

Historic District Review Board

Joint Work Session with Planning Commission

Agenda


Cape Charles Civic Center – 500 Tazewell Avenue

January 3, 2018

6:00 P.M.

1. Call to Order; Roll Call
2. Invocation and Pledge of Allegiance
3. Consent Agenda
 - A. Approval of Agenda Format.
4. Old Business
 - a. Joint work session with Historic District Review Board
 - Proposed draft text amendment to zoning ordinance Article VIII
 - Vinyl siding per zoning ordinance Article III, Section 3.2.1.6 and Historic District Design Guidelines, sections Planning New Construction or Additions (page 23) and Synthetic Siding (page 57)
5. Adjourn

Historic District Review Board Staff Report

From: Larry DiRe 
Date: January 3, 2018
Item: 4a – Joint work session with Historic District Review Board: Proposed draft text amendment to zoning ordinance Article VIII; vinyl siding

Attachments: Article VIII Historic District Overlay ordinance; Assessing Economic Hardship Claims article (*The Alliance Review*, January-February 2001); vinyl siding zoning ordinance Article III, Section 3.2.1.6 and Historic District Guidelines (pages 23 and 57).

Item specifics

The Town's Historic District Overlay ordinance language is a product of duplication from several other known municipal sources, and potentially an unknown master document. While some of this language is generic enough to suffice and serve the Town, other language is ambiguous, subjective, and imprecise to make the stated regulations difficult to enforce, subject to legal challenge, or even unknowable to property owners. At their November 21 regular meeting the Historic District Review Board reviewed Article VIII, and similar documents from several other jurisdictions, to consider the duplicate language and potential consequences of that language and that process. <http://capecharles.org/files/documents/HistoricDistrictReviewBoardAgenda11-21-17091032110917AM1701.pdf>

Following the November 7 Planning Commission regular meeting, staff revised the current Article VIII language with proposed draft language meant to eliminate subjective, arbitrary, ambiguous, and imprecise language. Several sections are of particular note including language on hardship cases including use of public funds, appeals, demolition, and delegation of authority to\from the Historic District Review Board.

Staff developed the list of discussion points below. There are other matters deserving of discussion as well, and the process to amend the ordinance provides opportunity for public review and input. Several sections are of particular note. These are the sections regulating economic hardship cases (under the maintenance and repair Section 8.23), and appeals of Historic District Review Board decisions.

Language in Section 8.23.C speaks about "proper" hardship case, and states that public funds would be available to pay for maintenance and repairs under this section. As to the latter claim, no such funds are designated and neither is there a town program and/or process to award such funds. Identical language is found in Article IX, Section 9.23.C of the zoning ordinance and, again, no such funds are designated nor is there a town program and/or process to award such funds. Since this language is directly and wholly copied from the ordinances of the towns of Smithfield and Scottsville (that staff has been able to document so there may be more), perhaps the expectation was those towns would provide the stated funds.

As to the "proper" hardship case designation, once again identical language from other Virginia municipalities, the word is ambiguous and lacks specifics about content and process. This ambiguity has consequences, as is stated in the 2001 document attached. Once again, this article appeared in a publication of general readership amongst preservationists (*The Alliance Review* published by the National Alliance of Preservation Commissions) and should have informed the Cape Charles ordinance language since it predated adoption of the town ordinance by at least nine months. As the article states, "In addressing hardship claims involving historic homes, commissions must be careful to be objective and consistent in their approach. Otherwise,

a commission may undermine the integrity of its preservation program and raise due process concerns as well. Ideally, grant money, tax relief, and other programs should be made available to historic homeowners who need financial assistance (page 17).” This speaks for itself, and so the process of cutting and pasting other jurisdictions laws is not only a lazy man’s approach to legislating and intellectually unsatisfactory to meet claims about the importance of the Cape Charles historic district, it also potentially subjects the district to legal challenge on due process at least.

As to the appeal process cited in Sections 8.34, 8.35, and 8.36 more specifics are presented. Procedural matters related to necessary documentation submitted and fees paid by “any party aggrieved and suffering cognizable harm” are proposed. It is expected that any party claiming to be aggrieved and suffering cognizable harm understand the settled law in Virginia established by the decision in the 1933 *Nicholas v. Lawrence* case. A good synopsis of the term “aggrieved” and its legal basis is found in the 1986 Virginia Supreme Court ruling in *Virginia Beach Beautification v. Board of Zoning*. <https://law.justia.com/cases/virginia/supreme-court/1986/850570-1.html>

Discussion

- Zoning ordinance Article VIII, the Historic District Overlay, was adopted by the Cape Charles Town Council on December 11, 2001.
- The Planning Commission discussed certain sections of Article VIII, and corresponding duplicate sections of Article IX, at their November 7, 2017 regular monthly meeting. Following discussion at that meeting staff committed to bringing a revised base document to the Planning Commission for review at their December 5, 2017 regular monthly meeting. The item was tabled at that meeting and the Commissioners decided the matter should be discussed with the Historic District Review Board at a January joint work session.
- All highlighted section headings indicate sections with proposed draft text amendments.
- A new preamble before Section 8.1 is recommended, and if requested staff will develop draft language for review at the February 6, 2018 meeting. This preamble language should ground the ordinance in the purpose and value of Cape Charles’ historic preservation goals, and reflect language found in the town comprehensive plan.
- All references to exterior paint colors are removed.
- All references to Code of Virginia sections were reviewed and are correct, or were corrected in the propose draft language.
- Please see attached article, dated January-February 2001, on establishing standards for hardship case review. This document was published at a time when it could have, and should have, informed Section 8.23.C. Instead the adopted ordinance merely duplicated language from other jurisdictions and so the ordinance provides neither documentation content nor due process standards for property owners experiencing financial hardship.
- Demolition is addressed in Article III, Section 3.6.F, and in Article IV, Section 4.10 (in duplicate language). Conflicting language related to demolition and demolition permitting is proposed for removal in the proposed draft text amendment.
- Specifics are written into the appeals process cited in Sections 8.34, 8.35, and 8.36.
- Subjective, arbitrary, ambiguous, and imprecise language is proposed for removal in the proposed draft text amendment.

Recommendation

After discussion provide direction to staff.

Town of Cape Charles
Article VIII
Historic District Overlay

Section 8.1 Purpose of the District

The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of ~~recognized~~ **registered** architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is **also** the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features ~~and their surroundings within a reasonable distance,~~ from destruction, damage, defacement, ~~and obvious incongruous development or uses of land~~ and to insure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the **historic district.** ~~general area in which they are located and with the historic buildings or structures within the district.~~

Section 8.2 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic District shall in general be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 8.3 Inventory of Landmarks and Contributing Properties Established

The Town of Cape Charles has established as part of this ordinance an inventory map covering the area included in the Historic District, based on the criteria set forth in this ordinance. This map herein after called the inventory map shall be as much a part of this ordinance as if fully described herein and shall be filed as a part of this ordinance by the Town Clerk of the Town of Cape Charles. Structures or sites designated as properties which contribute to the historic character of the Town shall be known as contributing properties for the purpose of this Ordinance. Structures or sites not designated as landmark or contributing properties shall be known as noncontributing properties. The inventory map may be amended from time to time in the same manner as the zoning district map.

Section 8.4. Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic District is created as a special district to be superimposed on other districts contained in these regulations and is to be so

designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic District.

Section 8.5 Permitted Uses

A building or land shall be used only for the following purposes, and except as provided herein, in each case subject to approval by the Zoning Administrator or Historic District Review Board as the case may require in accordance with the standards set forth in this Section and the standards and procedures for administration and enforcement set forth elsewhere in this Ordinance:

- A. any use or accessory use permitted in the zoning district in which the premises are situated and upon which the Historic District is superimposed.
- B. Any use permitted by conditional permit in the zoning district in which the premises are located subject to the procedures and standards of this Ordinance for approval of conditional permits and subject in all cases to report by the Historic District Review Board in accordance with the purposes and standards of the Historic District.
- C. Any variance permitted in the zoning district in which the premises are located, subject to the procedures and standards of this Ordinance for approval of special exceptions and variances and subject to report by the Historic District Review Board and specific findings of the Board of Zoning Appeals regarding the purposes and standards of the Historic District; provided, however, that if said variance is of such a minor nature as to be exempted from review by the Historic District Review Board by the terms of the regulations in the Historic District, then no such review or report shall be required.

Section 8.6 Historic District Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Historic District Review Board.

Section 8.7 Historic District Review Board; Membership

The members of **the** Historic District Review Board **shall** be appointed by the Town Council. The Membership shall consist of five citizens, at least three of whom shall be residents of the local historic district. ~~All former members of the Historic District Review Board are eligible to be alternates to present Historic District Review Board Members. An alternate, upon written request of a Historic District Review Board member, may serve as a member of the Historic District Review Board for the meeting(s) for which the alternate has been requested to serve. Alternates shall have all rights, responsibilities, and duties~~

~~as a present Historic District Review Board member during the meeting(s) during which the alternate(s) shall serve.~~

Section 8.8 Historic District Review Board; Terms

Upon approval by the Town Council, members shall be appointed for a term of five years. ~~except that original appointments shall be made for such terms that the term of one member shall expire each year.~~ Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 8.9 Historic District Review Board; Qualifications

Members of the Historic District Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town. ~~and when possible be a licensed architect or engineer, planning commission member, or licensed building contractor.~~

Section 8.10 Historic District Review Board; Organization

The Historic District Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman. ~~The Historic District Review Board may appoint a secretary and keep written minutes of its meetings.~~

Section 8.11 Historic District Review Board; Rules

The Board shall meet in regular session ~~at least once a month whenever an application has been filed requiring their consideration or in any case at least once per quarter~~ **on the third Tuesday of every month when an application has been filed requiring consideration.** Special meetings of the Board may be called by the chairman or a majority of the members after ~~twenty-four hours' written notice to each member served personally or left at his usual place of business or residence. Such notice shall be publicly posted and will state the time and place of a meeting and the purpose thereof.~~ **public notice as required.**

Section 8.12 Historic District Review Board; Meetings; Hearings

Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the **Commonwealth** State of Virginia.

Section 8.13 Historic District Review Board; Procedures

The Board shall establish procedures for all matters coming before it for review and all meetings shall be open to the public.

Section 8.14 Historic District Review Board; Powers and Duties

The Historic District Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the historic district: In addition, the Board shall have the following duties:

- A. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, and signs.
- B. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.
- C. To conduct studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.
- D. To propose additional historic districts or additions or deletions to districts.
- E. To adopt standards for review to supplement the standards set forth in this Ordinance.
- F. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.
- G. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 8.15 Summary of Administration Review Procedures

In general, it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic District. ~~which will be relatively simple with minimum delay for those actions which will have little if any permanent effect on the character of the historic district or on a significant structure but to require a more thorough review for actions which may have a substantial effect on the character of the district or on a significant structure.~~ To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Historic District Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Historic District Review Board. In all cases the decisions of the Zoning Administrator may be appealed to the Historic District Review Board, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final

decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 8.16 Certain Minor Actions Exempted from Review by the Historic District Review Board

Within the Historic District certain minor actions which are deemed not to have permanent effects upon the character of the historic district are exempted from review for architectural compatibility by the Historic District Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

- A. Repainting the structure. ~~in the same color or a very similar color or painting the structure with those colors specified in the design guidelines.~~ (Original painting of masonry surfaces is not exempted from review.)
- B. Replacement of missing or broken window panes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.
- C. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).
- D. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.
- E. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, small fountains, **and** ponds ~~and the like~~, which will not substantially affect the character of the property and its surroundings.
- F. ~~If consistent with the design guidelines, erection of any sign permitted in a residential district and any permitted non-illuminated flat or wall sign not exceeding three inches from a wall and not exceeding four square feet in area in a commercial or industrial district.~~
- G. ~~Construction of off-street loading areas and off-street parking areas. containing five spaces or less in a commercial or industrial district.~~
- H. ~~Creation of outside storage having a structure footprint of less than forty-one (41) square feet in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.~~

Section 8.17 Certain Actions Recommended in Design Guidelines Exempted from Review by the Historic District Review Board; Delegation of Authority

- A. ~~The Historic District Review Board, or The Zoning Administrator upon receiving a grant of any authority pursuant to this section from the Historic District Review~~

~~Board, shall have authority to order that work be stopped and that an appropriate application be filed for review by the Historic District Review Board in any case where in his opinion the action may have~~ **has** ~~an adverse effect on the Historic District. or may produce arresting and spectacular effects, violent contrasts of materials or colors, and intense and lurid colors or patterns, or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the historic district.~~

- B. The Historic District Review Board shall periodically review the design guidelines contained in this section.
- ~~C. The authority to perform any action under this section not granted to the Zoning Administrator shall remain with the Historic District Review Board.~~

Section 8.18 Approval of Historic District Review Board Required

- A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Historic District Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.
- B. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites in a historic district other than those specifically exempted herein:
 - 1. General examples of "non-substantial" alterations:
 - a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
 - b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.
 - 2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §8.16 of this article.
 - 3. General examples of work constituting "substantial alterations" include:
 - a. Construction of a new building at any location or a new accessory building on a landmark or contributing property or on a site within the Historic District.
 - b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters ~~substantially~~ its size, height, contour, or outline.

- c. Any change or alteration of the exterior architectural style of a structure, including removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, structural elements, stairways, terraces, and the like.
 - d. Any change or alteration of the ~~exterior color scheme of the~~ structure or any of its significant elements, including porches, openings, dormers, window sashes, awnings, canopies, chimneys, columns, stairways, terraces, or any other structural elements. This also applies to all structures on the site.
 - e. Addition to or removal of one or more stories or alteration of a roof line.
 - f. ~~Landscaping which involves major changes of grade or walls and fences more than three and one-half feet in height.~~
 - g. Any other major actions not specifically covered by the terms of this section but which would have ~~an a substantial~~ effect on the character of the historic district.
- C. In any case in which there might be some question as to whether a project may be exempted from review may constitute a minor action or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 8.19. Certificate of Appropriateness

Evidence of the approval required under the terms of the Historic District shall be a certificate of appropriateness issued by the Historic District Review Board, ~~or the Zoning Administrator as the case may require,~~ stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Historic District Review Board. ~~or the Administrator as the case may require.~~ The Historic District Review Board ~~or the Administrator in a case within his authority,~~ may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 8.20 Design Guidelines; Standards for Review

- A. ~~In order to achieve the purposes of the Historic District,~~ The Historic District Review Board shall be guided in its decisions by the design guidelines as authorized in subsection B of this section.

- B. It shall be the duty of the Historic District Review Board to prepare, and adopt, and amend specific design guidelines, illustrated as necessary, for buildings, structures, and sites in the historic district.
- C. The Historic District Review Board may adopt and amend a set of design guidelines after conducting at least one public hearing pursuant to Section 15.2-2204 Code of Virginia.

Section 8.21 Demolition; Alternate Procedure: Offer to Sell

A. ~~Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic District; the zoning administrator, the Historic District Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.~~

- ~~1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic District.~~
- ~~2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.~~
- ~~3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.~~
- ~~4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic District.~~

~~No subsequent application under Section 8.21A regarding the contributing structure may be made until more than one year after a final denial by the Town Council.~~

B. ~~In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:~~

- ~~1. The owner has applied to the Town Council for such right.~~
- ~~2. The owner has for the applicable period of time set forth in the time schedule in Section 8.21.B.4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the~~

~~requirements of this Section 8.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the “Property”), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.~~

- ~~3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 8.21.B.4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.~~
- ~~4. The time schedule for offers to sell shall be as follows:
 - a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
 - b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.
 - c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
 - d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
 - e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.
 - f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.~~
- ~~5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 8.21.B.2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period~~

~~set forth in the time schedule contained in Section 8.21.B.4. shall begin to run until the statement has been filed. Within five (5) days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Historic District Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.~~

- ~~6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.~~
- ~~7. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 8.21.B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 8.21.B.~~

Approved
2/9/2012

Section 8.22 Hazardous Buildings or Structures *[adopted by Council 2/9/12]*

Nothing in this Article shall prevent the razing or demolition of any building or structure without consideration of the Historic District Review Board which is in such an unsafe condition that it would endanger life or property, and protection from such condition is provided for in the Building Code and/or other applicable Town ordinances. However, such razing or demolition shall not be commenced without the following:

- A. Written approval of the Town Manager.
- B. Letter sealed by a Structural Engineer, licensed in Virginia stating the structural problems that render the building a hazard and not practicably rebuildable.

- C. Written concurrence by the Zoning Administrator and Code Official with the engineer's report.
- D. Notification of the Historic District Review Board and Town Council.
- E. Reconstruction plans for the property shall meet the requirements of the ordinance.

Section 8.23 Maintenance and Repair Required

- A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic District ~~jeopardize the future prosperity and well-being of the town by allowing historic assets to decay so as to~~ allow the structure, or historic attributes of the structure, to become a hazardous building or structure.
- B. All buildings and structures in the Historic District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Historic District Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
 - 1. The deterioration of exterior walls or other vertical supports, including broken doors and window panes;
 - 2. The deterioration of roofs or horizontal members;
 - 3. The deterioration of exterior chimneys;
 - 4. The deterioration or crumbling of exterior plaster, wood, or mortar;
 - 5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.
- C. After notice by the Historic District Review Board by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before the Historic District Review Board, the owner or person in charge of said structure shall have **ninety (90)** days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Historic District Review Board may recommend to the Town Council that the ~~Town~~ **Zoning** Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property. ~~or, in a proper hardship case as determined by the Town Council, paid by the Town from a fund established for such purposes.~~**(alternative language to establish a hardship case process)**

Section 8.24 File of Actions to be Maintained

In order to provide guidance for application of standards and guidelines, for the improvement of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the **Zoning** Administrator and the Historic District Review Board shall maintain a file containing a record of all applications brought before them, including drawings and photographs pertaining thereto and the decision of the **Zoning** Administrator or the Historic District Review Board in each case. The file documents shall remain the property of the Town but shall be held available for public review.

Section 8.25 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic District until the same has been approved by the Historic District Review Board as set forth in the following procedures.

Section 8.26 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the historic district, the Zoning Administrator shall:

- A. Forthwith forward to the Historic District Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Historic District Review Board to meet and render a decision;
- B. Maintain in his office a record of all such applications and of his handling and final disposition of the same;
- C. Require applicants to submit three (3) copies of material required to permit compliance with the foregoing.

Section 8.27 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Historic District Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, ~~proposed signs with appropriate detail as to character,~~ proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view ~~(with indications as to visual construction materials, design of doors and windows, colors, and relationships to adjoining structures),~~ and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in historic districts shall be accepted only from the record owner of the land involved in such proposal, or his agent.

Section 8.28 Other Approvals Required

In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by

the Historic District Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Historic District Review Board. Final action by the Historic District Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 8.29 Action by the Historic District Review Board; Issuance of Certificates of Appropriateness

The Historic District Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within **sixty (60)** days after the filing of an application accepted as complete. Failure of the Historic District Review Board to render such a decision within said **sixty (60)**-day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Historic District Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Historic District Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Historic District Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that he will make the suggested changes and does so in writing, the Historic District Review Board may issue the Certificate of Appropriateness.

Section 8.30 Expiration of Certificates of Appropriateness and Permits to Raze

Any certificate issued pursuant to this article ~~and any permit to raze a building issued pursuant to this article~~ shall expire of its own limitation twelve **(12)** months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve- month period; and further, any such certificate ~~and permit~~ shall also expire and become null and void if such authorized 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 ~~or permit~~ is stayed pursuant to this article shall be excluded from the computation of the twelve **(12)** months.

Section 8.31 Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Zoning Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Zoning Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 8.32 Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Historic District Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Historic District Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use.

Failure of negotiations within this period shall be the equivalent of a denial of the application by the Historic District Review Board or, on appeal, by the Town Council.

Section 8.33 Conditions Imposed by the Historic District Review Board

In approval of any proposal under this section, the Historic District Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 8.34 Appeals; Decisions of the Historic District Review Board

An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any **party aggrieved and suffering cognizable harm** ~~party aggrieved by said decision~~, which shall be taken within thirty (30) days after the decision appealed from by filing with the **Zoning Administrator the following**: a notice of appeal specifying the grounds thereof; **a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal.** The **Zoning** Administrator shall ~~forthwith~~ transmit to the Town Council **within five (5) days** all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within **sixty (60) days**. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Historic District Review Board.

Section 8.35 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Historic District Review Board by the owner of the property in question or by any **party aggrieved and suffering cognizable harm** ~~party aggrieved by said decision~~, which shall be taken within thirty (30) days after the decision appealed from by filing with the **Zoning Administrator the following**: a notice of appeal specifying the grounds thereof; **a signed statement listing any personal or business relationship with any general or subcontractors associated with the project under appeal; a signed statement that all real and personal property taxes are current as of the date of the filed appeal notice; a signed statement listing any personal or business relationship or partnership with property owner(s) associated with the project under appeal; a fee equal in value to the fee paid by the property owner(s) associated with the project under appeal.** The **Zoning** Administrator shall ~~forthwith~~ transmit to the Historic District Review Board **within five (5) days** all the papers constituting the record upon which the action appealed from was taken. The Historic District Review Board shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to §15.2-2204;

Code of Virginia, and decide the same within **sixty (60)** days. At the meeting the party may appear in person or by agent. In exercising its powers, the Historic District Review Board may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 8.36 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within **thirty (30)** days after said decision in the manner prescribed by law by the owner of the property in question, **by any party aggrieved and suffering cognizable harm**, or by the Historic District Review Board. ~~or by any party aggrieved by said decision or by any party who recorded an appearance at the hearing before the Town Council.~~ The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 8.37 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.43 of the Zoning Ordinance.

Section 8.38 Definitions

For the purpose of this article, certain terms and words pertaining to the Historic District are hereby defined. The general rules of construction contained in Article II of this Ordinance are applicable to these definitions.

ALTERATION is any change, modification, or addition to a part or all of the exterior of any building or structure.

BUILDING is any enclosed or open structure which is a combination of materials to form a construction for occupancy or use.

ADMINISTRATOR, THE ZONING ADMINISTRATOR, is that person appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator or the Historic District Review Board as the case may require of plans for construction alteration, reconstruction, repair, restoration, relocation, demolition, or razing of a building or structure or part

thereof in a historic district.

CONTRIBUTING PROPERTIES are those properties constructed fifty (50) years or more ago.

~~**DEMOLITION** is the dismantling or bearing down of all or part of any building and all operations incidental thereto.~~

DESIGN GUIDELINES are those set of guidelines, standards, and regulations adopted pursuant to §8.20 of this Code.

HISTORIC DISTRICT means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials.

~~This ordinance was duly considered following a required public hearing held on December 11, 2001, and adopted by the Town Council of Cape Charles at its regular session on the same day. All members voted in favor of its adoption: Chris Bannon, Charles Brown, Donald Clarke, James Davis, Dave Flora, and Frank Lewis.~~

Assessing Economic Hardship Claims under historic preservation ordinances

By Julia Miller

Historic preservation ordinances in effect around the country often include a process for administrative relief from preservation restriction in situations of "economic hardship." Under typical economic hardship procedures, an applicant may apply for a "certificate of economic hardship" after a preservation commission has denied his or her request to alter or demolish a historic property protected under a preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the decision making body to render a decision. The type of evidence required is generally spelled out in preservation ordinances or interpreting regulations. The burden of proof is on the applicant.

The exact meaning of the term "economic hardship" depends on how the standard is defined in the ordinance. Under many preservation ordinances 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.

Requests for relief on economic hardship grounds are usually decided by historic preservation commissions, although some preservation ordinances allow the commission's decision to be appealed to the city council. In some jurisdictions, the commission may be assisted by a hearing officer. A few localities have established a special economic review panel, comprised of members representing both the development and preservation community.

Economic Impact

In acting upon an application for a certificate of economic hardship, a commission is required to determine whether the economic impact of a historic preservation law, as applied to the property owner, has risen to the level of economic hardship. Thus, the first and most critical step in understanding economic hardship is to understand how to evaluate economic impact.

Commissions should look at a variety of factors in evaluating the economic impact of a proposed action on a particular property. Consideration of expenditures alone will not provide a complete or accurate picture of economic impact, whether income-producing property or owner-occupied residential property. Revenue, vacancy rates, operating expenses, financing, tax incentives, and other issues are all relevant considerations. With respect to income-producing property, economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return. This approach allows a commission to focus on the 'bottom line' of the transaction rather than on individual expenditures.

In addition to economic impact, the Supreme Court has said that "reasonable" or "beneficial use" of the property is also an important factor. Thus, in evaluating an economic hardship claim based on the constitutional standard for a regulatory taking, commissions will need to consider an owner's ability to continue to carry out the traditional use of the property, or whether another viable use for the property remains. In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the landmark decision upholding the use of preservation ordinances to regulate historic property, the Supreme Court found that a taking did not arise because the owner could continue to use its property as a railroad station.

The Supreme Court has also said that the applicant's "reasonable investment-backed expectations" should be taken into consideration. Although the meaning of this phrase has not been delineated with precision, it is clear that "reasonable" expectations do not include those that are contrary to law. Thus, an applicant's expectation of demolishing a historic property subject to a preservation ordinance at the time of purchase (or subject to the likelihood of designation and regulation) may not be considered "reasonable." Also pertinent is whether the owner's objectives were realistic given the condition of the property at the time of purchase, or whether the owner simply overpaid for the property. Under takings law, government is not required to compensate property owners for bad business decisions. Nor is the government required to guarantee a return on a speculative investment.

Commissions may also be able to take into account whether the alleged hardship is "self created." Clearly relevant is whether the value of the property declined or rehabilitation expenses increased because the owner allowed the building to deteriorate.

Application of the takings standard in the context of investment or income-producing property is usually fairly straightforward. The issue can be more complex, however, in situations involving hardship claims raised by homeowners. In the context of homeownership, it is extremely difficult for an applicant to meet the standard for a regulatory taking, that is, to establish that he or she has been denied all reasonable use of the property. When a commission insists that houses be painted rather than covered with vinyl siding, and windows be repaired rather than replaced, the applicant can still live in the house. The fact that these repairs may be more costly is not enough. Even if extensive rehabilitation is required, the applicant must show that the house cannot be sold "as is," or that the fair market value of the property in its current condition plus rehabilitation expenditures will exceed the fair market value of the house upon rehabilitation. See *City of Pittsburgh v. Weinberg*, 676 A.2d 207 (Pa.1996). It is also important to note that "investment-backed expectations" are different in the context of homeownership, owners often invest in home improvements or renovations without the expectation of recouping the full cost of the improvement in the form of increased property value.

In addressing hardship claims involving historic homes, commissions must be careful to be objective and consistent in their approach. Otherwise, a commission may undermine the integrity of its preservation program and raise due process concerns as well. Ideally, grant money, tax relief, and other programs should be made available to historic homeowners who need financial assistance.

Special standards for economic hardship may apply to nonprofit organizations. Because these entities serve charitable rather than commercial purposes, it is appropriate to focus on the beneficial use of their property, rather than rate of return, taking into account the particular circumstances of the owner (i.e., the obligation to serve a charitable purpose). In such situations, hardship analysis generally entails looking at a distinct set of questions, such as: the organization's charitable purpose, whether the regulation interferes with the organization's ability to carry out its charitable purpose, the condition of the building and the need and cost for repairs, and whether the organization can afford to pay for the repairs, if required. (Note, however, that while consid-

eration of financial impact may be appropriate, a nonprofit organization is not entitled to relief simply on the basis that it could raise or retain more money without the restriction.)

The Proceeding

Under a typical hardship process, the applicant will be required to submit specific evidence in support of his or her claim. Once a completed application has been filed, a hearing will be scheduled, at which time the applicant generally presents expert testimony in support of the economic hardship claim on issues such as the structural integrity of the historic building, estimated costs of rehabilitation, and the projected market value of the property after rehabilitation. Once the applicant has presented its case, parties in opposition or others may then present their own evidence. The commission may also bring in its own expert witnesses to testify. As noted above, the burden of proof rests on the property owner.

In hearing economic hardship matters, commissions must be prepared to make a legally defensible decision based on all the evidence presented. In the event of conflicting expert testimony, which is often the case in economic hardship proceedings, the commission will need to weigh the evidence, making specific findings on the relative credibility or competency of expert witnesses.

In evaluating the evidence, the commission should ask itself five distinct questions:

- 1. Is the evidence sufficient?* Does the commission have all the information it needs to understand the entire picture, or is something missing. The application is not complete unless all the required information has been submitted. If additional information is needed, ask for it.
- 2. Is the evidence relevant?* Weed out any information that is not relevant to the issue of economic hardship in the case before you. Commissions may be given more information than they need or information that is not germane to the issues, such as how much money the project could make if the historic property were demolished. The property owner is not entitled to the highest and best use of the property.
- 3. Is the evidence competent?* Make an assessment as to whether the evidence establishes what it purports to show.
- 4. Is the evidence credible?* Consider whether the evidence is believable. For example, ask whether the figures make sense. A commission will need to take into consideration the source of the evidence and its reliability. (If the evidence is based on expert testimony, the commission should determine whether the expert is biased or qualified on the issue being addressed. For example, it may matter whether

a contractor testifying on rehabilitation expenditures actually has experience in doing historic rehabilitations.)

5. *Is the evidence consistent?* Look for inconsistencies in the testimony or the evidence submitted. Request that inconsistencies be explained. If there is contradictory evidence, the commission needs to determine which evidence is credible and why.

In many instances the applicant's own evidence will fail to establish economic hardship. However, in some situations, the question may be less clear. The participation of preservation organizations in economic hardship proceedings can be helpful in developing the record. Commissions should also be prepared to hire or obtain experts of their own. For example, if a property owner submits evidence from a structural engineer that the property is structurally unsound, the commission may need to make an independent determination, through the use of a governmental engineer or other qualified expert, as to the accuracy of that information. It may be impossible to evaluate the credibility or competency of information submitted without expert advice.

The record as a whole becomes exceedingly important if the case goes to court. Under most standards of judicial review, a decision will be upheld if it is supported by substantial evidence. Thus, in conducting administrative proceedings, it is important that evidence provides a true and accurate story of the facts and circumstances and that the commission's decision is based directly on that evidence.

EVIDENTIARY CHECKLIST

The following checklist may serve as a useful tool for local commissions and other regulatory agencies 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,
- 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,
 - 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 the structural soundness of any buildings on the property and their suitability for rehabilitation.
- Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness,
- Estimated market value of the property: (a) in its current condition, (b) after completion of the proposed alteration or demolition, and (c) after renovation of the existing property for continued use,

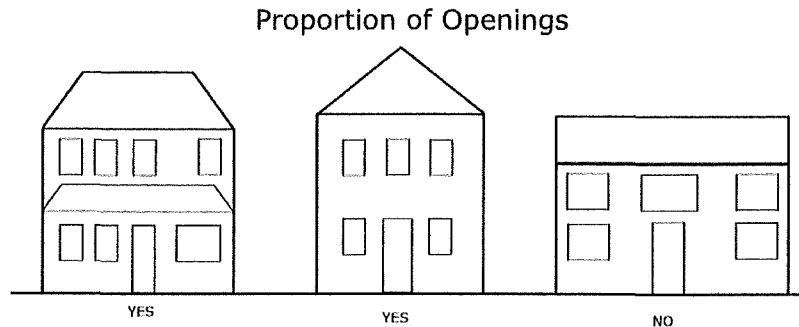
4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

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

6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs. ■

Julia Miller works in the Law and Public Policy office at the National Trust for Historic Preservation.

4. Windows and doors. The facade of new construction must draw upon the proportion of neighborhood structures. Windows must be double hung windows or of a size and style similar to existing windows in the neighborhood. The following window treatments are allowed: Jalousie windows, picture windows and horizontal windows, only in traditional American ranch style architecture. Exterior doors should be paneled or have glass panels. Flush doors are not allowed.



5. Porches. Porches must be constructed on the front of the house and must cover at least 80 percent of the building facade's width. Where there is no prevailing standard, porches may be reduced to be in keeping with the house style. Front porches must have a minimum depth of six feet. Porches on the side and rear of the house are also permitted. All porches must meet setback regulations.
6. Materials. New construction should use materials in a manner sympathetic to the character of the existing neighborhood houses. It is encouraged that materials should be of similar or complementary size, texture, scale, craftsmanship, and applicability to function performed. It should be noted that the sympathetic use of materials does not imply that materials used in new construction will replicate the old in detail nor that new construction will attempt to imitate existing structures. Rather, it is a matter of determining the compatibility of new construction. Certain materials are potentially so visually intrusive that their use for new construction in the R-1 District will not be permitted. These materials include:

- a. asphalt siding, vertical plywood siding, aluminum siding
- b. exposed concrete block above foundation level
- c. corrugated metal, except for roof applications
- d. flush doors (hollow or solid core)

Vinyl siding will be permitted as long as each individual clapboard is no wider than five inches.

7. Utilities. Upon installation of utility access lines, such lines shall be installed underground. The Town encourages replacement lines to be installed underground.

- Select windows and doors for proposed new buildings that are compatible in material, subdivision, proportion, pattern, and detail with the windows and doors surrounding buildings that contribute to the special character of the district. Bay windows should not disrupt the feeling of continuity of the wall surface.
- Design new buildings so that they are compatible with but discernible from historic buildings in the District.
 - The selection of materials and textures for a new building should be compatible with and complement neighboring buildings.
 - Synthetic sidings such as vinyl, aluminum and synthetic stucco-like finishes are not historic cladding material in the District and their use will not be allowed.
 - New construction should not attempt to create features that would create a false historical appearance.
- Identify significant landmark buildings in the District whose importance justifies the creation of a “zone of respect” around those buildings.
- New buildings should be compatible with the size, scale, color, material and character of the District, sub-area or block.
 - New buildings should incorporate architectural elements that divide the façade into intervals that maintain pedestrian friendly scale. Windows and doors should be placed in a manner that is harmonious with the District, sub-area or block.
 - Materials should be used in a manner that creates details, incorporates textures or small-scale elements that give the building a three-dimensional character and “human scale” at the ground level.
- It is essential that new construction in the Historic District reflect the integrity of design details and materials which help form the District’s character.
 - New construction should incorporate materials similar to those used traditionally in the historic structures in the area.
 - Materials used in new construction should be in units similar in scale to those used historically.
 - The placement of a porch to define the front entryway is encouraged and porches in new construction should be similar to those found on historic residential buildings in size and height.

SYNTHETIC SIDING

1 Synthetic sidings such as; vinyl, aluminum and stucco-like material are not historic cladding materials and do not contribute to the historic and architectural character of the district.

2 Remove synthetic siding and restore original building material if possible.

3 Synthetic siding as referenced above is not permissible, HardiPlank or similar is permitted with exceptions. Insure that any moisture, rot, or infestation problems are corrected before installing new siding. **Decorative elements, trim, features, and special surfaces must be retained when re-siding.** Consideration should be given to retaining the original materials on the primary elevations of the building and re-siding on only the secondary elevations of the building.

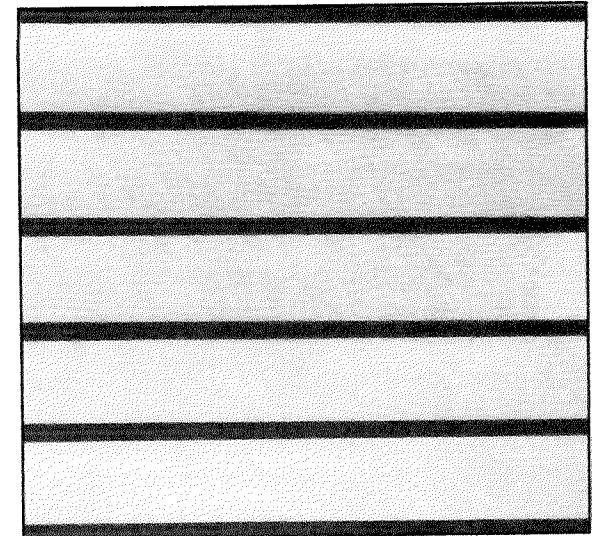
4 The use of synthetic siding such as HardiPlank or similar on new buildings within the historic district is allowed. Review the historic and architectural significance of surrounding buildings when determining the weather exposure of siding on new buildings.

5 Siding that simulates wood may be used on new construction if the depth of the siding (boards) conforms to the typical depth of traditional siding.

☞ Synthetic siding does not have the same patina, texture, or light-reflective qualities of original materials such as wood, brick, shingle, or stone. In addition to changing the appearance of a historic building, synthetic siding can make maintenance more difficult because it covers up potential moisture problems that can become serious. And synthetic siding, once it dents or fades, needs painting just as frequently as wood.

6 The use of synthetic siding on contributing structures [in the Town of Cape Charles] will only be permissible if the structure is currently clad in vinyl, aluminum and stucco-like siding and is the subject of a major addition.

THE HDRB STRONGLY SUGGEST REMOVAL OF SYNTHETIC SIDINGS AND RESTORATION OF OF THE ORIGINAL SIDING MATERIAL.



True wood siding (top) has a depth and range of appearance that can never be matched by synthetic siding (bottom)