

ARTICLE III. ~~ZZ~~ ZONING OVERLAY DISTRICTS

DIVISION 4.1. - FLOOD HAZARD PROTECTION OVERLAY DISTRICT²¹

No changes proposed

DIVISION 4.2. - HISTORICAL PRESERVATION AND ARCHITECTURAL DESIGN CONTROL OVERLAY DISTRICTS

Sec. 34-274. - Additions to and deletions from districts or protected property list.

- (a) City council may, by ordinance, ~~from time to time,~~ designate additional properties and areas for inclusion within a major design control district; remove properties from a major design control district; designate individual buildings, structures or landmarks as protected properties; or remove individual buildings, structure or landmarks from the city's list of protected properties. Any such action shall be undertaken following the rules and procedures applicable to the adoption of zoning amendments, see article x, division x to the city's zoning ordinance and zoning map.
- (b) Prior to taking action referenced in paragraph (a), the adoption of any such ordinance, the city council shall consider the recommendations of the planning commission, and the board of architectural review ("BAR"), and the NDS Director as to the proposed addition, removal or designation. The planning commission, and BAR and NDS Director shall, in making their address the following criteria in making their recommendations, address one or more of the following, as they deem relevant to the proposed action:
- (1) The historic, architectural or cultural significance, if any, of a building, structure or site and whether it has been listed on the National Register of Historic Places or the Virginia Landmarks Register;
 - (2) The association of the building, structure or site with an historic person or event or with a renowned architect or master craftsman;
 - (3) The overall aesthetic quality of the building, structure or site and whether it is or would be an integral part of an existing design control district;
 - (4) The age and condition of a building or structure;
 - (5) Whether a building or structure is of old or distinctive design, texture and material;
 - (6) The degree to which the distinguishing character, qualities or materials of a building, structure or site have been retained;
 - (7) Whether a building or structure, or any of its features, represents an infrequent or the first or last remaining example of a particular detail or type of architecture in the city;
 - (8) Whether a building or structure is 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 exist a number of buildings or structures separated geographically but linked by association or history.

Sec. 34-275. - Certificates of appropriateness; construction and alterations.

- (a) Certificates of appropriateness required--
- (1) No building or structure within any major design control district, and no protected property, shall be constructed, reconstructed, altered or restored unless and until an application for a certificate of appropriateness is approved by the BAR, or by the city council on appeal from a decision of the BAR.

Comment [RL1]: Incorporate existing provisions of the Flood Hazard Overlay District, which were recently updated.

- (2) No vendor stand shall be located or operated within a major architectural design control district unless and until a certificate of appropriateness is issued by the NDS Director pursuant to section 28-119 of the City Code. All approved vendor stands certificates of appropriateness shall be conditioned upon compliance shall also comply with the requirements set forth within Chapter 28, Article IV of the City Code (Street Vendors, Generally).
- (b) Review of the proposed construction, reconstruction, alteration or restoration of a building or structure shall be limited to: ~~(i) exterior architectural features, including signs, and (ii) the factors specified in section 34-276.~~ The BAR or council on appeal may make such requirements for, and conditions of approval as are necessary or desirable to prevent any construction, reconstruction, alteration or restoration which would be architecturally incompatible with the character of the major design control district or protected property, as may be applicable. Prior to attaching conditions to an approval, due consideration shall be given to the cost of compliance with the proposed conditions.
- (be) The following shall be exempt from the requirement of a certificate of appropriateness:
- (1) Interior features, details, alterations and improvements, including interior signs;
 - (2) Ordinary maintenance or repair of exterior elements or features; and
 - (3) Construction, reconstruction, alteration, repair 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~~ NDS Director shall notify the BAR of any alterations or repairs ordered by the building code official.
- (d) No building or structure, including exterior signs, shall be erected, reconstructed, altered or restored unless and until a certificate of appropriateness is approved by the BAR (or by city council, on appeal from a BAR decision) as being architecturally compatible with the character of (i) an individually protected property, or (ii) the applicable major design control district and the buildings or structures therein.

Sec. 34-276. - Standards for review of construction and alterations.

- (a) In considering a request for a certificate of appropriateness, the BAR shall approve the request unless it finds that the construction or alterations proposed will be architecturally incompatible with the character of (i) a property listed in sec. 34-X (individually protected properties), or (ii) the applicable major design control district and any buildings or structures therein. In the event of a disapproval the BAR shall give specific reason(s) therefor, with reference to provisions of this division or provisions of design guidelines (see sec. 34-288), as may be applicable.
- (b) On appeal from a decision of the BAR, city council may approve a certificate of appropriateness, upon a determination that proposed construction or alterations proposed will be architecturally incompatible with the character of (i) a property listed in sec. 34-X (individually protected properties), or (ii) the applicable major design control district and any buildings or structures therein.
- (c) The NDS Director shall review a request for a certificate of appropriateness and shall provide written analysis to the BAR. The NDS Director's analysis shall address applicable provisions of the city's design guidelines (see sec. 34-288) and shall contain a discussion of ~~The the following features and factors shall be considered in determining the appropriateness of proposed construction, reconstruction, alteration or restoration of buildings or structures pursuant to section 34-275 above:~~
- (1) Whether the material, texture, color, height, scale, mass and placement of the proposed addition, modification or construction are visually and architecturally compatible with the site and the applicable design control district;
 - (2) The harmony of the proposed change in terms of overall proportion and the size and placement of entrances, windows, awnings, exterior stairs and signs;

- (3) The Secretary of the Interior Standards for Rehabilitation set forth within the Code of Federal Regulations (36 C.F.R. §67.7(b)), as may be relevant;
- (4) The effect of the proposed change on the historic district neighborhood;
- (5) The impact of the proposed change on other protected features on the property, such as gardens, landscaping, fences, walls and walks;
- (6) Whether the proposed method of construction, renovation or restoration could have an adverse impact on the structure or site, or adjacent buildings or structures;
- (7) ~~When reviewing any proposed sign as part of an application under consideration,~~ the standards set forth within Article IX, sections 34-1020, et seq. shall be applied if any exterior sign(s) are proposed; ~~and~~
- (8) Any ~~applicable provisions of the city's design guidelines (see section 34-288(6))~~ other factor(s) or information that the NDS Director deems relevant to a determination of architectural compatibility of the proposed construction or alterations.

Sec. 34-277. - Certificates of appropriateness; demolitions and removals.

- (a) No contributing structure located within a major design control district, and no protected property listed in 34-273, shall be ~~razed, moved, removed, encapsulated or~~ demolished (in whole or in part), ~~encapsulated (in whole or in part) or otherwise removed~~, unless and until an application for a certificate of appropriateness has been approved by the BAR, or the city council on appeal, except that:
 - (1) The moving, ~~removing,~~ encapsulating or demolition, in whole or in part, or other removal of any contributing structure or protected property shall be allowed pursuant to an order of the city's building code official, without the permission of the BAR or city council on appeal, upon the determination of the building code official that the building or structure is in such a dangerous, hazardous or unsafe condition that it could reasonably be expected to cause death or serious injury before review under the provisions of this article. Upon such a determination, the building code official shall deliver a copy of his order to the ~~director of neighborhood development services~~ NDS Director and to the chairman of the BAR; and
 - (2) Where the moving, removing, encapsulation or demolition of any contributing structure or protected property will disturb or affect fewer than twenty-five (25) square feet, total, of exterior wall, roof or other exterior surfaces, such activity shall be deemed an alteration subject to the review process set forth within section 34-275, above.
- ~~(b) Review of the proposed moving, removing, encapsulation or demolition of any contributing structure or protected property shall be limited to the factors specified in section 34-278, below.~~
- ~~(c) The BAR, or council on appeal, may make such requirements for, and conditions of approval as are necessary or desirable to protect the safety of adjacent buildings, structures, or properties, and of any persons present thereon; and, in the case of a partial removal, encapsulation or demolition:~~
 - ~~(1) To protect the structural integrity of the portion(s) of a building or structure which are to remain following the activity that is the subject of a permit, or~~
 - ~~(2) To protect historic or architecturally significant features on the portion(s) of a building or structure which are to remain following the activity that is the subject of a permit.~~
- ~~(d) Failure to obtain the certificate of appropriateness permit required by this section shall subject the property landowner to the civil penalty described within Article I, section 34-86(b) (i.e., not to exceed twice the fair market value of the building or structure).~~

Sec. 34-278. - Standards for considering demolitions and removals.

- (a) In considering a request for a certificate of appropriateness for the proposed ~~The following factors shall be considered in determining whether or not to permit the~~ moving, removing, encapsulation or demolition, in whole or in part, of a contributing structure or protected property, the BAR shall

consider the analysis of the NDS Director (see paragraph (c), below) and shall apply the standards set forth within the design guidelines (see sec. 34-288), as may be applicable. In the event of a disapproval, the BAR shall give specific reason(s) therefor, with reference to provisions of this division or provisions of design guidelines (see sec. 34-288), as may be applicable.;

- (b) On appeal from a decision of the BAR, city council may approve or deny a certificate of appropriateness for a proposed demolition. Prior to taking action city council will consult with the BAR and will consider the NDS Director's report prepared for the BAR (see paragraph (c), below). City council may, in making its decision, consider any design guidelines, factors, or information it deems relevant.
- (c) The NDS Director shall review a proposed demolition or removal and shall provide written analysis to the BAR. The NDS Director's analysis shall address applicable provisions of the city's design guidelines (see sec. 34-288) and shall contain a discussion of the ~~The~~ historic, architectural or cultural significance, if any, of the specific structure or property, including, without limitation:
 - (1) The age of the structure or property;
 - (2) Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;
 - (3) Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;
 - (4) 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;
 - (5) Whether the building or structure is of such old or distinctive design, texture or material that it could not be reproduced, or could be reproduced only with great difficulty; and
 - (6) The degree to which distinguishing characteristics, qualities, features or materials remain;
 - (7) ~~b~~ Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within an existing major design control district, or is one (1) of a group of properties within such a district whose concentration or continuity possesses greater significance than many of its component buildings and structures.
 - (8) ~~e~~ 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 to the board;
 - (9) ~~d~~ Whether, and to what extent, the applicant proposes means, methods or plans for moving, removing or demolishing the structure or property that preserves portions, features or materials that are significant to the property's historic, architectural or cultural value; and
 - (10) ~~e~~ Any other factor(s) or information the NDS Director deems applicable provisions of to the specific request city's design guidelines (see section 34-288(6)).

Sec. 34-279. - Sign standards.

Signs within any architectural design control district shall comply with the standards set forth in Article IX, section 34-1020, et seq.

Sec. 34-280. - Validity of certificates of appropriateness.

- (a) The validity period of a certificate of appropriateness shall be as follows:
 - (1) A certificate of appropriateness associated with a project for which a valid site plan is not required shall expire and become void eighteen (18) months from the date of its approval by the board of architectural review, unless a building permit to construct the authorized improvements or activities has been issued; or, if no building permit is required, unless construction of the authorized improvements or activities has substantially commenced.

- (2) The validity period of a certificate of appropriateness associated with a project for which a valid site plan is required shall ~~coincide be consistent with the period of validity of a that of the approved preliminary or and final site plan, as applicable pursuant to sections 34-822 and 34-825,~~ except a certificate of appropriateness shall expire and become void ~~(i) eighteen (18) months from the date of its approval by the board of architectural review if (i) neither a preliminary nor a final site plan approval has not been granted been approved within the 18-month period, or (ii) immediately, upon the revocation or expiration of a upon revocation of an approved preliminary or final site plan approval or expiration of an approved final site plan.~~
- (3) Prior to the expiration of a certificate of appropriateness, upon written request and for reasonable cause, the ~~NDS Director~~~~director of neighborhood development services~~~~NDS Director~~ or the BAR may extend the validity of any such certificate for a period not to exceed one (1) year.

- (b) The ~~approval issuance~~ of a certificate of appropriateness shall not, in and of itself, authorize any construction, reconstruction, alteration, repair, demolition, or other improvements or activities requiring a building permit ~~or a zoning approval. Where a building permit is required, a~~ No activity authorized by a certificate of appropriateness shall be lawful unless conducted in accordance with ~~all the required building permit(s), all and all applicable building code requirements, and all applicable zoning regulations.~~

Sec. 34-281. - Maintenance and repair required.

- (a) Neither the owner of nor the person in charge of a contributing structure or protected property shall allow such property to fall into a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce or tend to produce a detrimental effect upon the character of a major architectural design district or the life and character of a contributing structure or protected property. Examples of the type of disrepair prohibited include, but are not limited to:
 - (1) The deterioration of exterior walls or other vertical supports;
 - (2) The deterioration of roofs or other horizontal members;
 - (3) The deterioration of exterior chimneys;
 - (4) The deterioration or crumbling of exterior plasters or mortar;
 - (5) The ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors;
 - (6) The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.
- (b) The ~~NDS Director zoning administrator~~ shall give notice by certified or registered mail of specific instances of failure to maintain or repair. The owner or person in charge of such structure or property shall have sixty (60) days to remedy such violation; provided that the ~~NDS Director zoning administrator~~, upon request, may allow an extension of up to sixty (60) days to remedy such violations. Thereafter, each day during which there exists any violation of this section shall constitute a separate ~~zoning violation and shall be punishable as provided in this zoning ordinance.~~

Sec. 34-282. - Application procedures.

- (a) Applications ~~seeking approval of a certificate of appropriateness~~ shall be submitted to the ~~NDS Director~~~~director of neighborhood development services~~~~NDS Director~~, by a ~~property landowner, contract purchaser, or lessee of the property, or by the authorized agent of any such person.~~ Each application shall be accompanied by the required application fee, as set forth within the most recent zoning fee schedule approved by city council.
- (b) Prior to submission of an application for a certificate of appropriateness, a ~~property landowner or his agent~~ may request a conference with the full BAR, the chairman of the BAR or the ~~NDS Director~~~~director of neighborhood development services~~~~NDS Director~~ ("pre-application conference")

to discuss and review ~~the a proposal for~~ activities that require such certificate. The ~~principal~~ objective of the conference shall be to simplify and expedite the formal review process.

(c) A pre-application conference with the entire BAR is mandatory for the following activities proposed within a major design control district:

(1) ~~Construction, alterations or demolitions/removals proposed Development~~ by the City of Charlottesville, or on land owned by the city, ~~including, without limitation, such activities;~~

(i2) ~~to be conducted Development~~ on property owned by the city that is being sold for private development;

(ii3) ~~to be Development being~~ financed in whole or in part by the city, or by a related governmental authority (such as the economic development authority or the redevelopment and housing authority);

(24) ~~Construction, alterations or demolitions/removals proposed Development~~ having a projected construction cost of three hundred fifty thousand dollars (\$350,000.00) or more; and,

(35) Any other ~~construction, alterations or demolitions/removals proposed development~~ deemed significant by the ~~director of neighborhood development services~~ NDS Director or the chair of the BAR, due to its size, location or potential impact on surrounding properties.

~~When The~~ required, a pre-application conference shall take place prior to an applicant's submission of an completed application, and no application shall be deemed officially submitted for review until the required pre-application conference has been completed.

(d) After the pre-application review, if any, has been completed, and at least twenty-one (21) days prior to the meeting at which an application will be considered by the BAR, a ~~landowner property owner or his agent~~ may submit an application seeking approval of apply for a certificate of appropriateness. The following information and exhibits shall be submitted along with each application:

(1) Detailed and clear descriptions of any proposed changes in the exterior features of the subject property, including but not limited to the following: the general design, arrangement, texture, materials, plantings and colors to be used, the type of windows, exterior doors, lights, landscaping, parking, signs, and other exterior fixtures and appurtenances. The relationship of the proposed change to surrounding properties will also be shown.

(2) Photographs of the subject property and photographs of the buildings on contiguous properties.

(3) Samples to show the nature, texture and color of materials proposed.

(4) The history of an existing building or structure, if requested by the BAR or staff.

(5) For new construction and projects proposing expansion of the footprint of an existing building: a three-dimensional model (in physical or digital form) depicting the site, and all buildings and structures to be located thereon, as it will appear upon completion of the work that is the subject of the application.

(6) In the case of a demolition request where structural integrity is at issue, the ~~landowner applicant~~ shall provide a structural evaluation and cost estimates for rehabilitation, prepared by a professional engineer.

(e) The ~~NDS Director director~~ shall establish submission deadlines for applications. ~~For purposes this division, a complete application shall be deemed to be "officially submitted" on the date of the next submission deadline following the date on which the application was received by the director.~~

Sec. 34-283. - Administrative review.

(a) ~~The Notwithstanding any contrary provision of this article, the NDS Director may act upon a request for a certificate of appropriateness, as the authorized agent of the BAR, when such request involves any of the following director of neighborhood development services may review, and may approve or deny, applications for certificates of appropriateness, in the following situations:~~

- (1) Exterior alterations which are shown, through adequate documentation, to have been approved for a tax credit under either the federal rehabilitation tax credit program or the similar Virginia state tax credit program;
- (2) The repainting of an existing building or structure in a different color;
- (3) The addition or deletion of awnings, canopies, storm windows, storm doors, gutters, and similar appurtenances;
- (4) The addition, alteration or removal of any sign(s) where such sign(s) are the sole subject of the application, or where all other improvements comprising part of the application are subject to administrative review under this section or sections 34-1041 through 34-1043; and
- (5) Structural changes to a building or structure which do not require issuance of a building permit under the Uniform Statewide Building Code except for the following, which must be reviewed by the BAR: replacement of roof coverings and installation or replacement of siding on any buildings or structures, and replacement of windows and doors on any buildings or structures.

- (b) In reviewing a proposed certificate of appropriateness the NDS Director shall approve the request unless it finds that the construction or alterations proposed will be architecturally incompatible with the character of (i) a property listed in sec. 34-X (individually protected properties), or (ii) the applicable major design control district and any buildings or structures therein. In the event of a disapproval the NDS Director shall give specific reason(s) therefor, with reference to provisions of this division or provisions of design guidelines (see sec. 34-288), as may be applicable. an application for a certificate of appropriateness, the director of neighborhood development shall apply the same criteria and design guidelines that the BAR must use in its review process.
- (c) Failure of the ~~of neighborhood development services~~ NDS Director to approve or disapprove a requested certificate of appropriateness n-application within ten (10) working days from the date an the application therefor was submitted shall be deemed approval of the certificate of appropriatenessapplication.
- (d) Upon approval of an application by the ~~director of neighborhood development services~~ NDS Director, the director shall issue the approved certificate. If the application is denied, the director shall mail or hand-deliver written notice of this decision to the landownerapplicant, which notice shall set forth the specific reasons for the denial, with reference to specific ordinances, laws or regulations. The NDS Director director shall inform the BAR of administratively-approved certificates of appropriateness, his administrative decisions at the next regular meeting of the BAR following the date of such approvaldecisions.
- (e) A landowner, or Following a decision of the director upon an application, the applicant, or any other aggrieved personparty, shall have ten (10) working days from the date of a decision of the NDS Director the decision to appeal that decision to the BAR.
- (f) In considering an appeal of a decision of the NDS Ddirector, 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. 34-284. - BAR review and hearing.

- (a) The BAR shall afford each applicant landowner, and any other interested party, an opportunity to be heard, prior to rendering its decision on any application. No published notice of a particular application is required; however, the ~~of neighborhood development services~~ NDS Director shall send written notice of the time, date, place and subject of a BAR meeting to (i) the landownerapplicant, or his agent, and (ii) to each landowner property owner, or his agent, of land adjacent to abutting or immediately across a street or road from the land property that is the subject of the proposed certificate of appropriatenessapplication, and (iii) to the owner of each lot or tract of land all properties having frontage along the same city street as the land that is the subject of the proposed certificate of appropriatenessblock. Notice sent by first class mail to the last known address of a landownersuch 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. A representative of the department of neighborhood development services shall make affidavit that such mailing has been made and file the affidavit with the papers related to the application. 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 board's~~ meeting, identifying the time, date, place and nature of the application which has been scheduled for a hearing.

- ~~(b)~~ An applicant may appear in person at the BAR hearing, or through a designated may be represented by a representative agent or attorney.
- (c) The BAR shall render a final decision, approving or denying a certificate of appropriateness: (i) within sixty (60) days after the date on which the application was officially submitted for review, or (ii) within twelve (12) months, if the landowner requests a multi-stage review. Failure of the BAR to act within the applicable time period shall be deemed approval of the requested certificate of appropriateness.

Sec. 34-285. -- Appeals from BAR decisions approval or denial of applications by BAR.

Appeals from a decision of the BAR may be taken to city council in accordance with Division 4.6, sec. 34-XXX of this article.

- ~~(a) Failure of the BAR to act on an application within sixty (60) days after receipt thereof shall be deemed approval.~~
- ~~(b) Following approval of an application by the BAR, the director of neighborhood development, or any aggrieved person, may note an appeal of the BAR decision to the city council, by filing a written notice of appeal within ten (10) working days of the date of the decision. If no such appeal is noted, then upon the expiration of the ten-day appeal period, the director of neighborhood development issue the approved certificate of appropriateness.~~
- ~~(c) 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. Following a denial the applicant, the director of neighborhood development any aggrieved person may appeal the decision to the city council, by filing a written notice of appeal within ten (10) working days of the date of the decision.~~

Sec. 34-286. -- Delete City council appeals.

- ~~(a) An applicant 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 by the owner of the subject property to the Circuit Court for the City of Charlottesville, by filing with the court a petition at law, 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. 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 referred to in subparagraphs (d) and (e), below.~~
- ~~(d)~~

~~In addition to the right of appeal set forth above, the owner of a building or structure, the demolition of which has been the subject of an application appealed to the city council, shall, as a matter of right, be entitled to demolish such building or structure if all of the following conditions have been met:~~

- ~~(1) The owner has appealed to city council for permission to demolish the building or structure, and city council has denied such permission;~~
- ~~(2) The owner has, for the applicable sale period set forth herein below, and at a price reasonably related to the fair market value of the subject property, made a bona fide offer to sell the building or structure, and the land pertaining thereto, to a person or legal entity that gives reasonable assurance that the building or structure will be preserved and restored; and~~
- ~~(3) No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable sale period.~~
- ~~(4) If all of the foregoing conditions are not met within the applicable sale period, then the city council's decision denying a permit shall stand, unless and until that decision is overturned by the circuit court. However, following expiration of the applicable sale period, a property owner may renew his request to the city council to approve the demolition of the historic landmark, building or structure.~~
- ~~(e) The time in which a property owner may take advantage of the rights afforded by subparagraph (d), above (the applicable "sale period") shall be as follows:~~
 - ~~(1) Three (3) months, when the offering price is less than twenty five thousand dollars (\$25,000.00).~~
 - ~~(2) Four (4) months when the offering price is equal to or greater than twenty five thousand dollars (\$25,000.00) but less than forty thousand dollars (\$40,000.00).~~
 - ~~(3) Five (5) months when the offering price is equal to or is greater than forty thousand dollars (\$40,000.00) but less than fifty five thousand dollars (\$55,000.00).~~
 - ~~(4) Six (6) months when the offering price is equal to or greater than fifty five thousand dollars (\$55,000.00) but less than seventy five thousand dollars (\$75,000.00).~~
 - ~~(5) Seven (7) months when the offering price is equal to or is greater than seventy five thousand dollars (\$75,000.00) but less than ninety thousand dollars (\$90,000.00).~~
 - ~~(6) Twelve (12) months when the offering price is equal to or greater than ninety thousand dollars (\$90,000.00).~~

~~(9-15-03(3); 5-4-09(2))~~

Sec. 34-287. Procedure for appeal to circuit court

- ~~(a) —~~
- ~~(b) —~~

Sec. 34-28X. Additional process—demolitions

In addition to the right of appeal set forth in sec. 34-287, the owner of a historic landmark, building or structure, the razing, demolition or removal of which is subject to the provisions of sec. 34-X of this division, shall be entitled to raze, demolish or remove such landmark, building or structure, provided that the owner (i) has applied to city council for such right, and (ii) has satisfied all of the requirements set forth within Virginia Code § 15.2-2306(A)(3).

Comment [RL2]: Moved

Sec. 34-28X7. - Board of architectural review established; ~~composition.~~

- (a) ~~Designation—City council hereby designates a review board, to be known as the city's .The board of architectural review ("BAR"), to administer the provisions of this division. shall be composed of nine (9) members.~~
- (b) ~~Composition—The BAR shall be composed of nine (9) members appointed by city council. Each member shall be appointed for a term of .Appointments to the BAR shall be made by city council, in the council's discretion, for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired remainder of the vacant term.~~
- (1) No member shall serve for more than two (2) consecutive four-year terms, except for the members initially appointed to fill vacancies, who may serve for two (2) full terms in addition to the vacant term to which they were originally appointed.
 - (2) All appointees shall be residents of the city; except that a person who resides outside the city, but who owns a business, or who owns commercial or residential property in a design control district, may be appointed to serve on the board.
 - (3) At least two (2) members of the BAR shall be licensed architects; one (1), a member of the city's planning commission; two (2), owners of a business or commercial property in a design control district; one (1), an owner of residential property or a resident in a design control district; one(1), either a landscape architect or a licensed professional contractor; and two (2) shall be historians or have substantial background in history or historic preservation.
- (4) ~~Any BAR member may be removed from office by the city council for inefficiency, neglect of duty, malfeasance, or the habitual absence from meetings.~~

~~Sec. 34-288. —Responsibilities of BAR:~~

- (c) ~~Responsibilities—The BAR shall have the following duties and responsibilities ~~function of the board of architectural review ("BAR") shall be to administer the provisions of this division. In carrying out this responsibility the BAR shall:~~~~

- (1) Approve, deny, or approve with conditions applications for certificates of appropriateness in accordance with the provisions of this division.
- (2) Recommend additional surveys of potential districts or properties, and recommend properties for inclusion in or deletion from major design control districts or the city's list of protected properties.
- (3) Act in an advisory role to city council and city departments, boards and commissions.
- (4) Disseminate information within the city on historic preservation issues and concerns.
- (5) Develop a preservation plan with goals and recommendations for consideration by the planning commission, and from time to time the board shall update such plan.
- (6) Develop and recommend to the city council for its approval design guidelines for the city's architectural design control districts ("design guidelines"), consistent with the purposes and standards set forth within this division. The BAR shall develop the design guidelines in consultation with the city's urban design committee and after seeking input from business and property owners in the various districts. Guidelines developed by the ~~BAR board~~ shall become effective upon approval by city council ~~and thereafter shall have the status of interpretive regulations.~~ The BAR shall undertake a comprehensive review ~~and update the design guidelines~~ at least once every five (5) years, ~~and shall propose updates to the design guidelines as may be advisable.~~

~~(9-15-03(3))~~

~~Sec. 34-289. —Quorum.~~

(d) Organization—

- (1) The BAR shall annually elect from its membership a chairman and vice-chairman, at the first meeting held on or after July first each calendar year. Similarly, the members shall elect a secretary, who may or may not be a member of the BAR.
- (2) A majority of the entire membership of the BAR shall constitute a quorum.

~~Sec. 34-290.— Chairman; vice-chairman; secretary.~~

~~The BAR shall annually elect from its membership a chairman and vice chairman, at the first meeting held on or after July first each calendar year. Similarly, the members shall elect a secretary, who may or may not be a member of the BAR.~~

~~(9-15-03(3))~~

~~Sec. 34-291.— Removal of members.~~

~~Any member of the BAR may be removed from office by the city council for inefficiency, neglect of duty, malfeasance, or the habitual absence from meetings.~~

Secs. 34-292—34-305. - Reserved.

DIVISION 4.3. - ENTRANCE CORRIDOR OVERLAY DISTRICTS

Sec. 34-306. - Purpose.

The purpose of the entrance corridor overlay district is ~~intended~~ to implement the comprehensive plan goal of protecting the city's historic, architectural and cultural resources, by: ensuring a quality of development compatible with those resources through design control measures; stabilizing and improving ~~the purposes of this article are to stabilize and improve~~ property values; and protecting and enhancing ~~to protect and enhance significant routes of tourist access to the city, and to historic landmarks, buildings, structures and districts within the city~~ the city's attractiveness to tourists and other visitors; in order ~~to~~ to sustain and enhance the economic benefits accruing to the city from tourism; to support and stimulate ~~development complimentary to the prominence afforded properties and districts having historic, architectural or cultural significance; all of the foregoing being deemed to advance and promote the health, safety and welfare of the general public.~~

State law reference: authority for entrance corridor regulations Va. Code 15.2-2306(A)(1)

Sec. 34-308. - Review board.

- (a) Composition—City council hereby designates a review board, to be known as the ~~The provisions of this article shall be administered by an entrance corridor review board ("entrance corridor review board" or "ERB") hereby created~~ by the city council. The city's planning commission shall serve as the review board.
- (b) Duties and responsibilities—the function of the ERB shall be to administer the provisions of this division. In performing that function, the ERB shall have the following authority and responsibilities:
 - (1) Act upon requests for certificates of appropriateness, in accordance with the provisions of this division ~~The meetings of the ERB shall be held at the call of its chairman or at such times as a quorum of the board may determine.~~
 - ~~(2) The ERB shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact.~~

- ~~(3) All records of official actions shall become part of the permanent records of the ERB.~~
- ~~(4) The ERB shall choose annually its own chairman and vice chairman, who shall act in the absence of the chairman.~~
- ~~(5) The ERB may, from time to time, adopt and amend bylaws for the regulation of its affairs and the conduct of its business.~~
- ~~(26) Recommend The ERB may, from time to time, recommend areas for designation as entrance corridors, or for overlay districts and may also recommend removal of any such designation.~~
- ~~(37) Act in an The ERB shall serve in an advisory role capacity to city council and city departments, boards and commissionsthe board of zoning appeals in rezonings, special use permits, site plans, subdivisions, variances and other matters within entrance corridor overlay districts.~~
- ~~(8) The ERB shall be responsible for issuance of certificates of appropriateness required by this article.~~
- ~~(4b) The ERB shall develop and recommend to the city council for its approval design guidelines for the entrance corridor overlay districts ("Entrance Corridor Design Guidelines"), consistent with sec. 34-X (purpose) the purposes and standards set forth within this article. The ERB shall develop such guidelines in consultation with the NDS Director, city's director of neighborhood development servicesNDS Director and after seeking input from business and property owners in the various overlay districts. Guidelines developed by the ERB shall become effective upon approval by city council and thereafter shall have the status of interpretive regulations. The ERB shall undertake a comprehensive review of the and update its design guidelines at least once every five (5) years, and shall recommend amendments for adoption by city council. Until the initial guidelines have been completed and approved for an entrance corridor overlay district, the ERB shall apply the design guidelines approved by city council pursuant to sec. 34-X to its review of a request for a certificate of appropriateness within an entrance corridor overlay districtdeveloped by the city's BAR for the entrance corridor districts.~~

Sec. 34-309. - Certificates of appropriateness required.

- (a) ~~No person shall commence, construct or install any of the following, unless and until The following shall require~~ a certificate of appropriateness has been approved issued in accordance with this division:
 - (1) ~~All Construction or alteration of any building or structure (other than a single-family or two-family dwelling), when the improvements requiring a building permit (but for which no site plan is required), other than single or two-family dwellings where the work requiring the building permit~~ (i) is new construction, or (ii) represents an addition or modification of 25% or more of the gross floor area of an existing building or structure;
 - (2) Regardless of whether a building permit is required: (i) signs; and (ii) installations or replacements of roof coverings, windows, doors or siding on any building or structure, any part of which, once installed, will be visible from an EC street referenced in section 34-307(a) above, other than those installed on a single- or two-family dwelling; and
 - (3) ~~Any~~ development for which a requiring a site plan is required.
- (b) All applications for the certificates required by subparagraphs (a)(1) or (a)(2) above, shall be reviewed and approved administratively by the NDS Director. If administrative approval is granted the applicant shall post a notice of such approval on the subject property. If the application is denied the director shall mail or hand-deliver notice of his decision to the applicant. In either case, the applicant or any other aggrieved party shall have ten (10) working days from the date of the director's decision to appeal the decision to the ERB; no certificate shall be issued prior to expiration of the ten-day period.
- (c) All applications for the certificates required by subparagraph (a)(3) above shall be reviewed and approved by the ERB in accordance with following the process set forth within the provisions of sections 34-310 through 34-313.

- (1) The ERB shall approve or disapprove an application and, if approved, ~~shall issue a certificate of appropriateness with may establish any~~ reasonable conditions as it may deem necessary to ensure compliance with this division. Failure of the ERB to act upon an application within sixty (60) days from the date of its original submission shall be deemed to constitute approval of the application.
 - (2) Nothing contained in this subsection shall be deemed to compromise, limit, or otherwise impair the planning commission in its exercise of preliminary or final site plan review as set forth within Article VII, section 34-800, et seq. of this zoning ordinance.
 - (3) It is the express ~~direction intent~~ of the city council in enacting the provisions of this subsection that matters related to public health and safety, as may be defined by the planning commission, shall prevail over issues within the purview of the ERB.
- (d) Notwithstanding the foregoing provisions of this section, no certificate of appropriateness shall be required for the following activities:
- (1) Interior alterations to a building or structure.
 - (2) Construction of ramps and other modifications to serve the handicapped.
 - (3) Repair and maintenance of buildings or structures which are non-conforming for failure to comply with the provisions of this article.
 - (4) General maintenance of buildings or structures, where no substantial change in design or materials is proposed.
 - (5) Additions or modifications to a building or structure, where no substantial change in design or materials is proposed, as determined by the ~~director of neighborhood development services~~ NDS Director or his designee.
- (e) Once issued, a certificate of appropriateness shall be binding upon the proposed development, as to any conditions of issuance specified therein. ~~The certificate shall certify that the proposed development (subject to any conditions stated within the certificate) is consistent with the design guidelines applicable to the specific EC street. Signature by the zoning administrator upon a final site plan or building permit, as the case may be, shall constitute such certification.~~
- (f) The validity period of a certificate of appropriateness shall be as follows:
- (1) A certificate of appropriateness associated with a project for which a valid site plan is not required shall expire and become void eighteen (18) months from the date of approval by the entrance corridor review board, unless a building permit to construct the authorized improvements or activities has been issued; or, if no building permit is required, unless construction of the authorized improvements or activities has substantially commenced.
 - (2) The validity period of a certificate of appropriateness associated with a project for which a valid site plan is required shall be consistent with that of the approved preliminary and final site plan pursuant to sections 34-822 and 34-825, except a certificate of appropriateness shall expire and become void eighteen (18) months from the date of approval by the entrance corridor review board if preliminary site plan approval has not been granted, or upon revocation of an approved preliminary site plan or expiration of an approved final site plan.
 - (3) Prior to the expiration of a certificate of appropriateness, upon written request and for reasonable cause, the ~~director of neighborhood development services~~ NDS Director or the entrance corridor review board may extend the validity of any such certificate for a period not to exceed one (1) year.

Sec. 34-310. - Standards for review considering certificates of appropriateness.

- (a) ~~The NDS Director shall review a request for a certificate of appropriateness and shall provide written analysis to the ERB. The NDS Director's analysis shall address applicable provisions of the City's EC design guidelines and shall contain a discussion of: The review board, the city council on review of an application, and the director in conducting an administrative review, shall consider the following features~~

~~and factors in determining the appropriateness of proposed construction, reconstruction, alteration or restoration of buildings or structures pursuant to this article:~~

- (1) Overall architectural design, form, and style of the subject building or structure, including, but not limited to: the height, mass and scale;
- (2) Exterior architectural details and features of the subject building or structure;
- (3) Texture, materials and color of materials proposed for use on the subject building or structure;
- (4) Design and arrangement of buildings and structures on the subject site;
- (5) The extent to which the features and characteristics described within paragraphs (1)—(4), above, are architecturally compatible (or incompatible) with similar features and characteristics of other buildings and structures having frontage on the same EC street(s) as the subject property.
- (6) Any applicable provisions of the Entrance Corridor Design Guidelines; and
- (7) Any other factor(s) or information that the NDS Director deems relevant to a determination of architectural compatibility of the proposal.

Sec. 34-311. - Sign standards.

Signs within any entrance corridor overlay district shall comply with the standards set forth within Article IX, section 34-1020, et seq.

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

Certificates of appropriateness issued by the ERB shall be governed by the provisions of sec. 34-X.

Sec. 34-312. - Application proceduresrequirements.

- (a) Applications for a certificates of appropriateness pursuant to this division shall be filed with the NDS Director~~director of neighborhood development services~~NDS Director by a landowner~~the owner, contract purchaser, or lessee of the property, or by the authorized agent of any such person, of the subject property.~~ Each application for a certificate of appropriateness shall be accompanied by the required application fee, as set forth within the most recent zoning fee schedule approved by city council.
 - (1) A complete application shall include all plans, maps, studies, reports, photographs, drawings, building elevations, and other informational materials ~~which may be reasonably required in order to make the determinations called for in a particular case.~~
 - (2) ~~[Reserved.]~~
 - (3) ~~Each application for a certificate of appropriateness shall be accompanied by the required application fee, as set forth within the most recent zoning fee schedule approved by city council.~~
- (b) The director shall establish submission deadlines for applications. For purposes of this division a complete application shall be deemed to be "officially submitted" on the date of the next submission deadline following the date on which the application was received by the director.
- (c) Landscaping—All nonresidential uses, including parking lots and vehicular display areas, shall have all of the street frontage, exclusive of driveways and walkway connections, landscaped with trees and other varieties of plant material at least eighteen (18) inches in height at maturity. The tree varieties shall conform to those recommended in the city's list of approved plantings. All uses shall have the side and rear property edges defined with a fence, wall or curbed planting strip of trees and other plantings a minimum of twenty-four (24) inches in height at maturity. Each application requesting a certificate of appropriateness shall include a detailed landscaping plan, ~~for the uses described following below.~~

(1) For development subject to site plan review, such plan shall include the information and details meet the requirements set forth below, as well as those set forth within required within Article VII, section 34-867.

(2) For other applications, the landscaping plan shall include consist of schematic plans, drawings, documents and information sufficient to allow the NDS Director director to verify that the following determine whether the following requirements will be are satisfied:

a. *Uses to be screened:* Parking lots, loading areas, refuse areas, storage areas, detention ponds and mechanical equipment shall be screened from view from the adjacent EC street.

b. *Standards for screening:* When required, screening shall consist of the following:

(i) A planting strip of vegetation or trees, an opaque wall, an opaque fence or a combination of these.

(ii) Where only vegetative screening is provided, such screening strip shall not be less than twenty (20) feet in depth and shall consist of a double staggered row of evergreen trees on fifteen-foot centers, a minimum of five (5) feet in height when planted, or a double staggered row of evergreen shrubs on five-foot centers, a minimum of twenty-four (24) inches in height when planted. Alternative methods of vegetative screening may be approved by the ERB or the director in connection with approval of a certificate of appropriateness.

(iii) Where a fence or wall is provided for screening, it shall be a minimum of six (6) feet in height with planting required at ten-foot intervals along such structure.

~~(3) *Landscaping:* All nonresidential uses, including parking lots and vehicular display areas, shall have all of the street frontage, exclusive of driveways and walkway connections, landscaped with trees and other varieties of plant material at least eighteen (18) inches in height at maturity. The tree varieties shall conform to those recommended in the city's list of approved plantings. All uses shall have the side and rear property edges defined with a fence, wall or curbed planting strip of trees and other plantings a minimum of twenty four (24) inches in height at maturity.~~

(d) Each application shall include information about proposed lighting. Lighting fixtures shall be harmonious with the character of existing and proposed structures fronting along the EC street, and shall not exceed the height of any buildings on the site. Further, lighting shall comply with the provisions of Article IX, Division 3, section 34-100, et seq.

Sec. 34-314. - Appeals.

Appeals from a decision of the ERB may be taken to city council in accordance with Division 4.6, sec. 34-XXX of this article.

~~(a) Following approval of an application by the ERB, the director of neighborhood development services NDS Director, or any aggrieved person, may note an appeal of that decision to the city council, by filing a written notice of appeal with the clerk of city council within ten (10) working days of the date of the date of the decision. If no such appeal is noted, then upon the expiration of the ten-day appeal period the director of neighborhood development services NDS Director shall issue the approved certificate of appropriateness.~~

~~(b) 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. Following a denial, the applicant, the director of neighborhood development services NDS Director, or any aggrieved person may appeal the decision to the city council, by filing a written notice of appeal with the clerk of city council within ten (10) working days of the date of the decision.~~

~~(c) In any review of an ERB decision the city council shall review the application as if the application had come before it in the first instance. Any aggrieved person, shall be given an opportunity to be heard~~

~~on the appeal. City council may consider any information or opinions relevant to the application which is the subject of such decision, including, but not limited to, those provided by the ERB.~~

Secs. 34-315—34-325. - Reserved.

DIVISION 3.4. - PUBLIC PARK PROTECTION OVERLAY DISTRICT

No changes proposed

Secs. 34-329—34-334. - Reserved.

DIVISION 4.5. - HISTORIC CONSERVATION OVERLAY DISTRICTS

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

(a)

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

- (1) Interior features, details, alterations and improvements;
- (2) Ordinary maintenance or repair of exterior elements or features;
- (3) 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~~NDS Director shall notify the BAR of any alterations or repairs ordered by the building code official; and
- (4) 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~~NDS Director 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 an ~~an application for a certificate of appropriateness, the particular application~~ the BAR shall approve the application unless it finds ~~that the proposal would be architecturally incompatible with the character of the district. In the event of a disapproval, the BAR shall give specific reason(s) therefor, with reference to provisions of this division or provisions of design guidelines, as may be applicable.~~

÷

~~(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) ~~Review of the proposed new construction or addition to a building or structure shall be limited to factors specified in section 34-342. On appeal from a decision of the BAR, city council may approve~~

Comment [RL3]: A proposed amendment of these provisions is currently moving forward on a different track. If adopted prior to the recommended Legal Changes, then those separate amendments would need to be incorporated here.

an application for COA if the proposal would be architecturally compatible with the character of the district.

- (c) The BAR, or 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 conservation district. Prior to attaching conditions to an approval, due consideration shall be given to the cost of compliance with the proposed conditions.

~~(c) Review of the proposed demolition, razing or moving of any contributing structure shall be limited to the factors specified in section 34-343.~~

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

The NDS Director shall review each request for a certificate of appropriateness and shall provide written analysis to the BAR. The NDS Director's analysis shall address applicable provisions of the city's design guidelines and shall contain a discussion of ~~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; and
- (6) Any other factor(s) or information that the NDS Director deems relevant to a determination of architectural compatibility of the proposal.

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

~~(a)The NDS Director shall review a request for a certificate of appropriateness proposing a demolition, razing or removal of a contributing structure, and shall provide written analysis to the BAR. The NDS Director's analysis shall address applicable provisions of the design guidelines and shall contain a discussion of~~ 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 to the BAR;
- (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; ~~and~~
- (6) Any other factor(s) or information that the NDS Director deems relevant to a determination of architectural compatibility of the proposal.

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

The same requirements and procedures specified in section 34-280 shall apply.

Sec. 34-345. - Application procedures.

- (a) Applications shall be submitted to the director by a ~~landowner, property owner, contract purchaser, or lessee of the property, or by the authorized agent of any such person.~~ Each application shall be accompanied by the required application fee, as set forth within the most recent zoning fee schedule approved by city council.
- (b) The NDS Director shall require the applicant to submit sufficient information for the preliminary review to make a determination whether further review and a certificate of appropriateness is required. If the director determines that review and approval by the BAR is required, then the applicant shall submit a complete application that includes 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.

Comment [RL4]: See definition of landowner, which is inclusive of authorized agents

Sec. 34-346. - 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~~ NDS Director 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 determined to be subject to BAR review within sixty (60) 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. 34-347. - Appeals.

Appeals from a decision of the BAR may be taken to city council in accordance with Division 4.6, sec. 34-XXX of this article.

- ~~(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 by the owner of the subject property to the Circuit Court for the City of Charlottesville, 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).~~

DIVISION 4.6. APPEALS—DESIGN CONTROL DISTRICTS

Sec. 34-XXX. Applicability

The provisions of this division shall apply to appeals taken from decisions of city council or its designated review boards, as to their decisions on landowners' requests for approval of certificates of appropriateness (COA).

Sec. 34-XXX. Appeals to city council

From any decision of the BAR or ERB, the following persons may file an appeal of such decision to city council: the NDS Director; the landowner who requested the COA; or any other aggrieved person (each, an "appellant").

(1) Appeals to city council must be initiated by filing a written notice of appeal within ten (10) days from the date of decision. The appellant shall set forth, in writing, the grounds for the appeal, including the procedure(s) or standard(s) alleged to have been violated or misapplied by the review board, and/or any additional information, factors or opinions the appellant deems relevant to the application. The appellant shall be given an opportunity to be heard by city council on the appeal.

(2) On appeal, City council shall review the COA application as if the application had come before it in the first instance. The appellant shall be given an opportunity to be heard on the appeal. City council may consider any information or opinions relevant to an assessment of the architectural compatibility of the proposal.

Sec. 34-287. Appeals to circuit court

- (a) A landowner whose request for a certificate of appropriateness has been denied by city council may appeal city council's final decision to the Charlottesville Circuit Court.
- (b) The procedure for the appeal authorized in paragraph (a), above, shall be as specified within Virginia Code § 15.2-2306(A)(3).
- (c) In addition to the right of appeal set forth above, the owner of a building or structure, the demolition of which has been the subject of an application appealed to the city council, shall, as a matter of right, be entitled to demolish such building or structure if all of the following conditions have been met:
- (1) The owner has appealed to city council for permission to demolish the building or structure, and city council has denied such permission;
 - (2) The owner has, for the applicable sale period set forth herein below, and at a price reasonably related to the fair market value of the subject property, made a bona fide offer to sell the building or structure, and the land pertaining thereto, to a person or legal entity that gives reasonable assurance that the building or structure will be preserved and restored; and
 - (3) No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable sale period.
 - (4) If all of the foregoing conditions are not met within the applicable sale period, then the city council's decision denying a permit shall stand, unless and until that decision is overturned by the circuit court. However, following expiration of the applicable sale period, a property owner may renew his request to the city council to approve the demolition of the historic landmark, building or structure.
- (e) The time in which a property owner may take advantage of the rights afforded by subparagraph (d), above (the applicable "sale period") shall be as follows:
- (1) Three (3) months, when the offering price is less than twenty-five thousand dollars (\$25,000.00).
 - (2) Four (4) months when the offering price is equal to or greater than twenty-five thousand dollars (\$25,000.00) but less than forty thousand dollars (\$40,000.00).
 - (3) Five (5) months when the offering price is equal to or is greater than forty thousand dollars (\$40,000.00) but less than fifty-five thousand dollars (\$55,000.00).
 - (4) Six (6) months when the offering price is equal to or greater than fifty-five thousand dollars (\$55,000.00) but less than seventy-five thousand dollars (\$75,000.00).
 - (5) Seven (7) months when the offering price is equal to or is greater than seventy-five thousand dollars (\$75,000.00) but less than ninety thousand dollars (\$90,000.00).
 - (6) Twelve (12) months when the offering price is equal to or greater than ninety thousand dollars (\$90,000.00).