

Chapter B - Zoning Ordinance

Article IV - Historic/Historic Overlay Districts

ATTACHMENT 4

4-1 CREATION

Pursuant to the authority conferred by the North Carolina General Statutes (NCGS) 160A - 400.1 through 400.14, the Forsyth County Board of Commissioners, the City Council of the City of Winston-Salem the Board of Aldermen of the Town of Kernersville, and the Village Council of Clemmons by concurrent ordinances, do hereby create and establish a joint commission to be known as the Forsyth County Historic Resources Commission (hereinafter the Commission). In establishing the Commission and making appointments to it, the Elected Bodies may seek the advice of State or local historical agencies, societies, or organizations. For purposes of this Article IV, County/City/Town/Village shall refer, respectively, to Forsyth County and the City of Winston-Salem, the Town of Kernersville, and the Village of Clemmons, or jointly, as the context requires.

4-2 PURPOSE

The historic heritage of Forsyth County is among its most valued and important assets. It is the intent of these regulations:

- (A) To safeguard the heritage of Forsyth County by preserving those areas and individual properties therein which reflect elements of its cultural, social, economic, political, or architectural history;
- (B) To stabilize and improve property values of Local Historic Landmarks and within the H and HO Districts;
- (C) To foster civic beauty; and,
- (D) To promote the use and conservation of Forsyth County's historic resources for the education, pleasure, and enrichment of residents of Forsyth County and of the State and nation as a whole.

4-3 FORSYTH COUNTY HISTORIC RESOURCES COMMISSION

The Commission is designated as the historic preservation advisory and quasi-judicial body for Forsyth County. The Commission shall consist of twelve (12) members appointed as follows: five (5) by the Forsyth County Board of Commissioners and five (5) by the Winston-Salem City Council; one (1) by the Kernersville Board of Alderman; and one (1) by the Cleminons Village Council. Commission members shall serve without compensation.

4-3.1 MEMBERSHIP AND ORGANIZATION

(A) Membership

The Commission shall consist of twelve (12) members appointed as follows: five (5) by the Forsyth County Board of Commissioners and five (5) by the Winston-Salem City Council; one (1) by the Kernersville Board of Aldermen; and one (1) by the Clemmons Village Council. In making appointments to the Commission, each Elected Body shall make a reasonable effort to balance the representation of urban and rural interests. All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within the jurisdiction of Forsyth County, and the City of Winston-Salem, the Town of Kernersville, or the Village of Clemmons.

(B) Qualifications

All members of the Commission shall reside within Forsyth County. All members of the Commission shall have a demonstrated interest or competence in, or knowledge of, historic preservation; and a majority of members shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. The Commission shall consist of six (6) at-large members and at least one (1) each of the following categories:

- (1) Architect licensed in the State of North Carolina;
- (2) Architectural historian or historic preservationist;
- (3) Archaeologist, landscape architect/designer, planner, surveyor, or arborist;
- (4) Historic (H) District property owner;
- (5) Historic Overlay (HO) District property owner; or,
- (6) Local Historic Landmark (LHL) property owner.

(C) Appointment of Categorical Members

The six (6) categorical members shall be appointed as follows: The Forsyth County Board of Commissioners shall appoint one (1) architect licensed in the State of North Carolina, one (1) archaeologist, landscape architect/designer, planner, surveyor, or arborist, and one (1) Local Historic Landmark (LHL) property owner; and the Winston-Salem City Council shall appoint one (1) architectural historian or historic preservationist, one (1) Historic (H) District property owner, and one (1) Historic Overlay (HO) District property owner.

(D) Term

The length of the term of each initial appointment shall be as follows:

Forsyth County, At-Large #1	1 year
Forsyth County, At-Large #2	3 years
Architect Licensed in North Carolina	3 years
Archaeologist, Landscape Architect/Designer, Planner, Surveyor, or Arborist	1 year
Local Historic Landmark (LHL) Property Owner	2 years
Winston-Salem, At-Large #1	1 year
Winston-Salem, At-Large #2	3 years
Architectural Historian or Historic Preservationist	4 years
Historic (H) District Property Owner	2 years
Historic Overlay (HO) District Property Owner	2 years
Kernersville, At-Large	4 years
Clemmons, At-Large.....	4 years

In making initial appointments to the Commission, each Elected Body shall give special preference to the outgoing members of the Forsyth County Joint Historic Properties Commission and the Winston-Salem Historic District Commission in order to provide continuity to the work of the Commission.

The regular term of office for Commission members shall be four (4) years. Unless a jurisdiction's code of ordinances provides otherwise, a member may be reappointed for a second consecutive term, but, thereafter, a member shall be ineligible for reappointment until one (1) year has elapsed from the member's termination of service. Members shall continue in office until a successor has been appointed and qualified.

(E) Members for Newly Established Historic (H) or Historic Overlay (HO) Districts

Notwithstanding any provisions of Section B.4-3.1 to the contrary, if a new Historic (H) or Historic Overlay (HO) district is established by an Elected Body, the membership of the Commission shall be increased by one (1) for each such new district for a period of two (2) years. Such new member shall be appointed for a term of two (2) years by the Elected Body in whose jurisdiction such new district has been established and shall be an owner of real property located within such new district.

(F) Compensation

Members shall serve without compensation.

(G) Meetings

The Commission shall establish a meeting time, and shall meet at least monthly, unless there is not sufficient business to warrant a meeting. All meetings of the Commission shall be open to the public and subject to the North Carolina Open Meetings Law.

(H) Rules of Procedure

The Commission shall adopt and publish Rules of Procedure for the conduct of its business.

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(I) Annual Report

An annual report shall be prepared and submitted by December of each year to the Elected Bodies. Such report shall include a comprehensive and detailed review of the activities and actions of the Commission, as well as any budget requests and/or recommendations.

(J) Meeting Minutes

The Commission shall keep permanent minutes of its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations, and other actions. The minutes of the Commission shall be a public record.

4-3.2 COMMISSION POWERS

(A) General Responsibilities of the Historic Resources Commission

The Commission shall act to promote, enhance, and preserve the character and heritage of Forsyth County.

(B) Specific Authority and Powers

The Commission shall have all powers of an historic preservation commission as provided in Part 3C of Article 19 of Chapter 160A of the NCGS including the following duties and responsibilities:

- (1) To undertake inventories of properties of historical, archaeological, architectural, and/or cultural significance;
- (2) To recommend to the Elected Bodies that individual properties be designated as Local Historic Landmarks (LHL) and/or that areas be designated as Historic (H) or Historic Overlay (HO) Districts;
- (3) To recommend that the Elected Bodies revoke historic landmark and/or district designations, in whole or part, for cause;
- (4) To review and act on proposals for exterior alteration, relocation, new construction, or demolition of, or within, designated historic landmarks or districts in accordance with 160A-400.9;
- (5) To review and act on proposals for alteration of interior features of designated historic landmarks if such features are specified in the designation ordinance;
- (6) To delay the relocation, demolition, or destruction of a designated landmark, or a building, structure, or site located within a designated historic district for not more than three hundred sixty-five (365) calendar days from the date of approval.
- (7) To negotiate with property owners who have received a Certificate of Appropriateness to demolish or relocate designated historic landmarks and/or properties within designated historic districts, in an effort to find a means of preserving the properties;
- (8) To delay demolition or destruction of buildings, sites, or structures proposed for historic landmark designation or located in areas proposed for historic district designation, for which the Commission has voted to recommend designation, for

up to one hundred eighty (180) days, or until the Elected Bodies take final action on the recommendation, whichever occurs first;

- (9) To report violations of the law to the appropriate Inspections Division of the County/City/Town/Village responsible for enforcement, and/or institute action to prevent, restrain, correct, or abate violations of this Article;
- (10) To organize itself and conduct its business by whatever legal means it deems proper;
- (11) To appoint advisory bodies or committees, as appropriate;
- (12) To receive and spend funds appropriated by the Elected Bodies for operation and performance of the Commission's duties;
- (13) To accept funds granted to the Commission from private or nonprofit organizations or individuals;
- (14) To contract for services or funds from the State of North Carolina and agencies or departments of the United States government;
- (15) To obtain the services of private consultants in order to perform the Commission's official duties;
- (16) To negotiate with property owners for acquisition or protection of historic properties;
- (17) To acquire under Commission ownership, manage, and dispose of properties designated as historic landmarks or within designated historic districts, pursuant to NCGS 160A-400.8(3);
- (18) To enter private lands to examine or survey them, at reasonable times and with the consent of the owner or occupant, in order to perform the Commission's official duties;
- (19) To give advice to property owners concerning treatment of the historic and related visual characteristics of their properties;
- (20) To conduct educational programs on historic resources within Forsyth County;
- (21) To publish information about, or otherwise inform the public and/or owners of designated historic landmarks or property within designated historic districts of any matters pertinent to the Commission's duties, organization, procedures, responsibilities, functions, or requirements;
- (22) To undertake programs of information, research, or analysis relating to any matters under the Commission's purview;
- (23) To recommend to the Elected Bodies and the State of North Carolina buildings, structures, sites, objects, or districts worthy of national, State, or local recognition;

- (24) To cooperate with State and federal governments on matters related to historic preservation;
- (25) To cooperate with local governmental boards, commissions, or agencies or other governmental units; and, to offer or request assistance, aid, guidance, or advice concerning matters under its purview or of mutual interest;
- (26) To prepare and recommend adoption of a preservation element as part of a comprehensive plan for the County/City/Town/Village;
- (27) To propose to the Elected Bodies changes to this or any related ordinance, and to propose new ordinances or laws relating to designated historic landmarks or districts, or relating to the total program for the development of the historic resources of Forsyth County; and,
- (28) To exercise such other powers and perform such other duties as are required elsewhere by this Ordinance, State law, or by the Elected Bodies.

4-4 LOCAL HISTORIC LANDMARK (LHL) DESIGNATION

4-4.1 DESIGNATION APPLICATION

A property owner, or other interested party, may request that a property be designated as a Local Historic Landmark (LHL) by application to the Commission. Requests for designation shall be made on forms provided by the Commission. An application fee may be required by the Commission for processing of the application.

4-4.2 DESIGNATION CRITERIA

The Commission shall adopt local criteria by which properties may be considered for designation as historic landmarks.

4-4.3 DESIGNATION PROCEDURES

No ordinance designating an historic landmark nor any amendment thereto may be adopted, nor may any designated historic landmark be accepted or acquired by the Commission until the following procedural steps have been taken:

- (A) The Commission shall adopt Rules of Procedure.
- (B) The Commission shall prepare and adopt principles and design review guidelines for altering, restoring, moving, or demolishing properties designated as historic landmarks.
- (C) In accordance with NCGS 160A-400.6(2), the Commission shall make or cause to be made an investigation and report on the archaeological, historical, architectural, educational, or cultural significance of each building, structure, site, area, or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
- (D) In accordance with NCGS 160A-400.6(3), the North Carolina Department of Cultural Resources shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the Department of Cultural Resources does not submit its comments within thirty (30) days following receipt by the Department of the investigation and report, the Commission and the Elected Body are relieved of any responsibility to consider such comments.
- (E) The Commission shall hold a public hearing on the proposed designation ordinance. It shall recommend to the Elected Body, as appropriate, approval of designation or denial of designation of the proposed historic landmark.
- (F) The Elected Body, as appropriate, shall hold a public hearing on the proposed designation ordinance. Following the public hearing, the Elected Body may adopt the designation ordinance as proposed, adopt the designation ordinance with any amendments it deems necessary, or reject the proposal.

- (G) Upon adoption of the designation ordinance, the following provisions shall apply:
 - (1) The owners and occupants of each designated historic landmark shall be given written notification of such designation by Commission staff, insofar as reasonable diligence permits.
 - (2) One (1) copy of the ordinance and each amendment thereto shall be filed by the Commission staff in the office of the Register of Deeds of Forsyth County. Each historic landmark designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Register of Deeds office.
 - (3) One (1) copy of the ordinance and each amendment thereto shall be given to the appropriate Inspections Division.
 - (4) One (1) copy of the ordinance and each amendment thereto shall be kept on file in the office of the appropriate County/City/Town/Village Clerk, and made available for public inspection at any reasonable time.
 - (5) The fact that a building, structure, site, area or object has been designated as an historic landmark shall be clearly indicated on all tax maps maintained by Forsyth County for such period as the designation remains in effect.
 - (6) The Commission shall give notice of the adoption of a designation ordinance and any amendment thereof to the Forsyth County Tax Supervisor. The designation and any recorded restriction upon the property limiting its use for preservation purposes shall be considered by the Tax Supervisor in appraising the property for tax purposes.

4-4.4 LHL REGULATIONS

(A) Permitted Uses

All uses permitted in the existing residential and nonresidential zoning district, whether by right or as a special use, shall be pennitted for each LHL according to the procedures established for such uses.

(B) Dimensional Requirements

- (1) **Requirements.** All buildings and structures designated as a LHL shall comply with the dimensional requirements established in the design review guidelines adopted for each separate LHL. Design review guidelines are addressed in Section B.4-7.5
- (2) **Exceptions to Dimensional Requirements Due to Authentic Restoration of Reconstruction.** In the event that the Commission finds that an application for a building permit covers activity constituting an authentic restoration or reconstruction in the same location as the original location and in the original conformation of the structure of historic and/or architectural significance to LHL, said building or structure may be restored or reconstructed without compliance with dimensional requirements of Section B.3-1.

Any items restored, reconstructed or maintained over, on, or within public sidewalks, public alley areas, or other such public way shall be the responsibility of the owner. The owner's restoration, reconstruction, or maintenance of any such item shall constitute the owner's agreement to protect and hold the County/City/Town/Village blameless against any and all liability, cost, damage, or expense suffered or sustained by the County/City/Town/Village as a result of or growing out of the restoration, reconstruction, or maintenance. Such items so approved, may be lawfully restored, reconstructed, or maintained. Any such item projecting over the street or alley shall be, at its lowest point, twelve (12) feet above the travel way unless located in the H District. If located in an H District see Section B.4-6.1(C)(2). The provisions of this subsection shall prevail over inconsistent or conflicting provisions of this Ordinance.

(C) Nonconforming Structures and Improvements

Any LHL existing prior to December 31, 1994 shall be exempt from the current dimensional requirements in Section B.3-1 and Section B.3-3 which includes off street parking requirements. Such exemptions shall be based upon the structure's use at that time, which includes the number of permitted parking spaces for the site and use. In no instance shall the structure's use be allowed to convert to a more intense use as per the parking requirements of Section B.3-3 without first meeting the additional parking needs of the new use.

4-5 HISTORIC DISTRICTS -- ESTABLISHMENT AND AMENDMENT

The following Historic Districts are hereby established.

4-5.1 H HISTORIC DISTRICT

(A) The H District is established as a separate use district. The purpose of the H District is to:

- (1)** Safeguard the heritage of the community by preserving those areas that embody important elements of the community's culture, history, architectural history, or archaeology; and,
- (2)** Promote the use and conservation of such areas for the education, pleasure, and enrichment of the residents of Forsyth County and the State.

(B) The boundaries of the H Districts are shown on the Official Zoning Maps.

4-5.2 HO HISTORIC OVERLAY DISTRICT

(A) The HO District is established as a district which overlays existing zoning districts in designated historic areas. The purpose of the HO District is to:

- (1)** Safeguard the heritage of the community by preserving those areas that embody important elements of the community's culture, history, architectural history, or archaeology; and,

- (2) Promote the use and conservation of such areas for the education, pleasure, and enrichment of the residents of Forsyth County and the State.

(B) The boundaries of the HO Districts are shown on the Official Zoning Maps.



4-5.3 ESTABLISHMENT AND AMENDMENT PROCEDURE

(A) **Establishment**

The Elected Bodies may designate one or more geographic areas as an H or HO District. The following shall be the procedure for establishing H or HO Districts:

- (1) Requests for establishment of H or HO Districts may be made in any one of the following methods:
 - (a) By the Elected Bodies of Forsyth County;
 - (b) By property owners within an affected area;
 - (c) By a neighborhood group, association, or coalition;
 - (d) At the initiative of the Commission.
- (2) All requests shall first be presented to the Commission. The Commission shall conduct a preliminary consideration of the request to determine the eligibility of the general area proposed to become an H or HO District.
- (3) If the Commission determines by vote that said general area is ineligible to become an H or HO District, the Commission shall report such determination to the appropriate Elected Body. The Elected Body may accept the determination of the Commission, or it may direct the Commission to proceed in accordance with this Article as if the Commission's determination had been that said general area was eligible to become an H or HO District.
- (4) If the Commission determines by vote that said general area is eligible to become an H or HO District, it shall notify property owners within said general area, through first class mail, that establishment of a designated historic district has been proposed and that the formation of a task force to prepare a detailed study for such establishment will be considered by the Commission at a specified date and time.
- (5) The Commission may appoint a task force to develop design review guidelines and boundaries for said general area. The task force shall be composed primarily of individuals representing various interests in said general area.
- (6) After developing design review guidelines and boundaries, the task force shall report to the Commission.
- (7) The Commission shall review the design review guidelines and boundaries and shall then vote on whether to accept the task force report.

- (8) Once the task force report has been accepted, the Commission shall schedule at least two (2) public informational meetings about the proposed district. Property owners within the proposed boundary area shall be notified of the public informational meetings through first class mail and through notice in a newspaper having general circulation in the area.
- (9) The Commission shall hold the public informational meetings and receive questions and comments.
- (10) The Commission shall consider revisions to the proposed design review guidelines and boundaries, as necessary, and prepare final proposed design review guidelines and boundaries.
- (11) The Commission shall prepare and submit a report to the Director of Planning and the North Carolina Department of Cultural Resources. The report shall include, but not be limited to, the following information:
- (a) A boundary description of the area;
 - (b) A map at a scale of not less than one inch represents two hundred (200) feet (1" equals 200'), showing the boundaries of the proposed area; and,
 - (c) A description of the significance of the area, including its buildings, structures, features, sites, or surroundings.
- (12) The North Carolina Department of Cultural Resources shall submit an analysis of, and recommendations concerning, the report described in Section B.4-5.3(A)(11) to the Elected Body. Failure of the North Carolina Department of Cultural Resources to submit written analysis and recommendations to the Elected Body within thirty (30) calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the County/City/Town/Village of any responsibility for awaiting such analysis, and the Elected Body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.
- (13) Once all the previous procedural steps have been met, an application for rezoning the said general area to an H or HO District shall be accepted. The County/City/Town/Village shall proceed in the same manner as would otherwise be required for a change in the Zoning Ordinance and the request shall be processed according to the procedures set forth in Section B.6-2. In addition, the design review guidelines for the proposed district shall be made available to the Elected Body for its review and comment.
- (14) Sections B.4-5.3(A)(1)-(9) shall not apply to a rezoning petition for a proposed H or HO District for which a task force has been previously appointed to study said general area and has submitted a report to the Commission.

(B) Amendment

The following shall be required to amend, supplement, change, modify, or repeal any district boundaries of the H or HO Districts.

- (1) The Commission shall prepare and submit a report to the Director of Planning and the North Carolina Department of Cultural Resources. The report shall include, but not be limited to, the following information:
 - (a) A boundary description of the area;
 - (b) A map at a scale of not less than one inch represents two hundred (200) feet (1" equals 200'), showing the boundaries of the proposed area; and,
 - (c) A description of the significance of the area, including its buildings, structures, features, sites, or surroundings.

- (2) The North Carolina Department of Cultural Resources shall include an analysis of and recommendations concerning the report described in Section 4-5.3(B)(1) to the Elected Body. Failure of the North Carolina Department of Cultural Resources to submit written analysis and recommendations to the Elected Body within thirty (30) calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the County/City/Town/Village of any responsibility for awaiting such analysis, and the Elected Body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

- (3) Once all the previous procedural steps have been met, an application to amend, supplement, change, modify, or repeal any district boundaries of the H or HO Districts shall be accepted. The County/City/Town/Village shall proceed in the same manner as would otherwise be required for a change in the Zoning Ordinance and the request shall be processed according to the procedures set forth in Section B.6-2.

4-6 H AND HO DISTRICT USES AND DIMENSIONAL REQUIREMENTS

4-6.1 H DISTRICT REGULATIONS

(A) Permitted Uses

In H Districts, the following principal and accessory uses are permitted:

- (1) Any use found by the Commission to have existed on the particular property in or prior to 1856 in the Old Salem Historic District, and in or prior to 1832 in the Bethabara Historic District;
- (2) Any single family residential use which is allowed without a special use permit from the Board of Adjustment;
- (3) A religious institution, college or university, or operation of an historic preservation organization with purposes related to the district; and,
- (4) Uses normally accessory to the principal uses permitted in above.

- (B) **Nonconforming Uses**
Prior to its acting upon an application for a special use permit pursuant to Section B.6-2 of the Zoning Ordinance to expand or convert a nonconforming use in the H Districts, the Board of Adjustment shall first receive the recommendation of the Commission with respect to such application.
- (C) **Dimensional Requirements for New Construction**
- (1) **Requirements.** All buildings and structures in the H Districts shall comply with the following yard and height provisions:
- (a) **Front Yard.** No building or part of a building, other than steps, open porches, overhanging eaves, and cornices, shall extend nearer to a front street line than the average distance of the setbacks of the principal buildings on the same block and on the same side of the street within one hundred (100) feet from the zoning lot in either direction. Provided, however, that in no case shall the front setback be less than eight (8) feet, and no building shall be required to set back more than forty (40) feet from the front street line.
 - (b) **Side Yards.** There shall be a side yard of not less than seven (7) feet on each side of the principal building. This restriction shall not apply to accessory buildings.
 - (c) **Rear Yard.** There shall be a rear yard with a depth of not less than thirty-five (35) feet. When a building extends through from street to street, the front yard restrictions shall be observed on both streets.
 - (d) **Height.** No building shall exceed a height of thirty-five (35) feet.
- (2) **Exceptions to Dimensional Requirements Due to Authentic Restoration and Reconstruction.** In the event that the Commission finds that an application for a building permit covers activity constituting an authentic restoration or reconstruction of a building or structure that existed at the same location in or prior to 1856 in the Old Salem Historic District or in or prior to 1832 in the Bethabara Historic District, said building or structure may be restored or reconstructed without compliance with dimensional requirements in Section B.3-1.

Any items restored, reconstructed, or maintained over, on, or within public sidewalks, public alley areas, or other such public way shall be the responsibility of the owner. The owner's restoration, reconstruction, or maintenance of any such item shall constitute the owner's agreement to protect and hold the County/City/Town/Village blameless against any and all liability, cost, damage, or expense suffered or sustained by the County/City/Town/Village as a result of or growing out of the restoration, reconstruction, or maintenance. Such items, so approved, may be lawfully restored, reconstructed, or maintained. Any such item projecting over the street or alley shall be, at its lowest point, seven (7) feet above the travel way. The provisions of this subsection shall prevail over inconsistent or conflicting provisions of this Ordinance.

(D) Nonconforming Structures and Improvements

In the H Districts, any habitable structure existing prior to December 31, 1994 shall be exempt from the current dimensional requirements in Section B.3-1 and Section B.3-3, which includes off-street parking requirements. Such exemptions shall be based upon the structure's use as of December 31, 1994, which includes the number of required parking spaces for the site and use. In no instance shall the structure's use be allowed to convert to a more intense use as per the parking requirements of Section B.3-3 without first meeting the additional parking needs of the new use.

4-6.2 HO DISTRICT REGULATIONS

(A) Permitted Uses

The HO District is established as a district which overlays existing residential and nonresidential zoning districts in certain areas with historic resources. All uses permitted in these residential and nonresidential districts, whether by right or as a special use, shall be permitted in the HO District according to the procedures established for such uses.

(B) Dimensional Requirements

(1) Requirements. All buildings and structures in the HO Districts shall comply with the dimensional requirements established in the design review guidelines adopted for each separate HO District. Design review guidelines are addressed in Section B.4-7.5.

(2) Exceptions to Dimensional Requirements Due to Authentic Restoration or Reconstruction. In the event that the Commission finds that an application for a building permit covers activity constituting an authentic restoration or reconstruction in the same location as the original location and in the original conformation of the structure of historic and/or architectural significance to the HO District, said building or structure may be restored or reconstructed without compliance with dimensional requirements in Section B.3-1.

Any items restored, reconstructed, or maintained over, on, or within public sidewalks, public alley areas, or other such public way shall be the responsibility of the owner. The owner's restoration, reconstruction, or maintenance of any such item shall constitute the owner's agreement to protect and hold the County/City/Town/Village blameless against any and all liability, cost, damage, or expense suffered or sustained by the County/City/Town/Village as a result of or growing out of the restoration, reconstruction, or maintenance. Such items, so approved, may be lawfully restored, reconstructed, or maintained. Any such item projecting over the street or alley shall be, at its lowest point, twelve (12) feet above the travel way. The provisions of this subsection shall prevail over inconsistent or conflicting provisions of this Ordinance.

(C) Nonconforming Structures and Improvements

In the HO districts, any habitable structure existing prior to December 31, 1994 shall be exempt from the current dimensional requirements in Section B.3-1 and Section B.3-3, which includes off-street parking requirements. Such exemptions shall be based upon the structure's use as of December 31, 1994, which includes the number of required parking spaces for the site and use. In no instance shall the structure's use be allowed to convert

to a more intense use as per the parking requirements of Section B.3-3 without first meeting the additional parking needs of the new use.

(D) Parking Variance

Where the Commission, in considering an application for a certificate of appropriateness, finds that the number of off-street parking spaces required by this Ordinance for a building or structure within an H or HO District or a designated Local Historic Landmark would render the building incongruous with the historic aspects of the designated district, it may recommend to the Board of Adjustment a variance, in part or in whole, of the off-street parking requirements. The Board of Adjustment may authorize a lesser number of off-street parking spaces, provided:

- (1) The Board of Adjustment finds that the lesser number of off-street parking spaces will not create problems due to increased on-street parking; and,
- (2) The Board of Adjustment finds that the lesser number of off-street parking spaces will not constitute a threat to the public safety.

4-7 CERTIFICATE OF APPROPRIATENESS

4-7.1 REQUIREMENTS FOR CERTIFICATES OF APPROPRIATENESS FOR LOCAL HISTORIC LANDMARKS (LHL)

From and after the designation of a Local Historic Landmark (LHL), no designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, or other appurtenant features); nor any above-ground utility structure; nor any type of outdoor advertising sign; nor important landscape and natural features may be erected, altered, restored, moved, or demolished on such designated historic landmark until after the property owner or his/her designated agent has determined that the project is in compliance with the Design Review Guidelines either through consultation with Commission staff or review of the Design Review Guidelines.

The County/City/Town/Village shall require a Certificate of Appropriateness to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which Certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Ordinance.

If a Certificate of Appropriateness is required, then the applicant shall be provided with an application form and instructions. Certificates of Appropriateness shall be issued or denied in accordance with Section B.4-7.5.

A Certificate of Appropriateness shall be issued prior to any application for a building permit being made. Any building permit or other such permit not issued in conformity with this section shall be invalid. A Certificate of Appropriateness shall be required for all activities specified in this section, whether a building permit is otherwise required or not.

For the purposes of the section, the term "designated portion" shall mean any portion of a designated historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements, and landscaping.

