

SECTION II. HISTORIC AREA REGULATIONS

11.01 LEGISLATIVE AUTHORITY

The regulations in this ordinance are established in accordance with the State of Maryland Enabling Act for Historic Area Zoning (Article 66B, Zoning and Planning, Section 8.018.17, Annotated Code of Maryland, as amended), and Section 13-1014, Subtitle 10. Canal Place Preservation and Development Authority, Annotated Code of Maryland.

11.02 PURPOSE

- (1) The preservation of sites, structures, and districts of historical, archeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in the City.
- (2) It is the further purpose of this article to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of Cumberland by preserving sites, structures, or districts which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values in and around such historic areas; to foster civic beauty; and to preserve and promote the preservation and appreciation of historic sites, structures and districts for the education and welfare of the citizens of the City of Cumberland, the County of Allegany, the State of Maryland, and the United States of America.

11.03 DEFINITIONS

For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them:

- (1) Alteration: Any exterior change that would affect the historic, archeological, or architectural significance of a designated site or structure, any portion of which is visible or intended to be visible from a public way, including, but not limited to, construction, reconstruction, moving, or demolition.
- (2) Appurtenances and environmental settings: All that space of grounds and structures thereon which surrounds a designated site or structure and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, waterways, open space, setbacks, parks, public spaces, and rocks.

- (3) Certificate of Appropriateness: A certificate issued by the Historic Preservation Commission indicating its approval of plans for construction, alteration, reconstruction, moving or demolition of an individually designated landmark, site or structure or of a site or structure within a designated preservation district.
- (4) Commission: Historic Preservation Commission
- (5) Demolition: Any act which destroys in whole or in part a building or structure.
- (6) Demolition by neglect: Any willful neglect in the maintenance and repair of an individually designated landmark, site or structure, or a site or structure within a designated preservation district, not including any appurtenances and environmental settings, that does not result from an owner's financial inability to maintain and repair such landmarks, sites, or structures, and which results in any of the following conditions:
 - (a) The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, so as to create or permit a hazardous or unsafe condition to exist; or
 - (b) The deterioration of the foundations, exterior walls, roofs, chimneys, doors, windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows.
- (7) District: See Preservation District.
- (8) Exterior features: The architectural style, design and general arrangement of the exterior of an historic structure, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of an historic structure.
- (9) Historic Area Work Permit: A permit issued by the Department of Community Development upon receiving a Certificate of Appropriateness from the Commission for all projects that the City conducts, assists, licenses, or permits that affect properties within a designated district, or individually designated sites or landmarks.
- (10) Landmark: Any designated site or structure outside the boundaries of a preservation district that is of exceptional historic, archeological, or architectural significance by itself and is worthy of rehabilitation, restoration, and preservation.
- (11) New Construction: Construction which is characterized by the introduction of new elements, sites, buildings, or structures or additions to existing buildings and structures in historic areas and districts.

- (12) Preservation District: A significant concentration, linkage, or continuity of sites, structures, or objects united historically, architecturally, archeologically, or culturally by plan or physical development, as defined and designated by the Mayor and City Council.
- (13) Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time.
- (14) Rehabilitation: The act or process of returning a property or building to usable condition through repair, alteration, and/or preservation of its features which are significant to its historical, architectural, and cultural values.
- (15) Restoration: The process of accurately recovering the form and details of a property as it appeared at a particular period of time by means of removal of later work and the replacement of missing original work.
- (16) Site: The location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, archeological, or cultural significance.
- (17) Structure: A combination of material to form a construction that is stable; including among other things, buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, bridges, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences, and display signs visible or intended to be visible from a public way; the term "structure" shall be construed as if followed by the words, "or part thereof."

11.04 HISTORIC PRESERVATION COMMISSION

11.04.01 Historic Preservation Commission

The City hereby creates a commission to be called the Historic Preservation Commission.

11.04.02 Membership

- (1) The Historic Preservation Commission shall consist of seven (7) members appointed by the Mayor and City Council. A majority of the members of the Commission shall be residents of the City of Cumberland. Nonresident appointees to the commission must possess professional or academic qualifications as further defined in 11.04.03 below. Each member shall possess a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architecture, architectural history, planning, archeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design or related disciplines.
- (2) In addition to the aforesaid seven appointed members, the Commission shall include

one (1) ex-officio member. The ex-officio member shall consist of one City Council representative appointed to serve in that capacity by the Mayor and City Council. The ex-officio member may participate in the review of applications and vote in decisions rendered by the Commission.

- (3) At least two (2) members of the Commission shall possess professional or academic training in one or more of the above-listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under federal regulation 36 C.F.R. Part 61.

11.04.03 Commission Membership Qualification Criteria

The requirement for commission membership under the category of demonstrated special interest may be satisfied either by formal training in one or more of the above-listed fields or active membership in a preservation-related organization. The requirement for membership under the category of specific knowledge may be satisfied by formal post secondary education, employment and/or practical experience in one or more of the above-listed fields. The requirement for commission membership under the category of professional or academic training may be satisfied by, at a minimum, two years experience as a professional or a Bachelor's degree in one or more of the above-listed fields.

11.04.04 Terms

Commission members shall be appointed for terms of three (3) years, except that the terms of the initial appointments shall be staggered so that three (3) members shall serve terms of three (3) years, two (2) members shall serve terms of two (2) years and two (2) members shall serve terms of one (1) year. Commission members may be reappointed.

11.04.05 Commission Officers

The Commission shall elect, from its membership, a Chairperson, Vice Chairperson, and Secretary. The terms of the Chairperson, Vice Chairperson, and Secretary shall be for one (1) year, with eligibility for reelection.

11.04.06 Vacancy

Any vacancy in the membership of the Commission caused by the expiration of a term, resignation, death, incapacity to discharge duties, removal for cause, or any other reason, shall be filled for a new term, or for the remainder of the term for which there is a vacancy, as the case may be, in the same manner as provided herein for the appointment and confirmation of the initial members of the Commission. Any vacancy of the Commission shall be filled by the appointing authority within sixty (60) days. In the case of expiration of terms, members may continue to serve until their successors are appointed and confirmed. Any unexcused absence of three (3) consecutive meetings shall constitute a vacancy. It shall be the duty of each member to attend all meetings. Should any member be absent from three (3) regular meetings during the year, without acceptable justification to the Commission, the Commission shall recommend that the member be removed for cause.

11.04.07 Removal for Cause

A member may be removed for cause from the Commission by the Mayor and City Council. In each case, the cause for removal shall be stated in writing.

11.04.08 Compensation

Commission members shall serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties, provided said expenses are permitted by the budget and approved in advance by the Community Development Manager.

11.04.09 Meetings

The Commission shall hold no fewer than 1 (one) regular meeting monthly to discharge its duties.

11.04.10 Staff

Consistent with the City's policies and procedures, employees may be assigned to the Commission, and such services and facilities made available as are deemed necessary or appropriate for the proper performance of its duties.

11.05 POWERS AND DUTIES

The Historic Preservation Commission shall have the following powers and duties:

- (1) The Commission may direct studies, reports, and surveys to identify historical, archeological, or architecturally significant sites, structures and districts that exemplify the cultural, social, economic, political, or architectural history of the city, state, or nation.
- (2) Consistent with the City's policies and procedures regarding the acceptance and use of gifts by public officials, the Commission shall have the right to accept and use gifts for the exercise of its functions.
- (3) The Commission shall prescribe appropriate rules and regulations as may be necessary for the proper transaction of its business.
- (4) The Commission shall adopt rehabilitation and new construction design guidelines for designated landmarks, sites, structures, and districts which are consistent with the Secretary of the Interior's Standards for Rehabilitation. Guidelines may include design characteristics intended to meet the needs of particular types of sites, structures, and districts, and may identify categories of changes that are so minimal in nature that they do not affect historic, archeological, or architectural significance and require no review by the Commission. These guidelines shall be utilized by the Commission in its review of applications.

- (5) Consistent with the City's policies and procedures governing the acquisition of easements, the Commission may accept historic preservation easements on designated landmarks, structures or sites and sites or structures located in, or adjacent to, the preservation district.
- (6) The Commission may undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or the implementation of the purpose of this article.

11.06 DESIGNATION

11.06.01 Designation

The City of Cumberland may designate boundaries for landmarks, sites, structures, or districts which are deemed to be of historic, archeological or architectural significance.

11.06.02 Designation Procedure

The Historic Preservation Commission may, after making full and proper study, recommend appropriate areas within the limits of the City for designation as a landmark, site, structure, or district. The Commission may also recommend boundaries for such landmarks, sites, structures or districts. The recommendations shall be submitted to the Mayor and City Council. The Mayor and City Council shall approve, approve with modification(s), or disapprove the proposed designation.

11.07 CERTIFICATE OF APPROPRIATENESS APPLICATION AND COMMISSION REVIEW

11.07.01 Application for Certificate of Appropriateness

Before the construction, restoration, rehabilitation, alteration, reconstruction, relocation, or demolition of a designated landmark, site or structure, or site or structure within a designated district is undertaken, if exterior changes are involved which would affect the historic, archeological or architectural significance of a designated landmark, site or structure or structure within a designated district, any portion of which is visible or intended to be visible from a public way, the person, individual, firm, or corporation proposing to make the construction or change shall file a Certificate of Appropriateness Application with the Commission, via the Department of Community Development, for permission to construct, alter, reconstruct, move or demolish the landmark, site, or structure. Every such application shall be referred to and considered by the Commission and accepted or rejected by the Commission. An application which is identical to a rejected application shall not be resubmitted within a period of one (1) year after the rejection. No Certificate of Appropriateness shall be granted until the Commission has acted thereon as hereinafter provided.

11.07.02 Application Review

In reviewing applications, the Commission shall give consideration to the historic, archeological, or architectural significance of the landmark, site or structure and its relationship to the historic, archeological, or architectural significance of the surrounding area; the relationship of the exterior architectural features of a landmark or structure to the remainder of the landmark or structure and to the surrounding area; the general compatibility of exterior design, scale, proportion, arrangement, texture, and materials proposed to be used; and any other factors including aesthetic factors which the Commission deems to be pertinent.

- (1) The Commission shall consider only exterior features of a landmark or structure and shall not consider any interior arrangements. Also, the Commission shall not disapprove an application except with respect to the several factors specified above.
- (2) The Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historic, archeological, or architectural significance. The Commission shall be lenient in its judgment of plans for sites or structures of little historic, archeological or architectural significance, or of plans involving new construction, unless such plans would seriously impair the historic, archeological, or architectural significance of the surrounding sites or structures. The Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any one (1) period.
- (3) If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure or for the moving or demolition of a structure, the preservation of which the Commission considers to be of unusual importance to the City of Cumberland or of unusual importance to the entire State or nation, the Commission shall attempt, with the owner(s) of the site or structure, to formulate an economically feasible plan for the preservation of the site or structure. Unless, in these circumstances, the Commission is satisfied that the proposed construction, alteration, or reconstruction will not materially- impair the historic, archeological, or architectural significance of the site or structure, the Commission shall reject the application, filing a copy of its rejection with the Department of Community Development.
- (4) If an application is submitted for construction, reconstruction, or alteration, or for the moving or demolition of a site or structure that the Commission considers to be of unusual importance and no economically feasible plan can be formulated, the Commission shall have ninety (90) days, from the time it concludes that no economically feasible plan can be formulated, to negotiate with the owner(s) and other parties in an effort to find a means of preserving the site or structure.
- (5) In the case of a site or structure considered to be valuable for its historic, archeological, or architectural significance, the Commission may approve the

proposed construction, reconstruction, alteration, moving, or demolition despite the fact the changes come within the provisions of 11.07.02(3) and (4) above if:

- (a) The site or structure is a deterrent to a major improvement program which will be of substantial benefit to the City.
 - (b) Retention of the site or structure would cause undue financial hardship to the owner.
 - (c) The retention of the site or structure would not be in the best interests of a majority of persons in the City.
6. In specific cases, such as where the proposed work involves substantially identical replacement “in kind,” or as delegated by the Commission, the staff of the Department, in consultation with the Community Development Manager, may determine that an application meets all requirements of these regulations, in which case a historic area work permit may be issued at the administrative level and Commission review and approval shall not be required.

11.07.03 Commission Decision

The Commission shall file with the Department of Community Development a certificate of its approval, modification, or rejection of all applications and plans submitted to it for review. Work shall not be commenced on any project until such a certificate of approval has been filed, and the Department of Community Development shall not issue a building permit or historic area work permit for such change or construction unless and until it has received such a certificate of approval. Except for requests involving demolition, the failure of the Commission to act upon a completed application within forty-five (45) days from the date the completed application was filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the Commission or the application has been withdrawn. In cases of requests involving demolition, the Commission shall render decisions over a course of up to two regularly scheduled monthly meetings, consistent with the procedures and requirements contained within the Commission’s approved guidelines.

11.07.04 Routine Maintenance

Nothing in this section shall be taken or construed to prevent routine maintenance or landscaping which will have no material effect on the historic, archeological, or architectural significance of a designated landmark, site, structure, or district.

11.07.05 Economic Hardship

In acting upon an application for a certificate of economic hardship, the Historic Preservation Commission is required to determine whether the economic impact of the historic preservation law, as applied to the property owner, has risen to the level of economic hardship. An applicant seeking a Certificate Of Appropriateness may apply for a “Certificate Of Economic Hardship” after the

preservation commission has denied his or her request to alter or demolish a historic property protected under the preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the historic preservation commission to render a decision. The burden of proof is on the applicant.

Economic hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking, which requires a property owner to establish that he or she has been denied all reasonable beneficial use or return on the property as a result of the commission's denial of a permit for alteration or demolition.

Evidentiary Checklist

The following checklist, as applicable, will be utilized by the Historic Preservation Commission when considering economic hardship claims:

1. Current level of economic return

- Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
- Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
- Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years;
- Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations;
- All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other; and
- Any state or federal income tax returns relating to the property for the last two years.

2. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:

- Any real estate broker or firm engaged to sell or lease the property;
- Reasonableness of price or rent sought by the applicant; and
- Any advertisements placed for the sale or rent of the property.

3. Feasibility of alternative uses for the property that could earn a reasonable economic return:

- Report from a licensed engineer or architect with experience in rehabilitation as to (1) the structural soundness of the building, (2) a condition assessment for the building envelope (roof, walls, windows and doors, foundation), and (3) the urgency of repairs to these features;
- Expert testimony from an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties as to the treatments of the property, including demolition (including site clearing), stabilization, and rehabilitation;
- Cost estimates for (1) the proposed construction, alteration, or demolition, (2) the costs of complying with the Certificate of Appropriateness, and (3) the cost of a total rehabilitation, and
- Estimated market value of the property (1) in its current condition, (2) after completion of the proposed alteration or demolition and (3) after total rehabilitation of the existing property for its current or alternate uses--a list of any designations, easements, or publicly instituted ordinances that affect development such as zoning, building codes, conservation districts, or enterprise zones.

4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

5. Knowledge of landmark designation or potential designation at time of acquisition.

6. A list of economic incentives and/or funding available to the applicant through federal, state, city, or private programs, which of these were considered and pursued, and why these were not used to improve the property

11.08 DEMOLITION BY NEGLIGENCE

(1) In the event of a case of demolition by neglect, the Commission may request the Department of Community Development to notify, in writing, the property owner(s) of record, any person(s) having a right, title, or interest therein, and the occupants or other person(s) responsible for the maintenance of the property or the deterioration. The notice shall specify the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

(2) Prior to the issuance of a written notice, the Commission may request the Department of Community Development to establish a record of demolition by neglect. Such a record may include dated materials such as photographs and/or written reports of the condition of the property so as to record and/or measure the deterioration.

- (3) The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of said notice and be completed within a time defined by the Commission in consultation with the property owner. The notice shall state that the owner(s) of record of the property, or any person(s) of record with any right, title or interest therein, may, within ten (10) days after the receipt of the said notice, request a hearing on the necessity of the items and conditions contained in said notice. In the event a public hearing is requested, it shall be held by the Commission upon thirty (30) day's written notice being mailed to all persons of record with any right, title or interest in the property and to all citizens and organizations which the Commission determines may have an interest in the proceedings.
- (4) If, after the public hearing, the Commission determines that the corrective actions remain necessary, the Commission may request the Department of Community Development to issue a Final Notice to be mailed to the owner(s) of record and all parties of record with any right, title or interest in the subject property, advising them of the items of repair and maintenance necessary to correct or prevent further deterioration. The owner(s) shall institute corrective action to comply with the Final Notice within thirty (30) days of receipt of the revised notice.
- (5) Upon failure, neglect, or refusal of the property owner(s) or other responsible person(s), duly notified, to take the corrective action(s) specified in the Final Notice, within the time allotted, the Commission may request that the Department of Community Development institute any of the remedies and penalties provided by law for said violations.

11.09 MARYLAND HISTORICAL TRUST

The Maryland Historical Trust may be designated by the Commission to make an analysis of and recommendation concerning the preservation of sites, structures, or districts of historic, archeological, architectural, or cultural significance within the area served by the Commission. Such report may include proposed boundaries of sites, structures, or districts, as well as make recommendations for the identification and designation of particular sites, structures, or districts to be preserved.

11.10 APPEALS

In the event that any party is aggrieved by a decision of the Commission, said party has the right of appeal to the Circuit Court of Allegany County. Appeal requests must occur within thirty (30) days from the date on which the Commission decision was made.

11.11 VIOLATIONS

Any person(s) who violate(s) the provisions of this article by willfully performing or allowing to be performed any work without first obtaining a Certificate of Appropriateness, failing to comply with any final notice issued pursuant to this article, or disregarding a decision of the Commission will be in violation of this article. A violation of this article shall be deemed a Municipal Infraction as stated in the City Code. Each and every day that the violation continues shall be deemed a separate offence.

11.12 SEVERABILITY

If any provisions of this article or the application thereof to any person(s) or circumstances are held invalid for any reason, such invalidity shall not affect the other provisions of any other application of this article which can be given effect without the invalid provisions or application, and to this end, all the provisions of this article are hereby declared to be severable.