

Adopted on April 17, 2017

**AN ORDINANCE
AMENDING ARTICLE II (OVERLAY DISTRICTS) OF CHAPTER 34 (ZONING) OF
THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
RELATING TO HISTORIC CONSERVATION OVERLAY DISTRICTS.**

WHEREAS, City Council has determined that certain amendments to the text of the City's Zoning Ordinance, as set forth within this ordinance ("Zoning Text Amendments") are required by public necessity, convenience, general welfare or good zoning practice; and

WHEREAS, on March 14, 2017 a joint public hearing was held by the City's Planning Commission and City Council for the Zoning Text Amendments, pursuant to public notice as required by Virginia Code Sec. 15.2-2204 and applicable provisions of the City's Zoning Ordinance; and

WHEREAS, following the joint public hearing, the Planning Commission, by motion duly adopted on March 14, 2017, voted to recommend that City Council should adopt the Zoning Text Amendments because they are required by the public necessity, convenience, general welfare or good zoning practice; now, therefore,

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia, that Sections 34-336, 34-340, 34-341, and 34-343 through 34-349 of Chapter 34, Article II, Division 5 of the Charlottesville City Code, 1990, as amended, are hereby amended and reordained, as follows:

CHAPTER 34. ZONING

ARTICLE II. OVERLAY DISTRICTS

Division 5. Historic Conservation Overlay Districts

Sec. 34-335. Purposes.

The City of Charlottesville seeks, through establishment of its historic conservation overlay ("CV" or "conservation") districts, to protect community health and safety, and to promote the education, prosperity and general welfare of the public through the identification and conservation of buildings, structures, and areas with special historical, cultural, architectural and archaeological significance. To achieve these general purposes, the City of Charlottesville seeks to pursue the following specific purposes:

- (1) To identify and preserve buildings, structures and areas with special historical, cultural, architectural and archaeological significance, or with a collective character

and quality, which serve as important visible reminders of the heritage of this city, the Commonwealth of Virginia, or this nation;

- (2) To assure that new structures, additions, and related elements will be in harmony with the scale and character of the existing buildings, structures and areas;
- (3) To document and promote an understanding of the social history of city neighborhoods, and to protect their cultural institutions.

Sec. 34-336. Establishment of, and additions to or deletions from, conservation districts.

(a) City council may, by ordinance, from time to time, designate properties and areas for inclusion or removal within a conservation district. Any such action shall be undertaken following the rules and procedures applicable to the adoption of amendments to the city's zoning ordinance and zoning map.

(b) Prior to the adoption of any such ordinance, the board of architectural review ("BAR") shall define, taking into consideration information that may be provided by neighborhood residents, the architectural character-defining features of the proposed conservation district. Those features would be referenced and reinforced when applying the conservation district design guidelines.

(c) Prior to the adoption of any such ordinance, the city council shall consider the recommendations of the planning commission and the BAR as to the proposed addition, removal or designation. The commission and BAR shall address the following criteria in making their recommendations:

- (1) The age of buildings and structures;
- (2) Whether the buildings, structures and areas are listed on the Virginia Landmarks Register or the National Register of Historic Places, or are eligible to be listed on such registers;
- (3) Whether the buildings, structures or areas are of locally important historic, cultural, architectural or archaeological interest;
- (4) Whether the buildings, structures or areas are associated with an historic person or event or with a significant architect or master craftsman, or have special public value because of notable features relating to the cultural or artistic heritage of the Charlottesville community;
- (5) Whether the buildings, structures or areas are part of a geographically definable area within which there exists a significant concentration or continuity of buildings or structures that are linked by past events or, aesthetically, by plan or physical development, or within which there exists a number of buildings or structures separated geographically but linked by association or history; and

- (6) Whether the buildings, structures or areas, when viewed together, possess a distinctive character and quality or historic significance.

Sec. 34-337. Conservation districts.

The following areas have been determined by city council to meet the criteria for designation as a conservation district, the limits of which are shown on the city's zoning map:

- (1) The Martha Jefferson Historic Conservation District; and
- (2) The Rugby Road Historic Conservation District.

Within each district designated above, city council has determined that only certain buildings are considered "contributing structures." Those contributing structures are identified on a map of each district included within the city's conservation district design guidelines, copies of which are available within the department of neighborhood development services.

Sec. 34-338. Relationship to individually protected properties.

(a) Within a conservation district all individually protected properties listed in section 34-273 shall retain that designation, and shall be reviewed under the Code provisions applicable to those properties.

(b) Before an area is designated as a historic conservation district, each of the structures that may qualify for designation as an individually protected property under section 34-273 within that area shall be identified.

Sec. 34-339. Contributing structures.

Before an area is designated as a conservation district, each structure shall be determined to be either "contributing" or "non-contributing." Thereafter, at least once every fifteen (15) years, this determination shall be reconfirmed.

Sec. 34-340. Actions requiring certificate of appropriateness; exemptions; penalties.

(a) A certificate of appropriateness (COA) must be approved in accordance with this division, prior to the commencement of construction, erection, alteration, or demolition of certain buildings, structures or improvements, as follows:

- (1) All new buildings and structures require a COA if they require a building permit, and unless they are concealed by the principal structure from all abutting streets.
- (2) All new fences and walls that abut a street, or which are located in a side yard between a street and the front of the principal structure on a lot, require a COA.

(b) The following proposed additions to existing buildings or structures require a COA:

- (1) Additions located wholly or partially to the side or front of the principal structure on a lot, or
- (2) Additions located on a lot that abuts a street on the side or rear, or
- (3) Additions that are equal to or greater than fifty (50) percent of the total gross floor area of the existing building, or
- (4) Additions located to the rear that exceed the height or width of the existing building or structure.

(c) The proposed demolition, razing or moving of any building or structure requires a COA only when:

- (1) The building is a contributing structure; and,
- (2) The proposed demolition is located in whole or in part to the front or side of the contributing structure, or
- (3) The proposed demolition is located on a lot that abuts a street on the side or rear, or
- (4) The proposed demolition is equal to or greater than thirty-three (33) percent of the total gross floor area of the existing building.

However, the removal or replacement of windows or doors shall not constitute a demolition under this conservation district ordinance, provided the size of the opening is not altered.

(d) The proposed painting of previously unpainted brick or other masonry requires a COA.

(e) The following shall be exempt from the requirement of a COA:

- (1) Interior features, details, alterations and improvements;
- (2) Ordinary maintenance or repair of exterior elements or features;
- (3) Painting or repainting a material other than unpainted brick or other masonry;
- (4) Construction, reconstruction or other improvements to a building or structure made pursuant to an order of correction issued by the city's building code official, upon a determination by the city's building code official that a building or structure is an "unsafe structure," as that term is defined by the state's building code and regulations. In the event any such order or determination is issued with respect to a building or structure subject to BAR review pursuant to this division, the director of neighborhood development services shall notify the BAR of any alterations or repairs ordered by the building code official; and
- (5) The demolition, razing or removing, in whole or in part, of any contributing structure allowed pursuant to an order of the city's building code official, upon a determination by the city's building code official that a building or structure is in such dangerous, hazardous or unsafe condition that it could reasonably be expected to cause death or serious injury before review under the provisions of this division. Upon such a determination, the building code official shall deliver a copy of the order to the director of neighborhood development services and to the chairperson of the BAR.

(f) Failure to obtain a COA as required by this section for the demolition, razing or moving of any contributing structure shall be subject to the civil penalty described within section 34-86(b) (i.e., not to exceed twice the fair market value of the building or structure).

Sec. 34-341. Criteria for approval.

(a) In considering a particular application the BAR shall approve the application unless it finds:

- (1) That the proposal does not meet specific standards set forth within this division or applicable provisions of the conservation district design guidelines; and
- (2) The proposal is incompatible with the historic, cultural or architectural character of the conservation district in which the property is located.

(b) The BAR's review of the proposed new construction or addition to a building or structure shall be limited to factors specified in section 34-342. The BAR's review of the proposed demolition, razing or moving of any contributing structure shall be limited to the factors specified in section 34-343.

(c) The BAR, or city council on appeal, may require conditions of approval as are necessary or desirable to ensure that any new construction or addition would be compatible with the scale and character of the historic conservation district. Prior to attaching conditions to an approval, due consideration shall be given to the cost of compliance with the proposed conditions.

Sec. 34-342. Standards for review of new construction and additions.

The following features and factors shall be considered in determining the appropriateness of proposed new construction and additions to buildings or structures:

- (1) Whether the form, height, scale, mass and placement of the proposed construction are visually and architecturally compatible with the site and the applicable conservation district;
- (2) The harmony of the proposed changes in terms of overall proportion and the size and placement of entrances and windows;
- (3) The impact of the proposed change on the essential architectural form and integrity of the existing building;
- (4) The effect, with respect to architectural considerations, of the proposed change on the conservation district neighborhood;
- (5) Any applicable provisions of the city's conservation district design guidelines.

Sec. 34-343. Standards for review of demolition, razing or moving of a contributing structure.

The following factors shall be considered in determining whether or not to permit the demolition, razing or moving, in whole or in part, of a contributing structure:

- (1) The historic, architectural or cultural significance, if any, of the specific building or structure, including, without limitation:
 - a. The age of the building or structure;
 - b. Whether it has been listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;
 - c. Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;
 - d. Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the city of a particular architectural style or feature;
 - e. The degree to which distinguishing characteristics, qualities, features or materials remain;
- (2) Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within the conservation district, and whether the proposed demolition would affect adversely or positively the historic or aesthetic character of the district;
- (3) The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant, or other information provided;
- (4) Whether, and to what extent, the applicant proposes to preserve portions, features or materials that are significant to the property's historic, architectural or cultural value; and
- (5) Any applicable provisions of the city's conservation district design guidelines.

Sec. 34-344. Validity of certificates of appropriateness.

An approved certificate of appropriateness shall be and remain valid for the same time period(s) and under the same circumstances as set forth within section 34-280.

Sec. 34-345. Application procedures.

- (a) A landowner who proposes to initiate any action(s) referenced in sec. 34-340 shall contact the NDS Director and shall submit information sufficient to allow the director to render a preliminary determination as to whether a certificate of appropriateness is required, and if so, whether the COA must be reviewed by the BAR or may be reviewed administratively pursuant to sec. 34-346.
- (b) If the NDS Director determines that review and approval by the BAR is required, then a complete application shall be submitted to the director, including all of the following information:
 - (1) A written description of proposed exterior changes;
 - (2) A general sketch plan of the property including: the location of existing structures; property and setback lines; and any proposed new construction, additions or deletions, parking areas, and fences;
 - (3) The total gross floor area of the existing building and of any proposed additions;
 - (4) Elevation drawings depicting existing conditions and proposed exterior changes;
 - (5) Photographs of the subject property in context of the buildings on contiguous properties;
 - (6) In the case of a demolition request where structural integrity is at issue, the applicant shall provide a structural evaluation and cost estimates (unless the building is the applicant's primary residence) for rehabilitation, prepared by a professional engineer.

Applications shall be submitted to the director by a landowner or authorized agent (such as a person authorized under a power of attorney, or a contract purchaser) or a lessee of the property, or lessee's authorized agent.

- (c) Each application shall be accompanied by the required application fee, as set forth within the most recent zoning fee schedule approved by city council, except that no fee shall be required for any of the following:
 - (1) an application subject to administrative review under sec. 34-346,
 - (2) an application subject to BAR review (other than an application seeking a COA for new construction or demolition of a contributing structure, which shall be subject to the required application fee); and
 - (3) an appeal of a BAR decision to city council pursuant to sec. 34-347(a), if the original application seeking approval of a COA was not subject to an application fee.

Sec. 34-346. Administrative review

- (a) The director of neighborhood development services may review, and may approve or deny, or may refer to the full BAR for review and approval, the following types of applications for certificates of appropriateness:
 - (1) Fences;

- (2) Applications that have previously been reviewed by the BAR, if the BAR has authorized final review by the director;
 - (3) Applications for minor accessory buildings or additions, after consultation with the Chair of the BAR.
- (b) In reviewing an application for a certificate of appropriateness, the director of neighborhood development services shall be deemed the agent of the BAR and shall apply the same criteria and design guidelines that the BAR must use in its review process.
- (c) Within ten (10) working days after the date an application is submitted, the director of neighborhood development services shall take one of the following actions: approve, deny, or refer the COA to the BAR for action.
- (d) Upon approval of an application by the director of neighborhood development services, the director shall issue the approved certificate. If the application is denied, the director shall convey written notice of this decision to the applicant, which notice shall set forth the specific reasons for the denial, with reference to specific provisions of this ordinance or applicable design guidelines. The director shall inform the BAR of his administrative decisions at the next regular meeting following the date of such decisions.
- (e) Following a decision of the director of neighborhood development services upon an application, the applicant, or any other aggrieved party, may appeal that decision to the BAR within ten (10) working days from the date of the director's decision.
- (f) In considering an appeal from a decision of the director of neighborhood development services, the BAR shall review the application as if the application had come before it in the first instance. In an appeal the BAR may consider any information or opinions relevant to the application, including, but not limited to, those provided by the director.

Sec. 34-347. Approval or denial of applications by BAR.

- (a) The BAR shall afford each applicant, and any other interested party, an opportunity to be heard, prior to rendering its decision on any application. The director of neighborhood development services shall send written notice of the time, date, place and subject of a meeting to the applicant, or his agent, and to each property owner, or his agent, abutting or immediately across a street or road from the property that is the subject of the application, and to all properties having frontage along the same city street block. Notice sent by first class mail to the last known address of such owner or agent, as shown on the city's current real estate assessment books, postmarked not less than fourteen (14) days before the meeting, shall be deemed adequate. Additionally, a sign shall be posted at the property which is the subject of the application, at least ten (10) days prior to the BAR's

meeting, and identifying the time, date, place and nature of the application which has been scheduled for a hearing.

- (b) Failure of the BAR to act on an application submitted under this division, and determined by the director to be subject to BAR review, within thirty (30) days after receipt thereof shall be deemed approval.
- (c) Upon BAR approval of an application, the director shall issue the approved certificate. Upon denial of an application (approval of an application with conditions over the objections of the applicant shall be deemed a denial), the applicant shall be provided written notice of the decision, including a statement of the reasons for the denial or for the conditions to which the applicant objects.

Sec. 34-348. Appeals.

(a) A decision of the BAR may be appealed to city council by the applicant, or any other aggrieved person, by filing a written notice of appeal within ten (10) days from the date of decision. An appellant shall set forth, in writing, the grounds for an appeal, including the procedure(s) or standard(s) alleged to have been violated or misapplied by the BAR, and/or any additional information, factors or opinions he or she deems relevant to the application. The applicant, or his agent, and any aggrieved person, shall be given an opportunity to be heard on the appeal.

(b) In any appeal the city council shall consult with the BAR and consider the written appeal, the criteria set forth within section 34-276 or 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application.

(c) A final decision of the city council may be appealed to the Charlottesville Circuit Court by the owner of the land for which the certificate of appropriateness is sought, by filing with the court a petition setting forth the alleged illegality of the action taken. Such petition must be filed with the Circuit Court within thirty (30) days after council's final decision. The filing of the petition shall stay the council's decision pending the outcome of the appeal; except that the filing of the petition shall not stay a decision of city council denying permission to demolish a building or structure.

(d) Any appeal which may be taken to the Circuit Court from a decision of the city council to deny a permit for the demolition of a building or structure shall not affect the right of the property owner to make the bona fide offer to sell as described in section 34-286(d) and section 34-286(e).

Sec. 34-349. Responsibilities of BAR.

With respect to conservation districts, the city's BAR shall oversee the administration of this division. In addition to any other responsibilities assigned to the BAR within this division, or in section 34-288, the BAR shall:

- (1) Recommend surveys of potential conservation districts, and recommend properties for inclusion in, or deletion from, conservation districts.

- (2) Develop and recommend to the city council for council's approval design guidelines for the city's conservation districts ("conservation district design guidelines"), consistent with the purposes and standards set forth within this division. Conservation district design guidelines shall have the status of interpretive regulations. The BAR shall undertake a comprehensive review and shall update the conservation district guidelines at least once every five (5) years.

Sec. 34-350. Reserved.