

### 3.6. - Overlay Districts.

Purpose statement: It is the intent of this section to provide for an airport hazard district, historic districts, neighborhood conservation districts, resource conservation district, and watershed protection district, which shall overlay the zoning districts enumerated in sections 3.3 through 3.5 above, and which shall provide for special review of development within such overlay districts in accord with the intents, procedures, and standards established for the districts in this article.

#### *3.6.1 Reserved.*

**Editor's note**— Ord. No. 2015-11-23/O-16, adopted Nov. 23, 2015, states that upon notification by the University of North Carolina that the Horace Williams Airport is closed, subsection 3.6.1, which pertained to the Airport Hazard District shall be repealed.

#### *3.6.2 Historic Districts.*

Purpose statement: The historic district is intended to protect and conserve the heritage and character of the Chapel Hill community by providing for the preservation of designated areas within the planning jurisdiction, including individual properties therein that embody important elements of social, economic, political, or architectural history, and by promoting the stabilization and enhancement of property values throughout such areas. The purpose of requiring regulation of placement and design of telecommunications equipment in this district is to help achieve these objectives and to protect the special character of the historic district.

It is intended that these regulations ensure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or to prohibit the demolition or removal of such buildings, or to impose architectural styles from particular historic periods, but rather to encourage design, whether contemporary or traditional, which is harmonious with the character of the historic district.

#### *(a) Establishment of historic district.*

- (1) The historic district is hereby established as a district which overlays other zoning districts established in sections 3.3—3.5. The boundaries of the historic district are as shown on the official zoning atlas.
- (2) No new historic district or any change to the boundaries of any existing historic district shall be designated until the North Carolina Department of Cultural Resources, or its successor agency, shall have been given an opportunity, in accord with Chapter NCGS 160D-944, or its successor statutes, to make recommendations with respect to the establishment of such new district or change in the boundaries of an existing district.

(3)

The use and development of any land or structure within the historic district shall comply with use regulations and intensity regulations applicable to the use district in which it is located.

(b) *Certificate of appropriateness required.*

- (1) No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), or any aboveground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished within the historic district until an application for a certificate of appropriateness as to exterior architectural features has been approved. For purposes of this article, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.
- (2) A certificate of appropriateness shall be issued prior to the issuance of a zoning compliance permit or any other permit granted for purposes of constructing, altering, or demolishing buildings or structures. A certificate of appropriateness shall be required whether or not a zoning compliance permit is required. Any zoning compliance permit or other permit not issued in conformity with this section shall be invalid.
- (3) The town 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, utility installations, lighting, walls, fences, structures, and buildings on property owned or franchised by the Town of Chapel Hill or public utility companies, excluding regulatory signs, other traffic control measures and devices, and utility distribution systems located in public right-of-way.
- (4) A certificate of appropriateness application and amendments to a certificate of appropriateness application may be reviewed and approved by the town manager according to specific review criteria contained in state law and Design Principles and Standards approved by the commission when the application is determined to involve minor works or modifications. Minor works or modifications are defined as those exterior changes that do not involve any substantial alterations, and do not involve additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works or modifications shall be limited to those listed in the Commission's Design Principles and Standards, or a successor document. No application involving a minor work or modification may be denied without the formal action of the commission. Ordinance requirements for notification of affected property owners must be met for all applications.

(c) *Certain changes not prohibited.*

- (1) Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district that does not involve a change in design, material, or outer appearance thereof, or to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature that the building inspector or similar official shall certify is required by the public safety because of unsafe or dangerous condition.
- (2) On the basis of preliminary sketches or drawings and other supporting data, the town manager may exempt from requirements for a certificate of appropriateness projects involving the ordinary maintenance or repair of any exterior architectural feature that does not involve a change in design, material, or outer appearance thereof. The town manager shall notify the commission of all such exemptions.

(d) *Procedures for approval of certificates of appropriateness.*

- (1) Application submittal requirements.
  - A. Applications for certificates of appropriateness shall be filed with the town manager.
  - B. The town manager shall prescribe the form(s) on which applications are made, as well as any other material which may reasonably be required to determine the nature of the application.
  - C. The commission may specify criteria for situations in which the town manager may waive any of the application material requirements.
  - D. No application shall be accepted by the town manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.
- (2) Notification of affected property owners. Prior to approval or denial of an application for a certificate of appropriateness by the historic district commission, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.
- (3) Procedures for decisions on certificates of appropriateness. Decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures in NCGS 160D-406.
- (4) Evidentiary hearing. In cases where the commission deems it necessary, it may hold an evidentiary hearing concerning the application provided such evidentiary hearing is held pursuant to the relevant quasi-judicial procedures in NCGS 160D-406.
- (5) Action on the application. The town manager or the commission shall approve the application, approve the application with conditions, or deny the application for a certificate of appropriateness by the end of the next commission meeting following ninety days after the

application is filed; provided, if timely action is not taken, and the time for taking action is not extended by the Commission and consented to by written notice from the applicant, the certificate of appropriateness shall be deemed to have been approved as submitted and shall be issued administratively.

The Commission may extend the time for consideration and deliberation for a period or for periods up to a total of one hundred eighty days from the date of acceptance of the application as complete, where it finds such action to be necessary:

- a) Because of meeting cancellations or postponements, quorum shortages, or backlogs of pending applications with priority by filing date, or other practical considerations; or
- b) To receive additional information requested by the Commission, or to deliberate fully on memoranda submitted by one or more parties, or to seek resolution of outstanding questions, issues, or goals.

Nothing herein shall prevent extensions by and with the consent of the Applicant. The time periods for action by the Commission shall be stayed during periods of appeal to the Board of Adjustment by any party.

Under no circumstances shall the time period for which the Commission or staff may take action on an application for a certificate of appropriateness be extended beyond 180 days from the date an application is filed. An application is considered filed when it has been submitted, deemed complete by the town manager, and the requisite application fee has been received by the Town.

The town manager or the commission may impose such reasonable conditions on the approval of an application as will ensure that the spirit and intent of this article are achieved. An application for a certificate of appropriateness authorizing the demolition of a building or structure within the historic district may not be denied. However, the effective date of such a certificate may be delayed for up to three hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the commission finds that the building has no particular significance or value toward maintaining the character of the historic district, it shall waive all or part of such period and authorize earlier demolition or removal. In every case, the record of the commission's action shall include the reasons for its action."

(6)

Actions subsequent to decision. The town manager shall notify the applicant of a decision in writing, and shall file a copy of it with the town's planning department. If the application is denied, the notice shall include the reasons for such action.

- (7) Appeal of decision. A decision by the commission on an application for a certificate of appropriateness may be appealed to the board of adjustment in accordance with the provisions of section 4.10. Appeals of administrative decisions shall be made to the historic district commission pursuant to the relevant procedures in NCGS 160D-405.
- (8) Submittal of new application. If the commission denies an application for a certificate of appropriateness, a new application affecting the same property may be accepted by the town manager only if substantial change, with respect to the reasons for its denial, is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.
- (9) A certificate of appropriateness shall be valid for three hundred sixty-five (365) calendar days from date of issuance, or, in the case of a certificate for demolition, from the effective date. If the authorized work has not commenced within that period, has not been extended by the commission, or has been discontinued for more than three hundred sixty-five (365) calendar days from the date of issuance, such certificate of appropriateness shall expire and the applicant shall be required to reapply and obtain a new certificate of appropriateness before commencing further work.

(e) *Review criteria.*

- (1) When considering the application, the commission shall apply the Design Principles and Standards and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact indicating whether the application is incongruous with the special character of the historic district, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the commission based its decision.
- (2) The review shall not consider interior arrangement or use.
- (3) The review shall not consider plantings and other vegetation.
- (4) The review shall not consider paint color.

(f) *Prevention of demolition by neglect.*

- (1) The purpose of this article is to protect Chapel Hill's historic architectural resources by intervening when a significant resource is undergoing demolition by neglect.  
Demolition by neglect is defined as a situation in which a property owner, or others having legal possession, custody or control of a property, allow the condition of property located in a historic district to suffer such deterioration, potentially beyond the point of repair, as to

threaten the structural integrity of the structure or its relevant architectural detail to a degree that the structure and its character may potentially be lost to current and future generations.

(2) Control of demolition by neglect of structures within designated historic districts.

A. In order to promote the purposes of historic preservation, this subsection requires that owners of historic properties maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to properties in the historic districts of Chapel Hill.

B. Conditions of neglect defined and prohibited.

Owners or others having legal possession, custody or control of a property in historic districts shall maintain or cause to be maintained the exterior and structural features of their properties and not allow conditions of neglect to occur on such properties. It is a violation of the town's land use management ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsection (C), below.

Conditions of neglect include, but are not limited to, the following:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Deterioration that has a detrimental effect on the surrounding historic district.
10. Deterioration that contributes to a hazardous or unsafe condition.
11. Deterioration of fences, gates, and accessory structures.

C.

*Procedure for enforcement.* Enforcement of these provisions shall be undertaken as described in section 4.13 of the Land Use Management Ordinance ("Violations and Penalties"), with the following additional components:

1. Upon receipt of a complaint or upon observation, if the town manager makes a preliminary determination that a property in a historic district is being neglected, as defined in subsection 3.6.2(f)(2)B, the manager shall inform the property owner of the preliminary determination and notify the historic district commission of the preliminary determination. The town manager will seek remedial action by the property owner.
  2. If remedial action has not commenced within thirty (30) days of initial notification, the town manager, after consultation with the historic district commission, shall make a finding of violation of the land use management ordinance. Procedures outlined in section 4.12 shall be followed, including notification of right to and process for appeal as described in section 4.12.
- (3) *Safeguards for undue economic hardship.* Upon notification from the town manager of required remedial action, the property owner may by written request claim undue economic hardship.

If a claim of undue economic hardship is made owing to the effects of this article, the town manager shall notify the historic district commission within five (5) business days following the receipt of the written request for a determination of undue hardship. The commission shall at its next regular meeting, schedule a hearing on the request within the limitations of its procedures for application deadlines.

The petitioner shall present the information provided under subsection (A) below to the commission at or prior to the hearing. The commission may require that an owner and/or parties in interest furnish such additional information as the commission may reasonably conclude is relevant to its determination of undue economic hardship, and may, in its sole discretion, hold the hearing open and allow the owner or party in interest a reasonable period of time (to be established by the commission) to furnish the requested additional information. The commission may request the staff to furnish additional information, as the commission believes is relevant. The commission shall also state which form of financial proof it deems relevant and necessary to a particular case.

In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reason why such information cannot be obtained.

A.

When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship. The minimum evidence shall include for all property:

1. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
2. Financial resources of the owner and/or parties in interest.
3. Cost of repairs.
4. Assessed value of the land and improvements.
5. Real estate taxes for the previous two (2) years.
6. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
7. Annual debt service, if any, for previous two (2) years received.
8. Any listing of the property for sale or rent, price asked, and offers received, if any.

In addition, for income-producing property:

9. Annual gross income from the property for the previous two (2) years.
  10. Itemized operating and maintenance expenses for the previous two (2) years.
  11. Annual cash flow, if any, for the previous two (2) years.
- B. Within sixty (60) days of the commission's hearing on the claim, the commission shall make a determination of undue or no undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the commission shall report such finding to the town manager, and the town manager shall cause to be issued an order for such property to be repaired within the time specified.
- C. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the town, the county, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The commission shall report such finding and plan to the town manager. The town manager shall cause to be issued an order for such property to be repaired within the time specified, and according to the provisions of the recommended plan.

- (4) *Appeals.* Decisions under this section made by the historic district commission may be appealed to the board of adjustment on the record in accordance with the procedures described in section 4.10.
- (5) *Stay of proceedings.* Issuance of an approved certificate of appropriateness for improvements, accompanied by actions to bring the property into compliance with this section, will stay an enforcement proceeding seeking compliance with this section for said property.
- (6) *Other town powers.* Nothing contained within this article shall diminish the town's power to declare an unsafe building or a violation of the minimum housing code.

### *3.6.3 Resource Conservation District.*

The resource conservation district (herein sometimes RCD) is intended to be applied to the areas within and along watercourses within the town's planning jurisdiction in order to preserve the water quality of the town's actual or potential water supply sources, to minimize danger to lives and properties from flooding in and near the watercourses to preserve the water-carrying capacity of the watercourses, and to protect them from erosion and sedimentation, to retain open spaces and greenways and to protect their environmentally-sensitive character, to preserve urban wildlife and plant life habitats from the intrusions of urbanization, to provide air and noise buffers to ameliorate the effects of development, and to preserve and maintain the aesthetic qualities and appearance of the town.

#### *(a) Definitions and rules of interpretation.*

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by town ordinance or state statute. The following terms and phrases, among others, shall have specific meanings for purposes of this section, and are defined in Appendix A:

Ditch or canal

Ephemeral stream

Intermittent stream

Land disturbance

Modified natural stream

Obligate and facultative wetland vegetation

Perennial stream

Perennial water body