

ARTICLE 14

HISTORIC WINCHESTER DISTRICT - HW

STATEMENT OF INTENT

This district is intended to focus attention on the architectural excellence and historic importance of certain buildings, structures, places, and areas of the City; to promote their preservation, protection, and maintenance; and to ensure the development and maintenance of appropriate settings and environment for such buildings, structures, places, and areas. Such buildings, structures, places and areas warrant special controls and incentives because they promote the general welfare by generating business; creating job opportunities; attracting visitors, researchers and new residents; encouraging study and interest in architecture, design and American history; educating citizens in American culture and heritage; and making the City a more attractive and desirable place in which to live.

SECTION 14-1. HISTORIC WINCHESTER DISTRICT.

A special zoning overlay district, the Historic Winchester District, (HW) is established. The boundaries of this district are delineated upon the City of Winchester, Virginia, Zoning Map.

SECTION 14-2. DEFINITIONS.

For clarification and better understanding of this Article, the following definitions are offered:

- 14-2-1 For the purpose of this Article, "Exterior Architectural Appearance" shall include architectural character; general arrangement of the exterior of a structure; general composition, including the kind, color, and texture of the building material; and type and character of all windows, doors, light fixtures, signs, and appurtenant elements, subject to public view from a public street, public way, or other public places.
- 14-2-2 For the purpose of this article, "structure" shall include walls, fences, signs, light fixtures, steps, or appurtenant elements thereof.

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SECTION 14-3. CERTIFICATE OF APPROPRIATENESS, GENERALLY.

- 14-3-1 Except as provided for in Section 14-5 of this Article, no building or structure within the Historic Winchester District shall be erected, reconstructed, structurally altered, restored, or demolished, unless and until a complete application for a Certificate of Appropriateness shall have been submitted and subsequently approved by the Board of Architectural Review. (9/14/10, Case TA-10-247, Ord. No. 2010-36)
- 14-3-2 No building or structure which existed in an area of the City that has since been designated within the Historic Winchester District seventy-five (75) years ago or prior thereto shall be demolished or removed in whole or in part, except for additions to the building which are less than seventy-five years (75) old, unless and until a complete application for a Certificate of Appropriateness shall have been submitted and subsequently approved by the Board of Architectural Review. No such application shall be considered by the review board until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (9/14/10, Case TA-10-247, Ord. No. 2010-36)
- 14-3-3 Evidence of such required approval shall be a Certificate of Appropriateness issued by either the Zoning Administrator as specified in Section 14-5 or the Board of Architectural Review. (9/14/10, Case TA-10-247, Ord. No. 2010-36)
- 14-3-4 Application for a Certificate of Appropriateness required by Sections 14-3-1 and 14-3-2 shall be made to the Zoning Administrator.
- 14-3-5 The provisions of this article shall not apply to any building or structure which is owned by the City of Winchester or the County of Frederick in the block bounded by Cameron Street, Rouss Avenue, The Loudoun Street Mall and Boscawen Street. (8/30/94, Case TA-94-07, Ord. No. 023-94)

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SECTION 14-4. BOARD OF ARCHITECTURAL REVIEW.

- 14-4-1 A Board of Architectural Review is hereby established and shall be known as the Board of Architectural Review, hereafter referred to as the review board. The review board shall consist of seven (7) voting members who shall be appointed by City Council. One (1) should be a registered architect or design professional, one should be a licensed real estate agent, one or more should own property or reside in the Historic District, and one or more may be from backgrounds in architectural history, history, planning, real estate, or archaeology. All members should possess knowledge of and demonstrate interest in preservation of the historic character of Winchester. These members shall serve a term of four (4) years each except that the original appointments shall be made as follows: one (1) member shall be appointed for a one (1) year term; two (2) members shall be appointed for two (2) year terms; two (2) members shall be appointed for three (3) year terms; and two (2) members shall be appointed to four (4) year terms. No member shall serve more than two (2) consecutive terms. Any vacancy on the Board shall be filled within sixty (60) days after that vacancy has occurred. (9/14/10, Case TA-10-247, Ord. No. 2010-36)
- 14-4-2 With the exception of its secretary, the review board shall elect from its own membership a chairman and vice-chairman, who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. (2/14/84, Case TA-83-08, Ord. No. 003-84)
- 14-4-3 The chairman shall conduct the meetings of the review board. The secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions, and determinations. All members of the review board shall be entitled to vote, and the decisions of the review board shall be determined by a majority vote. A quorum of one-half the active voting members is required before the review board may take any official action. The review board shall meet twice monthly or within twenty (20) days after notification by the Zoning Administrator of an application for a Certificate of Appropriateness or permit requiring action by the review board. The meetings of the review board shall be open to the public, and a full and impartial hearing which allows any interested person or group to speak, shall be granted. The review board shall vote and announce its decision on any matter properly before it, not later than sixty (60) days after the conclusion of the hearing on the matter unless the time is extended with the written consent of the applicant. The review board shall not reconsider any decision made by it, except in cases

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where an applicant appears within ninety (90) days with his application amended as provided. The review board shall not hear the subject matter of any application which has been denied for a period of one (1) year, except in cases where an applicant appears within ninety (90) days with his application amended as hereinafter provided.

- 14-4-4 In case of disapproval of the erection, reconstruction, alteration, restoration, or demolition of a building or structure, the review board shall briefly state its reasons in writing, and it may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, color, location, and the like of a building or structure involved. In case of disapproval accompanied by recommendations, the applicant may again be heard before the review board, if, within ninety (90) days, he comes before the review board with his application so amended that it will comply with all the recommendations of the review board.
- 14-4-5 In case of disapproval of the demolition of a building which existed in the Historic District seventy-five (75) years ago or prior thereto, the review board shall state its reasons in writing in some detail.
- 14-4-6 The review board, when requested by the applications for a building permit in the Historic District, shall advise as to the changes and alterations necessary to bring the proposed building or structure in harmony with the general design of the buildings or structures located in the surrounding area.
- 14-4-7 In matters governing the procedure for meetings not covered by this article, the review board may establish its own rules; provided they are not contrary to the spirit of this Article.

SECTION 14-5. ADMINISTRATIVE REVIEW. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

- 14-5-1 Notwithstanding any contrary provision of this article, the Zoning Administrator may review, and may approve or deny, applications for Certificates of Appropriateness, in the following situations:
- 14-5-1.1 Exterior alterations which are shown, through adequate documentation, to have been approved for tax credit under either the federal rehabilitation tax credit program or the similar Virginia state tax credit program, as further defined in Section 14-14-3 of this Article;

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- 14-5-1.2 The repainting of an existing building or structure in a different color, provided that the color(s) selected are based upon an approved historic color palette designated within the Historic District Design Guidelines by the Board of Architectural Review;
- 14-5-1.3 The addition or deletion of awnings, canopies, storm windows, storm doors, gutters, and similar appurtenances;
- 14-5-1.4 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; and
- 14-5-1.5 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.
- 14-5-2 In reviewing an application for a Certificate of Appropriateness, the Zoning Administrator shall apply the same Historic Winchester District Design Guidelines that the BAR must use in its review process.
- 14-5-3 Failure of the Zoning Administrator to approve or disapprove an application within ten (10) working days from the date the complete application was submitted shall immediately cause the application to be placed on the agenda for the next regularly scheduled meeting of the Board of Architectural Review.
- 14-5-4 Upon approval of an application by the Zoning Administrator, the Administrator shall issue the approved certificate. If the application is denied, the Administrator shall mail or hand-deliver written notice of this decision to the applicant, which notice shall set forth the specific reasons for the denial, with reference to specific ordinances, laws or regulations. The Administrator shall inform the BAR of his administrative decisions at the next regularly scheduled meeting following the date of such decisions.
- 14-5-6 Following a decision of the Administrator upon an application, the applicant, or any other aggrieved party, shall have ten (10) working days from the date of the decision to appeal that decision to the BAR.

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14-5-7 In considering an appeal of a decision of the Administrator, 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.

SECTION 14-6. CRITERIA FOR GRANTING A CERTIFICATE OF APPROPRIATENESS.

14-6-1 The Board of Architectural Review shall not approve a Certificate of Appropriateness unless the applicant's proposals are architecturally compatible with the character of the Historic District. The Board shall base its decision on whether the proposed action conforms to the criteria set forth by the Secretary of Interior's Standards for Rehabilitation. The review board also shall consider:

14-6-1.1 The historical or architectural value and significance of the building or structure and its relationship to or congruity with the historic value of the land, place, and area in the district upon which it is proposed to be located, constructed, reconstructed, altered, or restored.

14-6-1.2 The appropriateness of the exterior architectural features of such building or structure to such land, place, or area and its relationship to or congruity with the exterior architectural features of other land, places, areas, buildings, or structures in the district and environs.

14-6-2 Before a Certificate of Appropriateness is issued for the demolition of a building or structure which existed in the Historic District seventy-five (75) years ago or prior thereto, the review board shall consider among other things:

14-6-2.1 Is the building of such architectural or historic interest that its removal or disturbance would be to the detriment of the public interest?

14-6-2.2 Is the building of such interest or significance that it could be made into a national, state, or local historic shrine?

14-6-2.3 Is the building of such old and unusual or uncommon design, texture, and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense?

14-6-2.4 Would retention of the building help preserve the historic character of the district?

14-6-2.5 Would retention of the building help preserve a historic interest in a place or an area of the City?

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- 14-6-2.6 Would retention of the building promote the general welfare by maintaining the increasing real estate values; generating business; creating new positions; attracting tourists, students, writers, historians, artists, and artisans; attracting new residents; encouraging study and interest in American history; stimulating interest and study in architecture and design; educating citizens in American culture and heritage; and making the City a more attractive and desirable place in which to live?
- 14-6-3 The review board shall not consider detailed designs, interior arrangements, or features of a building or structure which are not subject to public view from a public street, public way, or other public place, except when necessary to do so for the purpose of preventing circumstances which will be incongruous to the preservation and protection of the historic aspects, settings, and environment of the district.

SECTION 14-7. ISSUANCE OF CERTIFICATE OF APPROPRIATENESS.

Immediately upon approval by the review board of any erection, reconstruction, alteration, restoration, or demolition, a Certificate of Appropriateness, signed by the secretary of the board and bearing the date of issuance, but subject to the provisions of Section 14-8, shall be made available to the applicant.

SECTION 14-8. EXPIRATION OF CERTIFICATE OF APPROPRIATENESS.

Any Certificate of Appropriateness issued pursuant to Section 14-3-1 and 14-3-2 of this Article shall expire of its own limitations twelve (12) months from the date of issuance if the work authorized by said certificate has not commenced; and further, if any such work is suspended or abandoned for a period of twelve (12) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this Article shall be excluded from the computation of the twelve (12) month period.

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SECTION 14-9. APPEALS.

14-9-1 APPEALS FROM BOARD OF ARCHITECTURAL REVIEW TO CITY COUNCIL.

14-9-1.1 Whenever the Board of Architectural Review shall, in a final decision, disapprove an application for a Certificate of Appropriateness as prescribed by Section 14-3, the applicant for such certificate shall have the right to appeal to and be heard before the City Council; provided, that he files with the Clerk of the Council, on or before thirty (30) days after the decision of the board, a notice in writing of his intention to appeal. Upon receipt of such notice, the Clerk of the Council shall schedule a public hearing before the City Council at a time not more than sixty (60) days after the receipt by the Clerk of such notice. No such appeal shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (12/11/79, Ord. No. 030-79)

14-9-1.2 Whenever the Board shall, in a final decision, approve an application for a Certificate of Appropriateness as prescribed by Section 14-3, opponents to the granting of such certificate or of such permit shall have the right to appeal to and be heard before the City Council; or before thirty (30) days after the decision of the Board, a petition in writing signed by at least twenty-five (25) persons owning real estate within the Historic Winchester District, indicating the intention to appeal. Upon receipt of such notice, the Clerk of the Council shall schedule a public hearing before the City Council at a time not more than sixty (60) days after receipt by the Clerk of such notice. No such appeal shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (12/11/79, Ord. No. 030-79)

14-9-1.3 On any such appeal, the final decision of the Board of Architectural Review appealed from shall be stayed pending the outcome of the appeal before the Council, except that the filing of such petition shall not stay the decision of the Board if such decision denies the right to raze or demolish a building which existed in the Historic Winchester District seventy-five (75) years of age or prior thereto. The Council shall consult with the Board of Architectural Review, before rendering any decision. The same standards shall be applied by the Council as are established for the Board of Architectural Review. The Council may affirm, reverse or modify the decision of the Board, in whole or in part. The decision of the Council, subject to the provisions of Section 14-9-2, shall be final. No Certificate of Appropriateness shall be issued for thirty (30) days following the decision of the Council, so that any appeals may be filed. (12/11/79, Ord. No. 030-79)

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14-9-2 APPEALS FROM CITY COUNCIL TO COURT.

14-9-2.1 Any applicant or any of the petitioners aforesaid aggrieved by a final decision of the City Council, or any opponents to the final decision of the City Council, shall have the right to appeal such decision to the Circuit Court for a review; provided, such appeal is filed within a period of thirty (30) days after the rendering of the final decision by the City Council, and that, in the case of opponents to the final decision of City Council, there is filed with the appeal a petition in writing signed by at least twenty-five persons owning real estate within the Historic Winchester District. Such appeal shall be taken by filing a petition at law, setting forth the alleged illegality of the action of the governing body. The filing of said petition shall stay the decision of the Council pending the outcome of the appeal to Circuit Court, except that the filing of such petition shall NOT stay the decision of the Council if such decision denies the right to raze or demolish a building which existed in the Historic Winchester District seventy-five (75) years ago or prior thereto. (12/11/79, Ord. No. 030-79)

SECTION 14-10. ADDITIONAL OR CONCURRENT RIGHT TO DEMOLISH BUILDINGS IN THE HISTORIC WINCHESTER DISTRICT.

In addition to the right of appeal herein above set forth, the owner of a building or structure, the demolition of which is subject to the provisions of this Article, shall, as a matter of right, be entitled to demolish such building or structure provide that the owner follows the procedures required by Section [15.2-2306](#) of the Code of Virginia (1950), as amended.

SECTION 14-11. BONA FIDE OFFER TO SELL.

14-11-1 Notice. Before making a bona fide offer to sell, provided for in Section 14-10, an owner shall first file a statement with the Zoning Administrator. The statement shall identify the property, state the offering price, the date the offer of sale is to begin, and the name of the real estate agent, if any. No time period set forth in the schedule contained in Section 14-10 shall begin to run until the statement has been filed. Within five (5) days of receipt of a statement, copies of the statement shall be delivered to the members of the City Council, members of the Planning Commission, and the City Manager.

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14-11-2 Question as to price. The fact that an offer to sell a building or structure and the land pertaining thereto is at a price reasonably related to fair market value may be questioned; provided, there is filed with the Zoning Administrator, on or before fifteen (15) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within the Historic Winchester District. Upon receipt of such a petition, three (3) disinterested real estate appraisers, familiar with property values in the Historic Winchester District, shall be appointed: one (1) by the review board, one (1) by the property owner, and one (1) by the review board and the property owner. The cost of the appraisals shall be divided equally between the property owner and the City. Said appraisers shall forthwith make an appraisal of the building or structure and the land pertaining thereto in question and forthwith file a written report with the Zoning Administrator whether or not in their opinion the offer to sell the building or structure and the land pertaining thereto is at a price reasonably related to its fair market value. In the event the opinion is to the effect that the offer to sell the building or structure and the land pertaining thereto is not at a price reasonably related to its fair market value, the offer to sell shall be void and of no force and effect; and the owner, if he wishes to take advantage of the additional or concurrent right provided for in Section 14-10, must file the notice provided for in Subsection 14-11-1 above and proceed with Section 14-10. Notwithstanding an adverse opinion by the appraisers, if an owner has entered into a binding bona fide contract as provided for in Section 14-10 prior to the date the appraisers have filed their report with the Zoning Administrator, the price shall be deemed reasonably related to fair market value.

SECTION 14-12. YARD VARIANCES.

Due to peculiar conditions of design and construction in historic neighborhoods where buildings and structures are often built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by granting variances to normal yard requirements. Where it is deemed that such a variance will not adversely affect neighboring properties, the board of review may recommend to the Board of Zoning Appeals that such variance to standard yard requirements be made.

SECTION 14-13. PERMITTED USES.

Nothing in this Article shall be construed to prevent any use of any land, building, or structure in the district permitted by the regulations prescribed in this ordinance for the district in which such land, building, or structure is otherwise located.

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SECTION 14-14. EXCLUSIONS.

- 14-14-1 Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure described in this Article so long as there is no change in the form or materials.
- 14-14-2 Nothing in this Article shall prevent the construction, reconstruction, alteration, restoration or demolition, without approval of the review board, of any building or structure which is in such unsafe condition that the building or structure would endanger life or property as determined in accordance with the provisions of the Uniform Statewide Building Code.
- 14-14-3 Nothing in this Article shall prevent the construction, reconstruction, alteration, restoration or demolition, without approval of the review board, of any building or structure which has otherwise received approval through separate application for Historic Preservation Certification to the Virginia Department of Historic Resources or the United States Department of the Interior. Exclusion is limited to those specific changes as identified and approved in such application, a copy of which shall be provided to the Administrator. (1/13/09, Case TA-08-08, Ord. No. 2009-02)

SECTION 14-15 DEFINING HISTORIC BUILDINGS AND AREAS AND CRITERIA FOR DESIGNATION OF HISTORIC DISTRICTS.

It shall be the continuing duty of the review board to investigate and delineate buildings, structures, places, and areas in the City having historic interest or value which should be preserved and protected in the execution and attainment of the purposes and objectives declared in this Article, and to report thereon from time to time to the City Council for consideration as to whether they or any of them shall be set apart for preservation and protection under the provisions of this Article.

- 14-15-1 In addition to the provisions of Article 22 of this Ordinance, The Board of Architectural Review may initiate, by adoption of a resolution, an amendment to the Ordinance to rezone property to the Historic Winchester District (HW). Prior to acting on a resolution, the Board of Architectural Review shall hold a public hearing. Such public hearing shall be advertised in a newspaper in the city once a week for two consecutive weeks.

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14-15-2 One or more Historic Districts may be designated provided that such districts conform to the definition of Historic Areas set forth in Section 15.2-2201 of the Code of Virginia (1950), as amended, and that any such Districts meets one or more of the following criteria.

- a. It is associated with a particular person, event, activity, or institution of local, state or national historical significance.
- b. It contains buildings whose exterior design or features exemplify the distinctive design characteristics of one or more historic periods, styles, materials or construction methods, or exemplify the work of an acknowledged master or masters.
- c. It contains qualities and/or artifacts which significantly contribute to present-day knowledge and understanding of lifestyles, activities, events or experiences of a previous era.
- d. Its unique location or physical characteristics represents an established and familiar pattern or unique visual feature of the City.

SECTION 14-16. HISTORIC MARKERS AND CRITERIA FOR AWARD OF HISTORIC MARKERS.

The review board shall design an appropriate marker, bearing the seal of the City and the words "Historic Building" and shall invite each owner of a building of historical significance to display the marker thereon. Buildings receiving such awards should have architectural and/or historic interest to justify consideration. The exterior of the building should not have been substantially altered or reconstructed so as to no longer constitute an early building.

14-16-2 The Board will consider all requests for plaques using the following standards:

- a. Classification standards of building: Architectural significance, date of construction, architectural style, method of construction.
- b. Current building inventory characteristics: Appropriateness of restoration, grounds, contribution to streetscape.
- c. Existing condition of building: present condition, appropriateness of past alterations.
- d. Historic/Architectural presence in the community: present condition, appropriateness of past alterations.

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14-16-3 Application Procedure. Application for a Historic Building Plaque must be made to the Zoning Administrator. Plaques will be awarded annually during National Preservation Week in May. A fee as per Section 23-8 will be charged for each plaque awarded.

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