

Appendix G:

Unified Development Ordinance—ARTICLE 4 SECTION 12 HISTORIC PRESERVATION OVERLAY DISTRICTS

4.12. HISTORIC PRESERVATION OVERLAY (HPOD) DISTRICTS.

4.12.1. PURPOSE.

4.12.1.1. Concord’s designated historic districts, hereinafter referred to as the “districts,” and historic landmarks, hereinafter referred to as “landmarks” are some of the most valued and important assets of the City of Concord. They are established for the purpose of protecting and conserving the heritage of the City of Concord, County and State; for the purpose of safeguarding the character and heritage of the districts by preserving the districts as a whole and any property therein that embodies important elements of their social, economic, cultural, political, or architectural history; for the purpose of promoting the conservation of such districts or landmarks for the education, pleasure and enrichment of residents of the districts and the City of Concord, County and State as a whole; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the districts as a whole, thus contributing to the improvement of the general health and welfare of the City of Concord and the residents of the districts.

4.12.2. HISTORIC DISTRICT ESTABLISHMENT.

4.12.2.1. The historic districts are hereby established as districts which overlap and overlay existing zoning districts, the extent and boundaries of which are as indicated on the official zoning map for the City of Concord. The boundaries of the districts are as shown on the Official Zoning Map of the City of Concord.

4.12.2.2. Historic districts, as provided for in this section, may from time-to-time be designated, amended, or repealed, provided; however, that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance. Such districts must also possess integrity of design, setting, workmanship, materials, feeling, and/or association. No district shall be

designated, amended, or repealed until the following procedure has been carried out:

4.12.2.2.1. An investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and;

4.12.2.2.2. The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the City Council within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the City Council of any responsibility for awaiting such analysis, and the City Council may at any time thereafter take any necessary action to adopt or amend its Zoning Ordinance.

4.12.2.3. The City Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendations prior to taking action to amend the Zoning Ordinance.

4.12.2.4. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (1) of this section shall be prepared by the Commission and shall be referred to the Planning and Zoning Commission for its review and comment according to the procedures set forth in the Zoning Ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall be submitted to the Department of Cultural Resources in accordance with the provisions of subsection (2) of this section.

4.12.2.5. Upon receipt of these reports and recommendations, the City Council may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate Zoning Ordinance provisions.

4.12.3. HISTORIC LANDMARK ESTABLISHMENT

4.12.3.1. Upon complying with the required landmark designation procedures set forth herein, the City Council may adopt and from time-to-time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling, and/or association.

4.12.3.2. The ordinance shall describe each property designated in the Ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area or object so designated as a landmark, the ordinance shall require that the waiting period set forth in this ordinance be observed prior to its demolition. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise the sign may be placed on a nearby public right-of-way.

4.12.3.3. No property shall be designated as a landmark until the following steps have been taken:

4.12.3.3.1. As a guide for the identification and evaluation of landmarks, the Commission shall, at the earliest possible time and consistent with the resources available to it, undertake an inventory of properties of historical architectural, prehistorical, and cultural significance with Concord.

4.12.3.3.2. The Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina

Department of Cultural Resources.

4.12.3.3.3. The Department of Cultural Resources, acting through the State Historic Preservation Officer, or his/her designee, shall either upon request of the Department or at the initiative of the Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark. All comments will be provided in writing. If the Department does not submit its comments to the Commission within 30 days following receipt by the Department of the report, the Commission and the City Council shall be relieved of any responsibility to consider such comments.

4.12.3.3.4. The Commission and the City Council shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

4.12.3.3.5. Following the public hearings(s), the City Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

4.12.3.3.6. Upon adoption of the ordinance, the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and amendments thereto shall be filed by the Commission in the office of the Register of Deeds of Cabarrus County. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office and the Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Concord City Clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the building inspector. The fact that a building, structure, site, area, or object has been designated a landmark shall be clearly indicated on all tax maps maintained by Cabarrus County for such period as the designation remains in effect.

4.12.3.3.7. Upon the adoption of the landmark ordinance or any amendments thereto, it is the duty of the Commission to give notice thereof to the tax supervisor of Cabarrus County. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered

by the tax supervisor in appraising it for tax purposes.

4.12.4. PERMITTED USES.

4.12.4.1. The districts contain several zoning classifications. All uses permitted in any such district, whether by right or as a special exception, shall be permitted in the historic districts according to the procedures established for such uses.

4.12.5. DIMENSIONAL REGULATIONS.

4.12.5.1. Structures within the historic districts shall observe the dimensions and other regulations of this Ordinance, except as follows:

4.12.5.2. No structures or part thereof shall extend nearer to or be required to be set back further from the front lot line than the average distance of the setbacks of the nearest principal buildings within 300 feet on each side of such building and fronting on the same side of the street.

4.12.5.3. No building shall exceed a height of 35 feet.

4.12.5.4. The minimum side yard setback shall be 15 feet.

4.12.5.5. The minimum new side yard setback shall be 10 feet.

4.12.5.6. It is the intent of this section to supersede, within the historic districts, the dimensional regulations of the basic districts applying to the property.

4.12.6. AUTHENTIC RESTORATION OR RECONSTRUCTION

4.12.6.1. Permitted Subject to Approval of Historic Preservation Commission and Planning and Zoning Commission, Although Not Complying with Dimensional Regulations.

4.12.6.1.1. Where it is found by the Historic Preservation Commission that an application for a building permit covers activity constituting an authentic restoration or reconstruction in the same location as the original location and in the original conformation of the structure of a structure of historic and/or architectural significance to the historic district, such activity may be approved by the Planning and Zoning Commission, following the approval by the Historic Preservation Commission.

4.12.6.2. Approval Subject to Conditions

4.12.6.2.1. The Planning and Zoning Commission, in approving such authentic reconstruction or restoration, may attach reasonable and appropriate conditions to the approval, such that the public health, safety and general welfare shall be protected.

4.12.6.3. Limitation on Approval

4.12.6.3.1. The Planning and Zoning Commission shall not be authorized, in action undertaken by this section, to approve a use of property which is not a use permitted by right or as a special exception use within the district in which the property is located.

4.12.6.3.2. In addition to any other condition the Planning and Zoning Commission may make regarding such authorization, any items restored, reconstructed, or maintained on, over, or within a public sidewalk, public alley area, or other such public way shall be the responsibility of the owner, his heirs and assigns. The owner's restoration, reconstruction, or maintenance of any such item within such area shall constitute the owner's agreement to protect and hold the City of Concord blameless against any and all liability, cost, damage, or expense suffered by the City of Concord as a result of or growing out of the restoration, reconstruction, or maintenance thereof. Such items, so approved, may be lawfully restored, reconstructed, or maintained. Any such item projecting over the vehicular truck way of a street or alley shall be, at its lowest point, 10 feet above the travel way.

4.12.7. PARKING WAIVER

4.12.7.1. Where the Historic Preservation Commission, in considering an application for a Certificate of Appropriateness, shall find that the number of off-street parking spaces required by the zoning regulations for a building or structure for which a building permit is requested would render the building incongruous with the historic aspects of the district, it shall recommend to the Planning and Zoning Commission a waiver, in part or in whole, of the off-street parking requirements. The Planning and Zoning Commission may authorize a lesser number of off-street parking spaces, provided: (1) the Commission finds that the lesser number of off-street parking spaces will not create problems due to increased on-street parking, and (2) will not constitute a threat to the public safety.

4.12.8. RECOMMENDATIONS ON SPECIAL EXCEPTION APPLICATIONS

4.12.8.1. All special exception applications within the historic districts shall be reviewed by the Historic Preservation Commission at its next regular meeting after the application has been submitted in accordance with the requirements of this Ordinance. The Historic Preservation Commission shall forward its comments and recommendations within 45 days of the filing of the application. The recommendations shall be presented to the Planning and Zoning Commission which has final decision responsibility on applications for special exceptions.

4.12.9. HISTORIC PRESERVATION COMMISSION

4.12.9.1. Refer to Section 2.5 of this Ordinance.

4.12.10. CERTIFICATE OF APPROPRIATENESS

4.12.10.1. Required.

4.12.10.1.1. From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps, and pavement, or other appurtenant features) no above-ground utility structure nor any type of outdoor advertising sign or business identification sign shall be erected, altered, restored, moved, or demolished on such landmark or within the historic district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. The municipality shall require such a certificate to be issued by the Commission prior to the issuance of a compliance permit or building permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purpose of this part. A Certificate of Appropriateness shall be required whether or not a building permit or compliance permit is required. Any building permit or such other permit not issued in conformity with this section shall be invalid.

4.12.10.1.2. The City of Concord and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or

streets owned or franchised by the City of Concord or public utility companies.

4.12.10.2. Procedures.

4.12.10.2.1. An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the Planning Director. Applications for Certificates of Appropriateness shall be considered by the Historic Preservation Commission at its next regular meeting, provided they have been filed, complete in form and content, at least 28 days prior to the regularly scheduled meeting of the Commission; otherwise, consideration shall be deferred until the following meeting.

4.12.10.2.2. The Commission shall, by uniform rule in its Rules of Procedure, require data as are reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required data have been submitted. Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

4.12.10.2.3. Upon receipt of an application, the Administrator shall notify the Historic Preservation Commission at least seven calendar days before its regularly scheduled meeting.

4.12.10.2.4. Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall conduct a public hearing in accordance with Section 3.1.7 of this Ordinance. The Administrator shall be responsible for notifying the affected parties per section 3.1.5 or this Ordinance.

4.12.10.2.5. The Commission shall take action on the application and in doing so shall apply the Review Criteria, contained in Section 4.12.11 of this Ordinance.

4.12.10.2.6. The Commission's action on the application shall be approval, approval with modifications, or disapproval.

4.12.10.2.7. Prior to final action on an application, the Commission, using the guidelines in Section 4.12.11, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the district.

4.12.10.2.8. The Commission shall cause to be

entered into the minutes of its meeting the reasons for its action, whether it be approval, approval with modifications, or denial.

4.12.10.2.9. If the Commission fails to take final action upon any application within 60 days after the complete application is submitted to the Planning Director, the application shall be deemed to be approved.

4.12.10.2.10. If the Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

4.12.11. Review Criteria

4.12.11.1. Intent

4.12.11.1.1. It is the intention of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district or of landmarks shall be harmonious with the special character of the district or landmark. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of same or to impose architectural styles from particular historic periods. In considering new construction, the Commission shall encourage contemporary design which is harmonious with the character of the district.

4.12.11.1.2. In granting a Certificate of Appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity.

4.12.11.1.3. The Commission shall take no action under this ordinance except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features, outdoor advertising signs, or other significant features which would be incongruous with the special character of the historic district or landmark.

4.12.11.2. Exterior Form and Appearance

4.12.11.2.1. The following criteria shall be considered, when relevant, by the Commission in reviewing applications for a Certificate of Appropriateness. All applications for Certificates of Appropriateness shall be subject to review based upon the Design Guidelines then in effect. These guidelines are set forth in a manual prepared and adopted by the Commission:

- lot coverage, defined as the percentage of lot area covered by primary structures;
- setback, defined as the distance from the lot lines to the building(s);
- building height;
- spacing of buildings, defined as the distance between adjacent buildings;
- exterior building materials;
- proportion, shape, positioning, location, pattern and sizes of any elements of fenestration;
- surface textures;
- roof shapes, forms and materials;
- use of local or regional architectural traditions;
- general form and proportions of buildings and structures, and relationship of any additions to the main structure;
- expression of architectural detailing, such as lintels, cornices, brick bond, and foundation materials;
- orientation of the building to the street;
- scale, determined by the size of the units of construction and architectural details in relation to the size of man and also by the relationship of the building mass to adjoining open space and nearby buildings and structures;
- proportion of width to height of the total building facade;
- archaeological sites and resources associated with standing structures;

- appurtenant fixtures and other features such as lighting;
- structural condition and soundness;
- walls--physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, building facades, or combination of these;
- ground cover or paving;
- maintenance of pedestrian scale and orientation as well as provision for safe pedestrian movement;
- color (new construction only and not for existing residences); and
- effect of trees and other landscape elements.

4.12.11.2.2. The Secretary of the Interior’s “Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for Certificates of Appropriateness.

4.12.11.3. Interior arrangement or design shall be exempt from review by the Historic Preservation Commission. Interior construction and/or reconstruction shall not require a Certificate of Appropriateness.

4.12.12. CERTAIN CHANGES NOT PROHIBITED

4.12.12.1. Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, alteration, restoration, or demolition of any such feature which the Building Inspector, Zoning Enforcement Officer or similar official shall certify in writing to the Commission is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration, of any existing above-ground utility structure with approval by the Commission.

4.12.13. DELAY IN DEMOLITION

4.12.13.1. An application for a Certificate of Appropriateness authorizing the demolition, removal, or destruction of a designated landmark or a building structure or site within a historic district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The period of delay shall be reduced by the Commission if it finds that the owner should suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period the Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure, or site. If the Commission finds that a building, structure, or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

4.12.13.2. In the case of action initiated by the City, the application for such a certificate will first be reviewed by the Commission and secondly by the City Council for final order of demolition or removal. The Commission shall consider the Housing Code Officer’s inspections and recommendations for demolition or removal of the building or structure.

4.12.13.3. If the Commission has voted to recommend the designation of a landmark or the designation of an area as a historic district and the final designation has not been made by the City Council, the demolition or destruction of any building, structure, or site in the proposed district or on the property of the designated landmark may be delayed by the Commission for up to 180 days or until the City Council takes final action on the designation, whichever occurs first.

4.12.14. APPLICATION REVIEW BY COMMISSION

4.12.14.1. As part of its review procedure, the Commission may view the premises and seek the advice of the Department of Cultural Resources or such other expert advice as it may deem necessary under the circumstances.

4.12.15. APPEAL OF DECISION

4.12.15.1. In any action granting or denying a Certificate of Appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment.

4.12.15.2. Written notice of the intent to appeal must be sent to the Commission, postmarked within 30 days following the decision. Appeals shall be in the nature of certiorari. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of Cabarrus County.

4.12.15.3. The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision with 30 days from the date that a notice of appeal by the state is received by the Historical Commission. The decision of the Historical Commission shall be final and binding upon both the State and the Commission.

4.12.16. COMPLIANCE

4.12.16.1. Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Planning Director. Failure to comply with a Certificate of Appropriateness shall be a violation of the Zoning Ordinance. The discontinuance of work or the lack of progress toward achieving compliance with a Certificate of Appropriateness for a period of six months shall be considered as a failure to comply with a Certificate of Appropriateness.

4.12.16.2. Nothing contained in this Ordinance shall prohibit, impair, or limit in any way the power of the City Council to prevent the construction, reconstruction, alteration, restoration, or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the Historic Districts in violation of the provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. (See General Statute 160A-175 and 160A-389.)

4.12.17. STATE RECOMMENDATIONS

4.12.17.1. The districts shall not be established or the authority and powers of Section 2.5 Commission Powers be implemented until the Department of Cultural Resources shall have been given an opportunity, in accordance with the provisions of North Carolina General Statute 160A-400.4 (2), to make recommendations with respect to the establishment of the districts.

