

**ORDINANCE NO: G-21-24**

**LEGISLATIVE HISTORY**

**PLANNING COMMISSION**

**PUBLIC HEARING: August 9, 2021**

**RECOMMENDATION  
LETTER SUBMITTED  
TO MAYOR & BOARD: August 10, 2021**

**MAYOR & BOARD OF ALDERMEN**

**WORKSHOP: September 22, 2021**

**PUBLIC HEARING: October 21, 2021**

**AN ORDINANCE** regarding historic preservation

**FOR THE PURPOSE** of providing for the withdrawal of a request for demolition review; clarifying language; updating references; making stylistic changes; and generally relating to demolition review and historic preservation within The City of Frederick.

**BY** repealing

Section 423  
Appendix A, "Land Management Code"  
The Code of the City of Frederick, 1966 (as amended)

**BY** adding

Section 423  
Appendix A, "Land Management Code"  
The Code of the City of Frederick, 1966 (as amended)

**SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK**, That the Code of the City of Frederick, 1966 (as amended), Appendix A, Land Management Code, Section 423, be repealed and a new Section 423 be added to read as follows:

**Sec. 423 HISTORIC PRESERVATION**

**Purpose:** The preservation of sites, structures, and districts of historical, archeological, or architectural significance and their appurtenances and environmental settings is a public purpose in the City.

This section is designed to safeguard the historical and cultural heritage of the City by preserving sites, structures or districts that reflect elements of cultural, social, economic, political, archeological, or architectural history; to stabilize and improve property values of those sites, structures, or districts; to foster civic beauty; to strengthen the local economy; and to promote the preservation and appreciation of those sites, structures, and districts for the education and welfare of the residents of the City.

**(a) Demolition review.**

- (1) Scope.** Except as otherwise provided in this paragraph, this subsection applies to all property not individually designated or located in a Historic Preservation Overlay (HPO) district. This subsection does not apply to a structure:
  - A.** shown to be demolished on a valid site plan, subdivision plat, master plan, or area plan conditionally or unconditionally approved before February 17, 2013; or
  - B.** expressly approved for demolition under an annexation resolution adopted before February 17, 2013.
- (2) Optional review.** A property owner may request demolition review for a structure located on the owner's property at any time in accordance with this subsection.
- (3) Mandatory review.** A property owner shall request demolition review concurrently with the submission of a sketch plan (under Section 301 of this LMC) or a minor site plan (under Section 309 of this LMC) if the sketch plan or minor site plan depicts:
  - A.** demolition of an entire structure;
  - B.** removal of a roof for the purposes of raising the overall height of the roof, rebuilding the roof to a different pitch, or adding another story to a structure;
  - C.** removal of one or more exterior walls or partitions of a structure;
  - D.** removal of more than 25% of a structure's overall gross square footage;  
or
  - E.** relocation or moving of a structure from its existing location.
- (4) Initiation.** The demolition review process begins with the submission of a request for demolition review. A request for demolition review must be submitted on a form provided by the Division and accompanied by any required fee as specified by the fee schedule then in effect.
- (5) Completion.** The demolition review process is complete when:
  - A.** the Division issues a certificate to demolish without delay for the structure;

- B. a map amendment ordinance designating the structure becomes effective; or
  - C. the request for demolition review is withdrawn in accordance with paragraph (11) of this subsection.
- (6) **Age of structure.** Within 15 days after the submission of a request for demolition review, the Division shall determine the age of the structure proposed to be demolished.
- A. If the Division determines that the structure is less than 50 years old, the Division will issue the property owner a certificate to demolish without delay.
  - B. If the Division determines that the structure, in whole or in part, is at least 50 years old, the Division will notify the Commission promptly, in writing. If the age of the structure is unknown, for the purposes of this subsection, the structure will be assumed to be at least 50 years old.
- (7) **Initial hearing.** Except as otherwise provided in this paragraph, within 15 days after receiving notification under paragraph (6)(B) of this subsection, the Commission shall hold a public hearing. At the conclusion of the hearing, the Commission shall determine whether or not the structure proposed to be demolished may be eligible for individual designation under subsection (d) of this section. Upon written request of the property owner, the initial hearing may be postponed for a period not to exceed 30 days after the original 15-day deadline.
- (8) **Structure not eligible.** The Division shall issue a certificate to demolish without delay for a structure if:
- A. at the conclusion of the initial hearing held under paragraph (7) of this subsection, the Commission determines that the structure is not eligible for individual designation; or
  - B. the Commission fails to hold a public hearing and make a determination as required by paragraph (7) of this subsection.
- (9) **Structure potentially eligible – Commission hearing and recommendation.** At the conclusion of the initial hearing held under paragraph (7) of this subsection, if the Commission determines that the structure may be eligible for individual designation, then as soon as practicable, the Commission may file a completed designation application with the Division. The designation process will then continue in accordance with subsection (f) of this section.
- (10) **Denial by Board of Aldermen.** If the Board of Aldermen votes to deny the proposed map amendment at the conclusion of the hearing held in accordance subsection (f)(3) of this section, the Division shall issue to the property owner a certificate to demolish without delay for the structure.

**(11) Withdrawal of request.**

- A.** A property owner may withdraw a request for demolition review made under paragraph (2) or paragraph (3) of this subsection by filing a written notice of withdrawal at any time before the beginning of the initial hearing held by the Commission in accordance with paragraph (7) of this subsection.
- B.** If a property owner withdraws a request that was submitted with a sketch plan pursuant to paragraph (3) of this subsection, future plans must reflect the withdrawal by showing that the structure originally intended to be demolished is being retained. Submission of a plan that again proposes demolition will initiate the demolition review process and must be accompanied by a request for demolition review.
- C.** If a property owner withdraws a request that was submitted with a minor site plan pursuant to paragraph (3) of this subsection, subsequent submissions of the minor site plan must reflect the withdrawal by showing that the structure originally intended to be demolished is being retained. A future submission of the minor site plan that again proposes demolition will initiate the demolition review process and must be accompanied by a request for demolition review.

**(12) Certificate to demolish without delay.** A certificate to demolish without delay expires 5 years after the date of its issuance.

**(13) Violations.** Failure to maintain or secure a structure from damage, deterioration, or destruction during the time that it is subject to demolition review under this subsection shall be considered a violation of this LMC and subject to enforcement action under Sec. 317 of this LMC.

**(b) Historic preservation – authority and scope.** The Board of Aldermen derives authority for subsections (b) through (p) of this section by virtue of their conformance with the State of Maryland Enabling Act for Historic Area Zoning, (Land Use Article, Title 8, Annotated Code of Maryland). Those subsections apply to any site or structure located within a HPO, as depicted on the official zoning maps. Sites and structures within a historic preservation overlay district may be used as permitted in the base zoning district but are also subject to the additional regulations.

**(c) Designation – in general.** In accordance with the Annotated Code of Maryland, Land Use Article, § 8-105, the Board of Aldermen may designate boundaries for sites, structures, or districts that are deemed to be of historic, archeological, or architectural significance by following the procedures of the City for establishing or changing zoning districts and classifications. The designation of a site, structure, or district constitutes an amendment to the official zoning maps through the creation of a HPO and may be referred to in this section as a “map amendment”.

**(d) Designation - Criteria.** A site, structure, or district is eligible for designation if:

- (1)** it is at least 50 years old;

- (2) it retains sufficient historical integrity, as defined in the U.S. Department of the Interior's National Register Bulletin No. 15: How to Apply the National Register Criteria for Evaluation ("Bulletin 15"); and
- (3) when evaluated in a historic context, as defined in Bulletin 15, the site, structure, or district:
  - A. is associated with events and cultural groups that have made a significant contribution to the broad patterns of history, including those that exemplify the heritage of the City;
  - B. is associated with the lives of persons significant in the history of the City, the region, the state, or the nation;
  - C. yields, or may be likely to yield, information important in prehistory or history; or
  - D. exhibits significance in design or construction by:
    - (i) embodying the distinctive characteristics of a type, period or method of construction, including characteristics particularly associated with the City;
    - (ii) representing the work of a master;
    - (iii) possessing high artistic values or superior craftsmanship; or
    - (iv) representing a distinguishable entity, such as a historic district or complex of resources, whose components may lack individual distinction.

(e) **Designation - applications.**

- (1) **Site or structure.** An application for the designation of a site or structure of historic, archeological, or architectural significance may be filed by:
  - A. an elected City official;
  - B. the Commission;
  - C. the Division;
  - D. the owner of the site or structure, or an authorized agent of the owner; or
  - E. a person or persons with at least a 50% contractual or proprietary interest in the site or structure.
- (2) **District.** An application to designate a district of historic, archeological, or architectural significance may be filed by:
  - A. an elected City official;

- B. the Commission;
- C. the Division; or
- D. the owners of 50% or more of the lots within the proposed district, with each lot having one vote.

**(f) Designation – public hearings.**

**(1) Commission hearing and recommendation.**

- A. Upon receipt of a complete application for designation, the Division will schedule a public hearing by the Commission, following the notice provisions of § 301 of this Code.
  - (i) With respect to a designation application submitted by the Commission under subsection (a)(10) of this section, the public hearing will be held within 30 days after the initial hearing held in accordance with subsection (a)(7) of this section.
  - (ii) With respect to any other designation application, the public hearing will be held within 45 days after the application was submitted.
- B. At the conclusion of its public hearing, the Commission shall recommend the approval, denial, or approval with modifications of the proposed map amendment. In making its recommendation, the Commission shall use only the criteria established in subsection (d) of this section
- C. The Division shall forward the proposed map amendment, along with the Commission's recommendation, in the form of a letter or a resolution, to the Planning Commission.

**(2) Planning Commission hearing and recommendation.**

- A. The Division will schedule a public hearing by the Planning Commission, to be held within 45 days after the Commission hearing held under paragraph (1) of this subsection.
- B. At the conclusion of its public hearing, the Planning Commission shall recommend the approval, denial, or approval with modifications of the proposed map amendment. In making its recommendation, the Planning Commission shall consider the Commission's findings with regard to the criteria established in subsection (d) of this section. The Planning Commission shall also evaluate the potential designation for consistency with the comprehensive plan and may consider any other planning issues.

- C. The Division shall forward the proposed map amendment, along with the Commission's recommendation and the Planning Commission's recommendation, in the form of a letter or a resolution, to the Mayor.

**(3) Board of Aldermen hearing and decision.**

- A. The Mayor shall schedule a public hearing by the Board of Aldermen to be held as soon as practicable after the Planning Commission hearing held under paragraph (2) of this subsection.
- B. At the conclusion of the public hearing, the Board of Aldermen shall approve, approve with modifications, or deny the proposed map amendment, in the same manner as it acts on any other ordinance. In making its decision, the Board of Aldermen shall consider the findings and recommendations of the Commission and the Planning Commission and shall consider whether the proposed map amendment will further the purpose of the HPO and the goals and objectives of the Comprehensive Plan.
- C. The Board of Aldermen may approve the designation of a smaller area than that requested by the applicant, provided the smaller area is accurately delineated as part of the map amendment ordinance. The Board of Aldermen may not approve the designation of a larger area than that requested by the applicant.
- D. If the Board of Aldermen denies the proposed map amendment, the Division may not accept a new application for substantially the same map amendment for at least 12 months after the denial.

**(g) Designation - withdrawal of application.**

- (1) An applicant may withdraw a map amendment application at any time before the hearing held by the Commission under subsection (f)(1) of this section.
- (2) Unless the new application includes new relevant and substantial evidence that could not have been known at the time of the withdrawal, the Division will not accept a new application for substantially the same map amendment for at least 90 days after the withdrawal.

**(h) Commission review of applications.**

- (1) **Scope.** Before constructing, altering, reconstructing, moving, or demolishing any site or structure, a person shall apply in accordance with §1124 of this LMC and obtain a certificate of approval from the Commission if:
  - A. the Commission has jurisdiction over the site or structure; and
  - B. any exterior change is involved that is not routine maintenance. Nothing in this section shall be construed to prevent routine maintenance, customary farming operations, or landscaping that has no material effect

on the historic, archeological, or architectural significance of a site, structure or district.

**(2) Jurisdiction of the Commission.**

- A.** The Commission has jurisdiction over every site or structure individually designated or located in a historic preservation overlay district, if any portion of the site or structure is visible or intended to be visible from a public way.
- B.** A proposed change to a site or structure need not be visible or intended to be visible from a public way in order to be subject to review by the Commission.
- C.** The Commission has jurisdiction over exterior features of a structure and shall not consider any interior arrangement. Exterior features include, but are not limited to, signs or other treatments applied directly to a window or otherwise intended to be viewed from the exterior.

**(3) Commission action.** Every application for a certificate of approval shall be considered by the Commission and approved, approved with conditions, or denied by the Commission.

**(4) Guidelines.** The Board of Aldermen shall adopt guidelines for rehabilitation and new construction design for designated sites, structures, and districts that are generally consistent with those recognized by the Maryland Historical Trust. The Commission shall use the guidelines in its review of applications.

**(5) Review factors.** In reviewing applications, the Commission shall consider, and may not deny an application except based on, the following factors:

- A.** the historic, archeological, or architectural significance of the site or structure and its relationship to the historic, archeological, or architectural significance of the surrounding area;
- B.** the relationship of the exterior architectural features of a structure to the remainder of the structure and to the surrounding area;
- C.** the general compatibility of exterior design, scale, proportion, arrangement, texture and materials to the site or structure and to the surrounding area; and
- D.** any other factors, including aesthetic factors, that the Commission considers pertinent.

**(6) Judgment.** The Commission shall strictly judge plans for sites or structures determined by research to be of historic, archeological, or architectural significance. Unless the plans would seriously impair the historic, archeological, or architectural significance of the surrounding site or structure, the Commission shall not strictly judge plans for sites or structures of little historic, archeological or architectural significance or plans involving new construction. The



Commission is not required to limit construction, reconstruction or alteration to the architectural style of any one period.

- (7) **Certificates and permits.** The Commission shall file with the Building Department a certificate of approval, approval with conditions, or denial of each application submitted to it for review. The Building Department may not issue a building permit or zoning permit for a project or allow work to commence on a project until a certificate of approval has been filed and all other applicable requirements have been met.
  - (8) **Failure to act on application.** The failure of the Commission to act upon a completed application within 45 days from the date the application is deemed complete constitutes automatic approval of the application unless the applicant and the Commission agree to an extension of the 45-day period or the application is withdrawn.
  - (9) **Resubmittal.** An application that is substantially the same as a denied application may not be resubmitted within a period of one year after the denial.
- (i) **Demolition.**
- (1) **Procedures.** In deciding on a demolition application, the Commission may use a multi-hearing process as further described in this subsection.
  - (2) **Degree of significance.** At the first hearing, the Commission shall determine whether the site or structure is "noncontributing" or "contributing" based on the criteria established in the Commission's guidelines.

    - A. If the Commission determines that a site or structure is noncontributing, the Commission may act on the demolition request at the same hearing. In making its decision, the Commission shall use the applicable criteria in the Commission's guidelines. The Commission may also act on replacement plans at the same hearing.
    - B. If the Commission determines that a site or structure is contributing, the Commission may not vote on the demolition request until a subsequent hearing.
  - (3) **Replacement plans.** An application for demolition of a site or structure shall include a replacement plan. Approval for the demolition of a site or structure may be conditioned upon the approval of an acceptable replacement plan. A bond or other financial guaranty in the amount of the cost of the replacement structure may be required in order to assure the completion of the replacement plan.
  - (4) **Demolition by neglect.** In the event of demolition by neglect, the Commission may request that the appropriate department of the City initiate enforcement action against any appropriate defendant in accordance with the Property Maintenance Code or other applicable City law.

(j) **Sites and structures of unusual importance.**

- (1) **Defined.** For purposes of this subsection, a site or structure of "unusual importance" is a contributing site or structure that individually meets one or more of the criteria for designation set forth in this section.
- (2) **Plan to preserve.** If an application is submitted for construction, reconstruction or alteration, moving, or demolition of a site or structure of unusual importance, the Commission shall attempt to formulate an economically feasible plan with the owner of the site or structure for its preservation.
- (3) **Negotiation.** If no economically feasible plan can be formulated, the Commission shall have 90 days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.
- (4) **Denial of application.** Except as otherwise provided in paragraph (5) of this subsection, unless the Commission is satisfied that the proposed construction, reconstruction or alteration will not materially impair the historic, archeological or architectural significance of the site or structure, the Commission shall deny the application for construction, reconstruction or alteration.
- (5) **Approval of application.** The Commission may approve the proposed construction, reconstruction, alteration, moving or demolition if:
  - A. the structure is a deterrent to a major improvement program that will be of substantial benefit to the City;
  - B. retention of the structure would cause undue financial hardship to the owner; or
  - C. retention of the structure would not be in the best interests of a majority of persons in the City.

(k) **New construction.**

- (1) **Scope.** This subsection applies to any new construction (in a historic preservation overlay zone) for which a site plan is required pursuant to Section 309 of this Code.
- (2) **Phased review.** The Commission will review applications for new construction projects in two phases, which will be known as "Level I" and "Level II". A separate application is required for each phase. The Commission may issue a certificate of approval after reviewing each application.
- (3) **Level I.** During Level I review, using the relevant criteria of the Commission's guidelines, the Commission will consider the following aspects of a proposed new construction project:
  - A. location;

- B. footprint;
- C. massing;
- D. height;
- E. setback;
- F. scale;
- G. facade;
- H. roof forms;
- I. materials; and
- J. plot plan.

(4) **Site plan.** The applicant shall obtain conditional or unconditional final site plan approval after the Commission issues a Level I certificate of approval and before the Commission commences Level II review of a new construction project.

(5) **Level II review.** During Level II review, the Commission will consider the following aspects of any proposed new construction project,

- A. texture;
- B. openings;
- C. lighting;
- D. landscaping;
- E. site plan;
- F. final articulation;
- G. detailed façade and elevations; and
- H. fenestration.

(l) **Certificate of approval expiration.** Except as otherwise provided in this subsection, if a building permit or zoning permit has not been issued for a project within 3 years after the certificate of approval is issued for that project, the certificate of approval will become void. Upon the request of a property owner, the Division may grant one 6-month extension. The Commission may grant additional extensions.

(m) **Maryland Historical Trust.** The Commission may designate the Maryland Historical Trust or a private qualified historic preservation consultant to conduct an analysis of, report on, or recommend the preservation of sites, structures, or districts of historic, archeological, architectural, or cultural significance within the City. The report may

include proposed boundaries of sites, structures, or districts, as well as recommendations for the identification and designation of particular sites, structures, or districts to be preserved.

- (n) **Judicial review.** Any person aggrieved by a decision of the Commission may, within 30 days after the decision, file a petition for judicial review in the Circuit Court for Frederick County in accordance with the Maryland Rules applicable to judicial review of administrative agency decisions.

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that this ordinance shall take effect on October 31, 2021 and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

**PASSED:**

**DATE:**

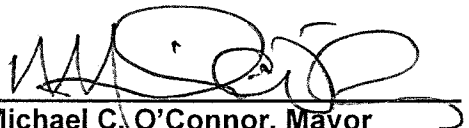


October 21, 2021

**Michael C. O'Connor, President,  
Board of Aldermen**

**APPROVED:**

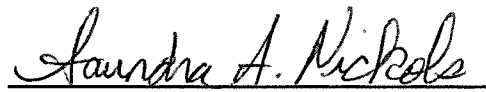
**DATE:**



October 21, 2021

**Michael C. O'Connor, Mayor**

**Approved for Legal Sufficiency:**

  
Sandra A. Nichols  
City Attorney

**City Attorney**