



Clarke County Planning Department

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TO: Board of Supervisors

FROM: Jeremy Camp, Senior Planner / Zoning Administrator

RE: HPC Demolition Criteria Text Amendment - SET PUBLIC HEARING

DATE: July 12, 2022

On May 19, 2021, the Historic Preservation Commission (HPC) approved a motion to recommend certain changes to the Zoning Ordinance that would add review criteria for demolitions within the Historic Overlay District. These changes are proposed to Section 6.2.5B-4 of the Clarke County Zoning Ordinance.

If adopted, the proposed text amendment will modify Section 6.2.5B-4 of the Clarke County Zoning Ordinance by establishing eight (8) criteria for reviewing applications for demolitions. The changes also include a description of what demolition means. This text amendment will give the HPC and the applicant clearer guidelines for reviewing and preparing applications for demolitions within the Historic Overlay District. There is presently no criteria for demolitions.

The proposed text amendment only applies to properties within the Historic Overlay District that require a certificate of appropriateness for the demolition of a building or structure. The Historic Overlay District includes the core village areas of Millwood and White Post.

After review by the Planning Commission's Ordinance Committee, and after a public hearing, the Planning Commission issued a recommendation to approve the attached text amendment during their business meeting held on July 1, 2022. There were no comments received at the public hearing. The new demolition criteria is shown as highlighted text on the attached document.

For the July 19, 2022 Board of Supervisors Regular Meeting, Staff recommends that the Board schedule a future public hearing to consider adopting the proposed text amendment.

Attachment: Draft Text Amendment to Section 6.2.5B-4 of the Clarke County Zoning Ordinance, showing the entirety of 6.2.5 for reference purposes.

6.2.5	CERTIFICATE OF APPROPRIATENESS (CA) Certificate of Appropriateness review is required to ensure that proposed construction, alteration, and restoration projects in the Historic (H) Overlay and Historic Access Corridor (HAC) Overlay Districts are compatible with the historic character of these historic preservation areas.	
<u>Approval Authority:</u>	<ul style="list-style-type: none"> • Historic (H) Overlay District properties – Historic Preservation Commission (HPC); HPC Executive Committee in limited situations (see Subsection B) • Historic Access Corridor (HAC) Overlay District properties – <ul style="list-style-type: none"> ○ Berryville Area Development Authority (BADA) if located in Berryville Annexation Area ○ Planning Commission if located outside Berryville Annexation Area 	<u>Time Limit for Review:</u> Yes – See Subsection B-6 for applications in the H District, and Subsection C-6 for applications in the HAC District
<u>Pre-Application Meeting Required:</u> No	<u>Public Hearing Required:</u> Yes if reviewed by full HPC, BADA, or Planning Commission	
<u>Other Applicable Deadlines:</u> None	<u>Expiration:</u> Yes, for certificates issued in the Historic Overlay District – See Subsection B-7	

A. When Required.

1. Properties Located in the Historic (H) Overlay District. A certificate of appropriateness shall be required for the following activities:
 - Erection of any building, structure, or sign
 - The major alteration or restoration of a contributing building or structure
 - Razing, demolishing, or moving any historic landmark, building, or structure

2. Properties Located in the Historic Access Corridor (HAC) Overlay District.
 - a. No structure or building to which the HAC District applies shall be erected, reconstructed, altered, or restored unless a Certificate of Appropriateness is approved.

 - b. Single family detached dwellings or any structures existing as of January 1, 1995 that are expanded by not more than 100% of their heated square footage as of

January 1, 1995 are excluded from the requirement for a Certificate of Appropriateness.

- c. If any part of a structure to be erected, altered, or restored is located within these boundaries, the entire structure shall be governed by this ordinance.
- d. Any structure proposed to be erected, altered, or restored within a lot, which is partly located within the HAC District, shall be exempt from this ordinance, if said structure is located entirely outside the HAC District.
- e. Signs. A certificate of appropriateness shall be required only for signs proposed on lots located within in the HAC District and the Berryville Annexation Area.
- f. The provisions of this ordinance shall not apply to the regular maintenance of structures within the HAC District. For the purposes of this section, changing the exterior color and/or materials of a structure or building shall be deemed an alteration and not regular maintenance.

B. Review Procedures and Criteria – Historic (H) Overlay District.

1. Review Procedures. The Executive Committee of the Historic Preservation Commission (HPC), comprised of the Commission’s Chair and the Vice-Chair, shall review a certificate of appropriateness application before any of the following activities may occur within the boundaries of the H District:

- Any degree of alteration or restoration of a non-contributing building or structure.
- Minor alteration or restoration of a contributing building or structure.
- The erection of a sign.

If the Executive Committee finds that the proposed activity is not compatible with the Historic District, as described in [Subsection 5](#), the matter shall be referred to the full HPC for consideration. A decision by the Executive Committee to approve a certificate of appropriateness may be appealed to the full HPC by any aggrieved party (except as noted below) within 10 working days of the decision. A decision of the HPC may be appealed to the Board of Supervisors per [Subsection 8](#). The Chair shall inform the HPC of any Executive Committee approvals in writing, within five working days of the action. A member of the HPC may request, in writing, that the full HPC review any approval by the Executive Committee. Such request for review must be submitted to the Zoning Administrator within five working days of action notification.

2. A major alteration of a building or structure shall include any work that requires a building permit, or the repair or replacement of windows or roofs. A minor alteration of a building or structure does not require a building permit or does not involve the repair or replacement of windows or roofs.

- 3 Approval of a certificate of appropriateness certifies that such erection, reconstruction, alteration or restoration is compatible with the historic landmarks, buildings, or structures within the District, based upon criteria listed in [Subsection 5](#). This section shall not be construed as to include normal repairs and maintenance such as repainting, provided such repair and maintenance activity does not include any architectural changes or alterations.
4. Razing, Demolition or Moving Within the H District. No historic landmark, building, or structure within the H District shall be razed, demolished, or moved until a certificate of appropriateness is issued by the HPC, or upon appeal, by the Board of Supervisors. However, approval of such a certificate of appropriateness for demolition of a non-contributing structure within the H District may be delegated by the HPC to the Zoning Administrator (following the criteria and notice set forth in this ordinance), with appeal to the HPC, and with subsequent appeal to the Board of Supervisors.

For purposes of this subsection, demolition is defined as removal of forty percent (40%) of a building or structure's total exterior wall or roof structure.

When considering a request for razing, demolishing, or moving, the criteria of [Subsection 5](#) shall apply. In addition, the following criteria shall be considered:

- a. How the historic landmark, building, or structure contributes to the District.
 - b. If the proposed demolition impacts the architectural and historic integrity of the District.
 - c. What alterations have been made in the past.
 - d. If the building or structure provides significant historic context to the local community.
 - e. The impact of the proposed demolition on the visual continuity of the streetscape.
 - f. If it is feasible to stabilize the historic landmark, building, or structure. A structural engineer's report may be required.
 - g. If rehabilitation is feasible instead of demolition. A cost analysis may be required that details the cost of rehabilitation in comparison to the market value.
 - h. If the plans for the proposed replacement building (if any) meet the design criteria of the District.
5. Criteria for Approval of Certificate of Appropriateness. In reviewing a request, the HPC shall not approve a certificate of appropriateness unless the applicant's proposals are architecturally compatible with the motif and character of the H District. The HPC shall base its decision on whether the proposed action conforms to the criteria set forth by the [Secretary of the Interior's Standards for Rehabilitation](#). The HPC shall also consider the following factors:
- a. The extent to which the project will affect the overall character, visual fabric, rhythm, and continuity of the District.
 - b. Whether the height, proportion, openings, spacing, roofs, walls, fences, landscaping, ground cover, scale, and directionality of the proposed work are visually compatible with the surrounding community.

- c. Whether the materials, textures, and colors planned for use are compatible with the District's character.
- d. In the case of a building to be razed, demolished, or moved, the extent to which the loss of said building will detract from the Historic District and the purposes of this Section.

6. Action on Certificate of Appropriateness Application. The HPC shall conduct a Public Hearing in accord with [Section 2.5 \(Public Hearings\)](#) of an application for a certificate of appropriateness for any activity that is initially heard by the full HPC. Public notice is not required before action by the Executive Committee.

The HPC shall act to approve, approve with conditions, or deny the requested certificate of appropriateness within 60 days of the initial Public Hearing on the request. Failure of the HPC to act within this 60-day period shall be deemed approval of the request unless the HPC and the applicant agree upon an extension of the time period. The Executive Committee shall act to approve, approve with conditions, or refer to the HPC the requested certificate of appropriateness within 30 days of the first meeting of the HPC on the request. Failure of the HPC to act within this 30-day period shall be deemed approval of the request unless the HPC and the applicant agree upon an extension of the time period.

7. Approval Expiration. Unless a final certificate of occupancy has been issued for the structure or structures described in the certificate of appropriateness, an approved certificate of appropriateness shall no longer be valid after five years from the date of issuance by the HPC. Upon application of the developer filed before expiration of the certificate of appropriateness, the HPC may grant one or more extensions of such approval for additional periods as the HPC, at the time the extension is granted, determines to be reasonable. Such extensions shall take into consideration:

- Whether a building permit has been issued;
- Whether substantial construction work has been completed;
- The size and phasing of the project; and
- The laws, ordinances, and regulations in effect at the time of application for the extension request.

8. Appeal. Any decision made under the provisions of this Section may be appealed to the Board of Supervisors by any party aggrieved by such decision and may be further appealed pursuant to [Va. Code §15.2-2306](#). In lieu of an appeal to the Board of Supervisors of a decision to deny a request to demolish an historic structure, [Va. Code §15.2-2306](#) provides a procedure to allow a property owner to demolish an historic structure after it has been offered for sale “at a price reasonably related to its fair market value:”

- a. Such price shall be not more than 120% of the assessed value of the property as set by the County Commissioner of the Revenue.

- b. If the property owner does not believe that a price that is not more than 120% of the assessed value is reasonable, he or she may obtain a value from a certified appraiser at his or her expense. If the value determined by the property owner's appraiser exceeds 120% of the assessed value, the appraiser and the Commissioner of the Revenue shall establish a mutually agreed upon price. If the appraiser and the Commissioner are unable to establish a mutually agreed upon price, the County shall obtain the services of a certified appraiser to establish a third value. The cost of this appraiser to establish a third value shall be paid by the property owner. The price reasonably related to fair market value shall then be the average of the assessed value, the value established by the appraiser hired by the property owner, and the value established by the third appraiser.

C. Review Procedures and Criteria – Historic Access Corridor (HAC) Overlay District.

1. Reviewing Boards. The architectural review board responsible for the administration of this ordinance and approval or denial of certificates of appropriateness for activity in Annexation Area B shall be the Berryville Area Development Authority (BADA). The architectural review board responsible for the administration of this ordinance and approval or denial of certificates of appropriateness for activity outside of Annexation Area B shall be the Planning Commission.
2. Applications. Applications for certificates of appropriateness shall be made on forms provided by the Zoning Administrator, who shall serve as agent for the architectural review board. Applications for new construction shall be submitted with the applications for site plan approval and shall be considered in conjunction with the site plan. Other applications shall be submitted at least 15 calendar days before the next regularly scheduled meeting of the architectural review board. The Zoning Administrator may require a revised application with a new application date when alterations or modifications are made to the accepted application.

Except as further provided, when filing an application of a certificate of appropriateness, applicants must submit the following information for consideration by the architectural review board:

- Architectural elevations of all building facades and structures, drawn to scale, identifying all colors and materials to be used (a set of samples shall be submitted wherever practical), and showing spatial relationships with neighboring properties (use of photographs or drawings relating the proposed project to the surrounding streetscape is encouraged).
 - Approved or proposed site plans.
 - Landscaping plans, with signage, and lighting systems (including analysis of impacts on nearby lots).
3. Applications for Signs. When filing an application for a certificate of appropriateness for signs, applicants must submit the following information:
 - A scale drawing of the proposed sign.

- Proposed materials for the sign, including supports, and the lighting method to be used.
 - A sketch or photograph showing the proposed location of the sign on the building or site.
4. Waiver of Application Requirements. Upon written request from the applicant, the Zoning Administrator may waive any of the requirements in the previous section, deemed not to be necessary for review of the application. The architectural review board may overrule these waivers if additional information is determined to be required by the board at its meeting to consider the application. The Zoning Administrator may promulgate rules and procedures for the filing application under this ordinance not in conflict with the provisions of this ordinance.
 5. Public Hearing Required. The architectural review board shall conduct a Public Hearing in accord with [Section 2.5](#) of an application for a certificate of appropriateness.
 6. Action on Application. In response to applications for certificate of appropriateness, the architectural review board shall vote and announce its decision to approve, deny, or approve with conditions that modify the application. Action on any matter properly before the architectural review board shall be taken not later than 45 days after the conclusion of the public meeting on the matter, unless the time is extended by mutual agreement between the architectural review board and the applicant. All decisions of the architectural review board in granting or denying a certificate of appropriateness shall be in writing, a copy of which shall be sent to the applicant and a copy filed with the agent. In the case of denial of a certificate of appropriateness, the architectural review board shall state the reasons for such denial in writing. In citing the reasons for denial, the architectural review board may make suggestions that would assist the applicant in the resubmitting of an application.
 7. Design Guidelines for development in the HAC District are set forth in [Section 7.6 \(Historic Access Corridor \(HAC\) Overlay District Design Standards\)](#).
 8. Approval Expiration. Unless a final certificate of occupancy has been issued for the structure or structures described in the certificate of appropriateness, an approved certificate of appropriateness shall no longer be valid after five years from the date of issuance by the Planning Commission. Upon application of the developer filed before expiration of the certificate of appropriateness, the Commission may grant one or more extensions of such approval for additional periods as the Commission, at the time the extension is granted, determines to be reasonable. Such extensions shall take into consideration:
 - Whether a building permit has been issued;
 - Whether substantial construction work has been completed;
 - The size and phasing of the project; and
 - The laws, ordinances, and regulations in effect at the time of application for the extension request.

9. Appeals. Any decision made under the provisions of this Section may be appealed to the Board of Supervisors by any applicant aggrieved by such decision and may be further appealed pursuant to [Va. Code §15.2-2306](#).
10. Conformance with Certificate of Appropriateness.
 - a. Before the issuance of building permits for any work that has been approved by the architectural review board, the Zoning Administrator shall require applicants to submit plans that accurately reflect any changes or conditions imposed by the architectural review board in its approval of projects.
 - b. All work performed pursuant to issuance of a certificate of appropriateness shall conform to the approved plans and specifications and to any modifications required by the certificate of appropriateness. In the event work is performed not in conformance with the certificate of appropriateness, the Zoning Administrator shall notify the responsible person or firm in writing of the violations and shall take the necessary legal steps to ensure that the work is performed in conformance with the certificate of appropriateness. Any violation of this section shall be subject to the provision for violations and penalties set forth in [Section 10 \(Enforcement\)](#) of this Ordinance.
 - c. Any change in the approved plans subsequent to the issuance of the certificate of appropriateness shall be promptly submitted to the Zoning Administrator prior to construction of the modified feature. The Zoning Administrator may administratively approve non-substantial modifications with notice thereof to the architectural review board at its next meeting. Copies of any proposed revisions deemed substantive by the Zoning Administrator shall be forwarded to the architectural review board, accompanied by additional application materials as determined necessary by the Zoning Administrator and the architectural review board to render a decision.