

ARTICLE XVII. OVERLAY ZONING DISTRICTS**PART I. MIDDLEBURG HISTORIC DISTRICT REGULATIONS****Section 236: Purpose and Intent**

The purpose of the historic district regulations is to protect the "Historic Middleburg District", which was established to preserve the unique historical, architectural and cultural, and archaeological heritage represented by the original section of the town, and all significant historic and archaeological resources within the town, in order to protect the quality of life of town residents, to strengthen the town's economy by promoting and enhancing business and tourism, and to protect property values.

Section 237: Boundaries of Historic Middleburg District

- (a) The Historic Middleburg District shall include the original town boundaries as shown on the map of Middleburg which is on the map of Loudoun County by Yardley Taylor drawn in 1853. The district is bounded on the North by Marshall Street, on the East by Independence Street, on the South by Federal Street and on the West by Constitution Street. In addition, the district includes the area within 300 feet of the perimeter of the above described boundary within the corporate limits. The district is created as an overlay zoning district to be superimposed on the other districts contained in this ordinance or amendments thereto.
- (b) Whenever a portion of a lot or parcel lies within the district as described by subsection (a) above, the entire lot or parcel shall be subject to the provisions of this ordinance.

Section 238: Certificate of Appropriateness Required to Erect, Reconstruct, Alter, Restore, or Raze a Structure.

In order to promote the general welfare through the preservation and protection of historic places and areas of historic interest, except as provided herein, no building or structure within a designated historic district may be demolished in whole or in part, nor may any architectural features of any buildings or structures within such district which are subject to public view from a public street be altered, nor shall any building or structure, including signs, hereafter be erected, reconstructed, altered, relocated or restored within such district, unless and until an application for a certificate of appropriateness shall have been approved by the Historic District Review Committee, or, on appeal, by the Town Council.

Section 239: Application for Certificate of Appropriateness

- (a) Optional Pre-application Review Procedure
- (1) Prior to the preparation of working drawings and specifications or calling for proposals or bids from contractors, prospective property developers, owners or agents may prepare preliminary scale drawings and outline specifications, including color samples for outside work, for review and informal discussion with the historic district review committee. The purpose of this review shall be to acquaint the developer, owner or agent with standards of appropriateness of design that are required of the proposed development.
 - (2) The optional pre-application review shall not require formal application but shall require notice to be given to the zoning administrator and subsequent notification of the chairman at least ten days before the date of the meeting at which the preliminary drawings are to be discussed.
 - (3) In the case of minor projects involving alterations to existing buildings or structures, the committee, if the preliminary drawings and other data are sufficiently clear and explicit, may approve such projects following such preapplication review, provided that the applicant shall submit an application conforming to the preapplication submission.
 - (4) Should data submitted for preapplication review show alterations, remodeling, or repairs not changing the exterior appearance, the administrator may exempt the application from the provisions of this section and approve a permit under the provisions of Section 243(a) of this ordinance.
- (b) Procedure for Obtaining a Certificate of Appropriateness
- (1) Application for a certificate of appropriateness shall be made by the owner of the building, structure, or land to the administrator. Such application shall indicate the proposed use of the building, structure, or land and shall be accompanied by one-quarter inch minimum scale plans and specifications (herein "plans") as may be required by the committee. The plans shall include, but not be limited to, the part or parts of the building, structure or land that are, or will be, subject to view from a public street, public way, or other public place. The plans shall show the proposed exterior architectural and features of such building, structure or land, which shall include, but shall not necessarily be limited to, the general design, arrangement, texture, materials, and color proposed to be used in the project, and the type of windows, exterior appurtenances and accessory structures which will be subject to public view from a public street, public way or other public place.

- (2) The administrator shall place the matter on the agenda for consideration at the next regularly scheduled committee meeting after receipt of the application, provided that it is a complete application and was filed with the administrator at least fourteen days prior to the meeting date. Otherwise, the application shall be placed on the agenda for consideration at the next following regularly scheduled committee meeting. If a public hearing is required pursuant to Section 239(b)(4), the matter shall be placed on the agenda for the first regularly scheduled committee meeting following the public hearing. (Amended 02/10/05)
- (3) The committee shall hold a public hearing within 60 days (or such shorter time as council may direct) after notification by the administrator of the filing of an application for a permit to raze, demolish or move any building in whole or in part. At least seven days notice of the time and place of the hearing shall be given by the administrator as follows:
 - (i) in writing to the applicant;
 - (ii) in writing to adjacent property owners; and
 - (iii) by publication in the form of an advertisement in a newspaper of general circulation within the town.
- (4) The committee shall either approve a certificate of appropriateness, with or without conditions, or with such modifications of the plans as the committee deems necessary to achieve the intent of this ordinance, or the committee shall disapprove the certificate after consideration of the criteria set forth in Section 241. The committee shall state its reasons for disapproval in writing. Failure of the committee to approve or disapprove a certificate within 30 days from the date of the committee meeting at which an application was first considered shall be deemed approval of the application as submitted.
- (5) If the committee approves the certificate of appropriateness, the administrator shall process the application for a zoning or sign permit for the project. If the committee has disapproved the certificate of appropriateness, the administrator shall proceed to notify the applicant that a location or sign permit for the project will not be processed.
- (6) The time for decision on a certificate of appropriateness may be extended by mutual agreement between the applicant and town.
- (7) If the committee disapproves the erection, reconstruction alteration, restoration, moving or razing of a building or structure, the committee shall state its reasons in writing and may make recommendations to the applicant about the appropriateness of design, arrangement, texture, materials, color, and location of the building or structure involved. In the case of disapproval with recommendations, the applicant may file an amended application for a certificate of appropriateness with the committee within 90 days.

(8) No application which has been denied shall be heard by the committee for one year except in cases where the applicant amends the application within 90 days as provided in Section 239(b)(7).

(c) Procedure for Zoning Administrator Exemptions (Added 10/10/02)

For minor actions that may be approved without a Certificate of Appropriateness pursuant to Section 243(b), an application shall be submitted on a form provided by the Town to permit the Administrator to determine if the proposed action is exempt from review by the Historic District Review Committee. The form shall be accompanied by sufficient information, such as photographs, materials specifications and/or color samples, to permit the Administrator to make the required finding that the proposed minor action will not permanently affect the character of the district and, in the case of repainting projects, that the proposed color(s) match or are compatible with colors included in an adopted Town historic district color palette.

Section 240: Demolition, Razing and Moving of Building or Structures

- (a) Applications involving any building or structure which is to be demolished, razed or moved under the provisions of this ordinance shall be subject to the provisions of Section 15.2-2306 of the 1950 Code of Virginia, as amended.
- (b) The committee may consult with civic groups, public agencies and interested citizens, recommend the acquisition of the property by public or private bodies or agencies, and explore the possibility of moving one or more structures or other features to preserve the buildings or structures concerned in accordance with the purposes of this ordinance during the demolition delay period set forth in the applicable provisions of Section 15.2-2306 of the Code of Virginia, as amended.

Section 241: Matters to be Considered in Acting on the Appropriateness of the Erection, Reconstruction, Alteration, Restoration, or Demolition of a Building or Structure

In reviewing certificate of appropriateness applications, the committee shall base its decision on whether the proposals therein are compatible with the existing building or structure, if any, and with the surrounding historic district. Interior arrangement or features not subject to any public view shall not be considered. The following shall be considered by the committee in acting on the appropriateness of the proposed erection, reconstruction, alteration, restoration, or demolition of buildings or structures:

- (a) Exterior architectural features, including all signs, which are subject to public view from a public street, way or place.
- (b) Design, arrangement and relative size.
- (c) Texture, material and color.

- (d) The relation of the factors in a, b, and c above to similar features of buildings and structures in the immediate surroundings.
- (e) The extent to which the building or structure would be harmonious with or obviously incongruous to the historic aspect of the surroundings.
- (f) In the case of a building to be razed or moved, a primary consideration shall be the extent to which its continued existence would tend to protect irreplaceable historic places and preserve the general historic atmosphere of the town.
- (g) The extent to which the building or structure will promote the general welfare of the town and all citizens by the preservation and protection of historic places and areas.
- (h) The extent to which said preservation and protection will promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage, and making the town a more attractive and desirable place in which to live.
- (i) The extent to which the proposal adheres to the Historic District Guidelines for the Town of Middleburg adopted by the Town Council and incorporated herein by reference.

Section 242: Time Limit

A certificate of appropriateness shall be valid for one (1) year from the date of issuance. If the demolition, erection, reconstruction, alteration, relocation or restoration for which the certificate was issued is not commenced within one year and thereafter diligently pursued, a new certificate shall be obtained prior thereto.

Section 243: Exclusions

- (a) Ordinary Maintenance Excluded. (Amended 10/10/02)

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair, as listed below, of any exterior elements of any building or structure described in Section 239(a)(4). The following ordinary maintenance and repair work shall be exempt from the requirement to obtain a certificate of appropriateness.

- (1) Replacement of missing or broken window panes, roofing slates, tiles, or shingles, outside doors, window frames, or shutters where no substantial change in design, color or material is proposed.
- (2) Ordinary maintenance, including repair and replacement, of other exterior architectural features, such as siding or fencing, with the same design, color and material, unless such repair or replacement, in the opinion of the Zoning

Administrator, will perpetuate a condition or treatment that is considered inappropriate or incompatible with the character of the district, as indicated by the Middleburg Historic District Guidelines or previous decisions of the Historic District Review Committee.

- (3) Repainting resulting in the same color (Original painting of masonry surfaces is not exempted from review).

(b) Minor Actions Excluded. (Amended 10/10/02)

Furthermore, certain minor actions may be exempted by the Zoning Administrator from the requirement to obtain a certificate of appropriateness if the Administrator finds that such action will not permanently affect the character of the historic property or district. Such ordinary maintenance or repair and minor 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: (Amended 10/10/02)

- (1) Repainting to a color selected from a color palette of historically accurate paint colors adopted by the Historic District Review Committee or to a color found by the Administrator to be compatible with a color included in an adopted color palette. (Added 10/10/02)
- (2) Addition or deletion of storm doors or storm windows and window gardens.
- (3) Minor landscaping structures, such as walks, low retaining walls, small fountains, ponds and the like which will not substantially affect the character of the property and its surroundings.

Provided, however, that the Zoning Administrator shall have authority to order that work be stopped and that a certificate of appropriateness application be filed for review by the committee in any case where, in the Zoning Administrator's opinion, the action may have an adverse effect on the historic district or may produce colors, patterns or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the district as a whole.

(c) Public Safety Exclusion

Nothing in this article shall be construed to prevent the construction, reconstruction, alteration or demolition of any such elements which the authorized municipal officers shall certify as required by public safety; provided, however, that in appropriate cases measures required to protect the public safety may be approved for a period not to exceed 12 months.

Section 244: Appeals

- (a) Appeals to the Council. Appeals to the council from any final decision of the committee may be made by any person by filing a petition with the Clerk of Council, setting forth the basis for the appeal, within one week of the committee's decision. The appeal shall be placed on the next regularly scheduled council meeting following receipt of the

appeal. The filing of the appeal shall stay the decision of the committee pending the outcome of the appeal to the council, except that the filing of such petition shall not stay the committee's decision if such decision denies the right to raze or demolish a historic structure or building. The council may reverse, modify or affirm the decision of the committee.

- (b) The owner of any building, structure or land within the district that is the subject of a final decision of the council may appeal such decision within 30 days of the date the final decision is rendered by the council by filing a petition at law with the Circuit Court of Loudoun County setting forth the alleged illegality of the action of the council.

The filing of a petition for review shall stay the decision of the council pending the outcome of the appeal to the Circuit Court of Loudoun County, except that the filing of a petition shall not stay the decision of the council if such decision denies the right to raze or demolish a building or structure.

Section 245: Designation of Historic Districts

The Historic Middleburg District may be enlarged or altered and new historic districts, including individual historic landmarks, may be established by the Town Council pursuant to Section 15.2-2306 of the 1950 Code of Virginia, as amended, and to Article XVIII of this ordinance. One or more property owners within the affected area, the Town Council, the Historic District Review Committee, or the Planning Commission may propose amendments to an existing district or creation of a new one.

(a) Criteria for Designation of Historic Districts

Any proposed districts or amendments to districts shall meet one or more of the following criteria:

- (1) possess an identifiable character representative of the town's architectural, archaeological, and/or cultural heritage; or
- (2) be closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history; or
- (3) contain buildings, structures or archaeological resources whose exterior design or features exemplify the distinctive characteristics of an historic type, period or method of construction, or which represent the work of an acknowledged master; or
- (4) have yielded, or are likely to yield, information important to local, regional or national history or prehistory; or
- (5) owing to its unique location or singular physical characteristic, represent an established and familiar visual feature of the neighborhood, community or town; or

- (6) encompass parcels of land or portions thereof adjacent to a street which is a significant historic route of tourist access to the town.

(b) Boundaries of Historic Districts.

The boundaries of historic districts shall be drawn to include those lands which are adjacent to the landmarks, buildings or structures for which the historic district was established and any other lands which the Town Council deems important to ensure preservation of the essential historic character of the district.

(c) Inventory of Buildings and Structures.

Following the creation of each historic district, the Zoning Administrator shall establish and maintain an inventory of the historic buildings and structures within the district.

Section 245a. Maintenance of Historic Structures (Added 02/14/02)

- (a) The purpose of this Section is to prevent the demolition by neglect through permanent damage by weather or vandalism of any contributing building or structure within a designated historic district in Middleburg or of any building or structure that is determined by the Historic District Review Committee (HDRC) to be significant to the character of the district. For the purposes of this Section, a “contributing building or structure” is one that is designated or is eligible to be designated by the Secretary of the Interior as contributing to the historic character of the historic district in which it is located or that is listed individually in the National and/or State Register of Historic Places.
- (b) The owner of any contributing or historically significant building or structure, as defined or determined in this Section shall maintain the building or structure in good repair; that is, structurally sound and protected against decay and deterioration in compliance with this Section and the provisions of the Uniform Statewide Building Code, as adopted by the town under Chapter 36 of the Town Code, to the extent that, in the opinion of the HDRC, such decay or deterioration may result in irreparable deterioration of any exterior architectural feature or produce a detrimental effect upon the structure or upon the character of the district, including, but not limited to:
 - (1) The deterioration of exterior walls or other vertical supports; or
 - (2) The deterioration of roofs or other horizontal members; or
 - (3) The deterioration of exterior chimneys; or
 - (4) The deterioration or crumbling of exterior plaster or mortar; or
 - (5) The ineffective waterproofing of exterior walls, roofs and foundations, including broken windows and doors; or
 - (6) The peeling of paint, rotting, holes and other forms of decay; or
 - (7) The lack of maintenance of surrounding structures, such as fences, walls, gates, sidewalks, steps, signs, or other accessory structures; or
 - (8) The deterioration of any feature so as to create or permit the creation of any hazardous condition.

- (c) The Administrator shall have concurrent jurisdiction with the County Building Official to enforce the requirements of this section.
- (d) Upon a finding by the Administrator that a contributing building or structure is not in good repair and protected against decay and deterioration or a finding by the HDRC that a building or structure within a historic district is significant to the character of the district and is not in good repair and protected against decay and deterioration, the Administrator shall inform the owners of the property in writing, by certified mail, return receipt requested, of the specific deficiencies requiring remediation and shall order such owners to repair or secure such building or structure.
- (e) If the owners or lien holder of the property cited and notified under subsection (d) have not completed the prescribed repairs or other approved remedial measures or come to agreement with the Administrator on a remediation plan within 60 days of the date of the notification prescribed in subsection (d), then the Administrator shall place the matter on the next available agenda of the Historic District Review Committee for approval or modification of the remediation plan by the Committee. Upon approval of a remediation plan by the Committee, the Administrator shall order the owners or lien holder of the property in writing, by certified mail, return receipt requested, to complete the prescribed repairs within 90 days of approval of such measures by the HDRC.
- (f) If such repairs have not been completed within the specified 90-day period, the property owner shall be notified of a zoning ordinance violation, and enforcement shall be pursued by the Administrator in accordance with Article VII.
- (g) In addition to the remedies set forth in Article VII and, at the direction of the Town Council, the town staff may cause the remedial measures to be implemented through its own agents. The Administrator shall provide the property owners with reasonable notice of the town's intent to accomplish the repairs, including at a minimum:
 - (1) A written notice to the owners and any lien holders, sent by certified mail, return receipt requested, to the last know address of the property owner; and
 - (2) Notice published once a week for two successive weeks in a newspaper having general circulation in the town.

No such action shall be taken by the town to remove, repair, or secure any building, wall, or other structure for at least 30 days following the later of the return of the receipt or newspaper publication.

In the event the town removes, repairs, or secures any building, wall, or other structure after complying with the notice provisions of this section, the cost thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected. Every charge authorized by this Section with which the owner of such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 and 4 of Chapter 39 of Title 58.1 of the 1950 Code of Virginia, as amended. The town may waive such liens

in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed. In hardship cases, if a property owner can demonstrate that he or she does not have the financial resources to perform the requisite maintenance, the town may elect to pay for such maintenance from its own funds.