that can lead to a Historic Resource’s structural weakness, decay, and deterioration, resulting in its demolition and the avoidance of the provisions of the Historic Overlay District.
- F. Historical Commission – The Schwenksville Borough Historical Commission, as established under Chapter 29.
- G. Historic Resource – Any buildings, sites, structures, fixtures, monuments, landscapes, or objects that have been designated as protected under this Ordinance and identified on the Borough’s Historic Resource Map.
- H. Historic Resource Inventory – The official Borough listing, maintained by the Historical Commission, on which Historic Resources are identified by location and/or description. The Historic Resource Inventory shall include any relevant prior surveys, the Historic Resource Map, and all amendments, additions, deletions, and updates made periodically by Borough Council upon recommendation by the Historical Commission.
- I. Historic Resource Map – The official map, maintained by the Historical Commission, which identifies the location of the Historic Resources within Schwenksville Borough, included in and a part of the Historic Resource Inventory.

Section 2.3 General Provisions

- A. Applicability. This ordinance shall apply to all Historic Resources listed on the Historic Resource Map and Inventory, as amended. The requirements of this ordinance are restricted to actions that involve exterior additions, alterations, or rehabilitations that are visible from any public street, as well as demolitions or demolitions by neglect to Historic Resources.
- B. Compliance. Any change to the exterior of a Historic Resource shall occur only in full compliance with the terms of this article and other applicable regulations.
- C. Historic Resources Overlay. The Historic Resource Inventory shall be deemed an overlay

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on any zoning districts now or hereafter enacted to regulate the use of land in Schwenksville Borough. For any property listed on the Historic Resource Inventory, the requirements and opportunities contained in this Article shall supersede requirements of underlying zoning districts that may be in conflict with this Article.

- D. Preservation of other restrictions. It is not intended by this Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Article shall prevail.

Section 2.4 Historic Resource Map and Inventory

- A. Designation of Historic Resources on Map. Historic Resources in the Borough shall be shown on the map attached as Exhibit A and made part of this Ordinance, which shall be designated the “Historic Resource Map.” The Historic Resource Map has initially been prepared as of ... The Historic Resource Map and all the notations, references, and other data shown thereon, and the Inventory dated... attached as Exhibit B hereto that has been compiled, are hereby incorporated herein by reference, and shall be as much a part of this Ordinance as if all were fully described herein.
- B. The Historical Commission shall maintain an updated inventory of the resources shown on the Historic Resource Map for all designated Historic Resources in the Borough. The Inventory shall identify each Historic Resource by parcel, including the Montgomery County real estate tax identification number.
- C. Criteria for Inclusion on the Historic Resource Inventory and Map. The Historical Commission shall consider the following factors when designating the Borough’s Historic Resources:
- 1) Significance of character, interest, or value as part of the development, heritage, or cultural characteristics of the Borough, County, Region, Commonwealth or Nation, or is associated with the life of a person significant in the past; or
 - 2) Association with an event of importance to the history of the Borough, County, Region, Commonwealth or Nation; or
 - 3) Embodiment of an icon associated with an era characterized by a distinctive architectural style; or
 - 4) Embodiment of distinguishing characteristics of an architectural style or engineering specimen; or
 - 5) Is the noteworthy work of a designer, architect, landscape architect, designer, or engineer whose work has significantly influenced the historical, architectural, economic, social or cultural development of the Borough, County, Region,

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Commonwealth or Nation; or

- 6) Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
- 7) Is part of or related to a commercial center, park, community or other distinctive area which should be preserved according to a historic, cultural, or architectural motif; or
- 8) Owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood, community, or Borough; or
- 9) Has yielded, or may be likely to yield, information important in prehistory or history; or
- 10) Exemplifies the cultural, political, economic, social or historical heritage of the community; or
- 11) Is potentially eligible for listing on the National Register of Historic Places, and in any case, is appropriately documented to that effect by the Historical Commission.

D. Revisions to the Historic Resource Inventory and/or Map

- 1) **Review.** The Historical Commission shall review the Historic Resource Map and Inventory as needed, but at least once each calendar year, and may recommend the addition and/or removal of a site as a Historic Resource from the Historic Resource Map and Inventory. The Historic Resource Map and Inventory may be revised, if needed, by Borough Council based upon recommendations from the Historical Commission after a public hearing.
- 2) **Proposed Change.** The Historical Commission or Borough Council can initiate the proposed addition or removal of a property to the Historic Resource Map and Inventory. An owner of a potential Historic Resource can request that the Historical Commission add the property in question to the Historic Resource Map and Inventory. Unless an addition is proposed by the owner(s) of the property, such owner(s) shall be notified, in writing, of a proposal affecting their property, and shall be invited to respond to such proposal at or prior to the public hearing.
- 3) **Recommendation of Historical Commission.** The Historical Commission shall consider any proposed change to the Historic Resource Map and Inventory at its next scheduled meeting, and may thereafter conduct such research as may be necessary to support its recommendation concerning the proposed action. Once it has gathered all necessary research (but no later than ninety (90) days following the receipt of the original application proposing such change, unless this time period is extended or

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waived by the property owner), the Historical Commission shall then make a written recommendation to Borough Council, within 30 days following the public hearing, concerning the proposed change to the Historic Map and Inventory.

- 4) Hearing of Borough Council. Borough Council shall set a hearing date within thirty (30) days of receipt of the Historical Commission's recommendation, and shall give to the owners of any property that is proposed to be removed from or added to the Historic Resource Map and Inventory, a written notice of the Historical Commission's recommendation to Borough Council and a notice of a hearing date at least fourteen (14) days in advance of the public hearing at which the proposed action will be discussed. At the hearing, Borough Council shall hear from all interested parties, and shall thereafter make a written decision on the proposed action within fourteen (14) days of the date of the last such hearing.
- 5) Changes Reflected on the Map. The Historic Resources Map and Inventory shall be deemed amended as of the date of the Borough's decision to reflect the addition or removal that may have been approved by Borough Council.

Section 2.5 Additions, Alterations, and Rehabilitation of Historic Resources

- A. Routine maintenance or in-kind repairs or replacements shall not constitute an addition, alteration, or rehabilitation. The Code Enforcement Officer shall have the ability to decide if proposed work is minor, does not require review by the Historical Commission, and can receive a permit to proceed.
- B. No permits for any alteration, addition, or rehabilitation shall be issued prior to review by the Historical Commission. Any proposed work on a Historic Resource shall be made in a way that is in harmony in scale and architectural style with the existing Historic Resource and shall be in substantial compliance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings published by the U.S. Department of the Interior, National Park Service. These ten standards are reprinted in their entirety below:
 - 1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
 - 2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
 - 3) Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

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- 4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.
 - 5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
 - 6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
 - 7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
 - 8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
 - 9) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
 - 10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- B. The application and review for any alteration, addition, or rehabilitation shall include:
- 1) A written description of the proposed alteration, addition, or rehabilitation, and where applicable;
 - 2) A site plan at a scale designated by the Historical Commission;
 - 3) Schematic architectural drawings of the proposed construction or alterations; and
 - 4) Materials list and disposition of existing materials.

Section 2.6 Demolition of Historic Resources

- A. Demolition by Neglect. No Historic Resources shall be demolished by neglect. As such, unoccupied structures should be tightly sealed and fenced off, and the utilities should be

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turned off for safety.

- B. Permit for demolition. No Historic Resource shall be demolished, in whole or in part, including the indiscriminate removal or stripping of any significant architectural features, unless a permit is obtained from Borough Council in accordance with the procedures and requirements of this Section and other applicable standards and procedures of the Borough's Building and Fire Codes.
- C. Proposed demolition of Historic Resources. All permit applications for demolition will be reviewed by the Borough's Code Enforcement Officer who will determine if the application concerns a Historic Resource. If the application concerns a Historic Resource, the applicant will be advised that he or she must comply with the following procedures and requirements, as applicable.
- D. Application requirements for the demolition of a Historic Resource. In addition to applicable requirements under the Borough's Building and Fire Codes, any applicant seeking a permit to demolish a Historic Resource shall provide the following with regard to that Historic Resource. Some of the information required may be obtained through the Historical Commission; however, it is the property owner's responsibility to produce the report.
 - 1) The owner of record and address of the property;
 - 2) A site plan showing all buildings and structures on the property;
 - 3) Recent exterior color photographs of the Historic Resource proposed for demolition, removal, or relocation;
 - 4) The reason for the demolition;
 - 5) The method of demolition;
 - 6) A report from a registered professional structural engineer describing the structural condition of the Historic Resource proposed to be demolished, removed, or relocated;
 - 7) A report from a code enforcement officer indicating the Historic Resource's compliance with any applicable Borough property maintenance codes;
 - 8) The proposed disposition of materials, including any reuse of the same;
 - 9) The timeline for implementation of any proposed use(s) for the Historic Resource;
 - 10) The form of ownership or operation of the Historic Resource, whether sole proprietorship, for-profit or nonprofit corporation, limited partnership, joint venture,

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- or other;
- 11) Future uses of the site; and
 - 12) Alternatives to demolition considered by the applicant.
- E. Applicants seeking to demolish an entire building or buildings shall also submit:
- 1) Documentation of all efforts to sell the Historic Resource in the preceding three years;
 - 2) The date of purchase, purchase price, and ownership history of the Historic Resource;
 - 3) The assessed value of the land and improvements thereon;
 - 4) If the building was purchased more than three years prior to the submission date of the application, a certified appraisal from a licensed appraiser;
 - 5) For depreciable properties, a pro forma financial statement prepared by a certified public accountant or broker of record;
- F. Additional information to be submitted as applicable. The applicant shall provide credible evidence that:
- 1) The demolition, removal, or relocation of the Historic Resource in question will not adversely affect the significance as well as the structural or aesthetic integrity of a Historic Resource.
 - 2) There is no feasibility to continue the current use of the Historic Resource.
 - 3) Other uses permitted within the underlying zoning district, either as permitted uses, special exception uses, or conditional uses, have been denied or are not feasible due to constraints on the Historic Resource proposed to be demolished, removed, or relocated.
 - 4) Adaptive reuse opportunities do not exist due to constraints related to the Historic Resource proposed to be demolished, removed, or relocated.
 - 5) Permitted uses and adaptive reuse potential of the Historic Resource proposed to be demolished, removed, or relocated do not provide a reasonable rate of return based on a reasonable initial investment.

Section 2.7 Permit Application Review Procedures

- A. Initial review procedure.

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- 1) Upon receipt by the Borough of three (3) copies of a completed permit application, the Borough Manager or Zoning Officer shall within three (3) working days of receipt of the completed application, forward copies thereof, together with all required supporting documentation submitted by the applicant, to the Borough Council and the Historical Commission for their review and comments. No application will be considered complete until all requested materials have been received in the Borough office.
 - 2) The Borough Manager or Code Enforcement Officer shall not issue a permit until Borough Council has rendered a written decision or made its decision by resolution.
 - 3) The Borough Manager shall maintain a record of all such applications and final dispositions of the same.
- B. Historical Commission review of applications. Within thirty (30) days of the Borough's determination that a permit application is complete, the Historical Commission, or a subcommittee thereof, shall consider the application at a regular or special meeting. The applicant shall be advised as to the time and place of the meeting at which the application shall be considered. The applicant shall have the right to attend this meeting and be heard as to the reasons for filing the application. In its review of a permit application, the Historical Commission may require the applicant to provide additional information, which may include a Historic Resource Impact Study that contains financial information. In the case of a application for demolition, the Historical Commission may further require the applicant to conduct, at the applicant's expense, an evaluation to determine whether the Historic Resource has, or may have, alternate uses consistent with preservation, and which do not deprive the owner of all economic use of the property. The Historical Commission shall present a report to Borough Council within 45 days of the last public meeting on the application recommending the issuance or denial of a permit.
- C. Contents of the Written Report. The Historical Commission shall prepare a written report setting forth the reasons for its recommendation on the issuance or denial of a permit application including a report on the evidence considered and its findings of fact. Factual findings shall include but need not be limited to the following matters:
- 1) The exact location of the Historic Resource in which the proposed addition, alteration, rehabilitation, or demolition is to occur;
 - 2) A list of any other Historic Resources within 300 feet of the Historic Resource for which the permit application was filed;
 - 3) The effect of the proposed work upon the general historic, archaeological, cultural, and architectural character of the Borough, based on factual information; and

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- 4) Recommendations by the Historical Commission as to the issuance or denial of the permit application.

If the Historical Commission recommends denial of the permit application, the Historical Commission shall also indicate an alternative(s) which would protect:

- 1) the distinctive historical character of the Historic Resource;
- 2) the architectural or archaeological integrity of the Historic Resource; and/or
- 3) the cultural significance of the Historic Resource.

D. Time Extension. The Historical Commission or Borough Council may grant a reasonable extension of their respective review periods, either at the request of the applicant or upon its own motion, not to exceed ninety (90) days in any one instance. In each instance at which an extension is requested, the applicant must agree, as a condition to the extension, to waive any rights that would require the Historical Commission or Borough Council to make a decision on the application within the review period.

E. Notification of Applicant of Borough Council Hearing. The applicant shall be notified in writing by Borough Council of their upcoming deliberation upon receipt of the written report from the Historical Commission. Borough Council shall consider, at a public meeting within thirty (30) days of the issuance of the Historical Commission's written report, the question of the issuance of a permit. The applicant shall be advised as to the time and place of the meeting at which his or her application shall be considered and shall be provided with a copy of the Historical Commission's written report. The applicant shall have the right to attend this meeting and be heard as to the reasons for filing the application.

F. Approval by Borough Council. If Borough Council approves the permit application, it shall authorize the Code Enforcement Officer (or other official) to issue a permit for the proposed work and shall require the applicant to document and record, at the applicant's expense, the Historic Resource, including the following:

- 1) A detailed description of the Historic Resource and its context, including topography, vegetation, landscaping, driveways, structures, and features;
- 2) A detailed site plan of the Historic Resource;
- 3) Measured floor plans, if applicable, and exterior elevations; and
- 4) Measured drawings of individual elements of the Historic Resource.

Applicants who have received a demolition permit are also required to document the

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following:

- 1) Comprehensive photographic records of the Historic Resource;
- 2) Chain of title or other information related to the history of the Historic Resource; and
- 3) A statement of the significance of the Historic Resource and its context to the Borough and environs.

Two copies of such documentation shall be delivered to the Historical Commission for review and approval. Upon approval by the Historical Commission, one copy shall be forwarded to the Borough Code Enforcement Officer with evidence of such approval to be added to the property information on file. The second copy shall be retained in the records of the Historical Commission. All approved permits must be conspicuously posted within public view at the Historic Resource throughout the period of work. Borough Council may require, as a condition for the issuance of the permit that the applicant fabricate and erect, at the applicant's expense, a historical marker that is fitting with the surrounding neighborhood's architectural style.

- G. Disapproval by Borough Council. If Borough Council disapproves the issuance of a permit, a written decision shall be given to the applicant and the Borough's Code Enforcement Officer within thirty (30) days of the Borough Council's hearing. The decision shall indicate if any changes to the plans would meet the conditions for protecting the architectural integrity of the Historic Resource, including any potential or actual archaeological resources affected by the request. Upon receipt of the written disapproval decision from Borough Council, the Code Enforcement Officer shall disapprove the application for a permit and so advise the applicant. The applicant may appeal the decision to the Montgomery County Court of Common Pleas within the time specified by law.

Section 2.8 Additional Requirements

In all land development applications, the Historical Commission shall act as advisor to Borough Council in reviewing and providing guidelines and recommendations in order to preserve historic structures or resources on the site. Such guidelines and recommendations may include, but are not limited to the following:

- A. Setback requirement. When a larger parcel on which a Historic Resource is located is proposed for subdivision and/or land development, the subdivided parcel intended to contain the Historic Resource shall include a lot area of sufficient size to preserve those portions and features of the Historic Resource that are significant to its historical, architectural, and cultural values. As a minimum, no lot line shall be closer than one hundred (100) feet to a Historic Resource or such lesser distance as may be permitted by the Zoning Hearing Board, provided the other requirements of this Section are met. Any

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new construction on an adjoining lot cannot be closer than fifty (50) feet to the Historic Resource, except as otherwise permitted by the Zoning Hearing Board by special exception.

Section 2.9 Enforcement and Enforcement Penalties

- A. The Code Enforcement Officer shall have the power to institute any proceedings at law or in equity for the enforcement of this Ordinance in the same manner as in his enforcement of the Borough Building Permit Ordinance as enacted, and may be amended from time to time.
- B. Any person, partnership or corporation who or which shall violate the provisions of this Ordinance shall, upon conviction thereof, be sentenced to a fine not to exceed one thousand dollars, plus costs. The Borough shall give official written notice to the violator, by certified/registered mail, that he is committing a violation, and each day that a violation is continued shall constitute a separate offense.

Section 2.10 Miscellaneous Provisions

- A. As used in this Ordinance, the present tense includes all other tenses; the singular includes the plural, and the plural includes the singular; the masculine gender includes the feminine and neuter. The word “used” includes the words “designed” or “arranged.” The word “person” includes an individual, estate, trust, fiduciary, partnership, association, corporation or any other organization or entity, including the principal officers thereof or any person or entity acting directly or indirectly by, through, or under any of the foregoing. The word “occupied” includes the words “designed, or intended to be occupied.” The word “structure” includes “building.” The word “shall” is always mandatory. The word “may” is always permissive. The term “as amended” as applied to any statute, ordinance, code, regulation, plan or map includes replacements, supplements, or restatements thereof. A reference to a particular Article, Section or subsection that inherently refers to other Articles, Sections, or subsections, includes all Articles, Sections or subsection referred to.

As used in this Ordinance, the terms “such as” and “including” are intended to introduce matters which are illustrative of the meaning of the sentence, clause or phrase in which such terms appear without limiting or derogating from the general application of the sentence, clause, or phrase in which such terms appear.

- B. Repealer. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 2.11

This Ordinance shall become effective immediately upon enactment.

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ENACTED AND ORDAINED this _____ day of _____, 2011.

SCHWENKSVILLE BOROUGH COUNCIL

BY: _____
ARTHUR FAIRCLOUGH, PRESIDENT

ATTEST: _____

GAIL L. PHILLIPS, SECRETARY

Read and approved this _____ day of _____, 2011.

JOSEPH GIUNTA, MAYOR