



MEMORANDUM

TO: Metropolitan Planning Commission
FROM: Buz Johnson
Mike Reynolds
DATE: February 7, 2014
SUBJECT: Amendments to the City of Knoxville Zoning Ordinance regarding the removal of a certificate of appropriateness for demolition within the D-1 (Downtown Design Overlay) District (2-B-14-OA)

REQUEST

At the request of the City of Knoxville Law Department, the MPC staff has prepared the attached amendments to the zoning ordinance which, if approved, would remove the certificate of appropriateness for demolition from consideration within the D-1 (Downtown Design Overlay) District. In addition, the law department has asked that the staff also present for consideration companion changes to the Downtown Design Guidelines removing guidelines related to the demolition of and removal of buildings, building features and non-contribution buildings. The changes to the Design Guidelines appear in this agenda under **Other Business**, at **Item #46**.

BACKGROUND

The Downtown Design Overlay District (the “District”) was created when the Knoxville City Council adopted Ordinance No. O-8-07 on January 30, 2007. This overlay district is intended to foster attractive and harmonious development and rehabilitation in Downtown Knoxville that reflects the goals of adopted plans, and the principles of the downtown design guidelines that are to be adopted when the zoning map is amended to create this district. Additionally, a Downtown Design Review Board (DDRB) was established to review and approve the plans for public and private improvements in the district. Design Guidelines were created and then adopted by the Knoxville City Council on March 27, 2007.

Pursuant to the Downtown Design Overlay District portion of the Knoxville City Code, developers of private property are required to file an application for a Certificate of Appropriateness before receiving a building permit in the District. Although not originally included in the Downtown Design Overlay District portion of the Knoxville City Code, the Code was amended on August 26, 2008 to state that “a building permit shall not be

issued for demolition of buildings and building features facing a publicly-oriented space without the issuance of a Certificate of Appropriateness” from the DDRB.

The Design Guidelines adopted by the Knoxville City Council provide the following guidelines for the DDRB when considering demolition within the District:

- If a building is demolished, all visible unutilized building material must be removed and the site must be vegetated or otherwise brought into compliance with the guidelines.
- Any building features facing a publicly-oriented space (not including alleys) shall not be removed/demolished without a Certificate of Appropriateness.
- See Section 1. C: Historic Resources for guidance on demolition and removal of building features in National Register Districts.

At its June 19, 2013 meeting, the DDRB requested that “staff review the guidelines with regard to demolition policy and improve the current guidelines with more definitive direction with regard to demolition of old structures.” As a result of this request, MPC staff member Mike Reynolds presented proposed amendments to the administrative rules, overlay district, and design guidelines for consideration at the October DDRB meeting.

ANALYSIS

Upon researching the legality of various aspects of the proposed amendments, the City Law Department assistant attorney Crista Cuccaro encountered Tennessee Code Annotated § 6-54-133, Design review commission; duties; membership; appeal. This statute falls within Part 1, General Provisions, of Chapter 54, Municipal Powers Generally. The language of the statute, which went into effect on May 28, 2008, is:

*Any municipality may create a design review commission (DRC) having the authority to develop general guidelines for **the exterior appearance of nonresidential property, multiple family residential property, and any entrance to a nonresidential development** within the municipality. The municipal governing body may designate the planning commission as the DRC. When the municipality creates a separate DRC, the mayor shall appoint the members of the DRC from residents of the municipality and shall strive to ensure that the membership is representative of the municipality as a whole, including, if possible, members with either architectural or engineering knowledge, or any other person having experience in nonresidential building. Any property owner affected by the guidelines may appeal a decision of the DRC to the municipality's planning commission or, if there is no planning commission or if the municipality has designated the planning commission as the DRC, to the municipality's governing body. See Tenn. Code Ann. § 6-54-133 (emphasis added).*

The plain meaning of the statute enabling municipalities to create design review commissions is clear and unambiguous. Specifically, a design review commission is limited in its purview to three things: the exterior appearance of nonresidential property, multiple family residential property, and any entrance to a nonresidential development. If property rights are characterized as the proverbial bundle of sticks, demolition is one of those rights. A design review commission is not authorized to review demolition under this statute.

In contrast, the state statute enabling the Historic Zoning Commission states, in part, the following: *“All applications for permits for **construction, alteration, repair, rehabilitation, relocation or demolition of any building, structure or other improvement** to real estate situated within a historic zone or district shall be referred to the historic zoning commission or the regional historic zoning commission, which shall have broad powers to request detailed construction plans and related data pertinent to thorough review of the proposal.”* See Tenn. Code Ann. § 13-7-407(a) (emphasis added). The inclusion of demolition in this statute gives the Historic Zoning Commission the authority to review it.

Although the City of Knoxville is a home rule municipality, and therefore Dillon’s Rule does not apply, the City cannot interfere with property owners’ rights to demolish their property, unless the City has direction from the legislature or is acting in a police power capacity.

The attached amendments have been introduced by the City of Knoxville to remedy these defects in the Knoxville City Code. Pursuant to the Downtown Design Overlay District portion of the Knoxville City Code and the Administration Section of the Downtown Design Guidelines, the Downtown Design Review Zoning Overlay Ordinance text, zoning map, Downtown Design Guidelines, and subsequent changes to those items, must be submitted to both the MPC and City Council for adoption. The only governing document required to be adopted by the DDRB is the administrative rules; presumably, this adoption includes subsequent changes to the rules. Then, the administrative rules must be approved by the MPC. Therefore, the attached amendments are to the zoning ordinance, and the changes to the Downtown Design Guidelines following at **Item #46**. Amendments to the administrative rules will be submitted to the MPC after they are heard at the Feb. 19, 2014 meeting of the DDRB.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission recommend to Knoxville City Council approval of the amendments to the D-1 District, as shown in Exhibit A.

EXHIBIT

Exhibit A.

**AMENDMENTS TO THE KNOXVILLE CITY CODE, APPENDIX B,
ARTICLE IV, SECTION 5.5, D-1 DOWNTOWN DESIGN OVERLAY
DISTRICT, REMOVING CERTIFICATES OF APPROPRIATENESS FOR
DEMOLITION WITHIN THE DISTRICT.**

(Language to be removed is ~~struck through~~, and new language to be added is in **bold and underlined type**.)

5.5. D-1 downtown design overlay district.

A. *General description.* This overlay district is intended to foster attractive and harmonious development and rehabilitation in Downtown Knoxville that reflects the goals of adopted plans, and the principles of the downtown design guidelines that are to be adopted when the zoning map is amended to create this district. Additionally, a downtown design review board will be established to review and approve the plans for public and private improvements in the district. Pursuant to procedures and conditions provided in this chapter, the design review board shall work to realize the following objectives:

1. Promote downtown as a place for a viable mix of commercial, office, civic and residential uses, including street level development that creates a pedestrian-friendly environment.
2. Create quality publicly-oriented spaces, including streets, pedestrian ways, parks and squares that are safe and beautiful.
3. Create harmony in architectural and landscape architectural elements to provide a pleasing environment and continuous commerce and interest along sidewalks.
4. Create efficient processes for the review and approval of downtown projects.
5. Establish a means for design review for public improvements and building development and renovation to protect overall downtown investments.
6. Foster new development that complements adjacent historic resources.
7. Provide for the development of areas of special character, including the older grid street district (including such streets as Gay and Market streets and Clinch and Cumberland avenues), the Warehouse District (the Jackson-Central vicinity) and areas that are characterized by boulevard-like streets (such as sites along Summit Hill Drive and Henley Street).

B. *Permitted uses.* Permitted uses shall be determined by the base zone of the property (such as the C-2 or O-2 zoning districts).

C. *Area regulations.* The dimensional requirements of the base zone, such as the five-foot front yard setback and the open space requirement for taller buildings in the C-2 zoning district, will not always be consistent with the intent of the downtown design guidelines. The downtown design review board may issue a certificate of appropriateness (referenced in subsection F) to avoid the need for variances in cases where a development has been conceived to respect the historic context of the block,

provide greater pedestrian activity at sidewalk level or meet other provisions of the guidelines.

D. *Downtown overlay district defined and required guidelines.* The downtown design overlay district shall be shown on the city zoning map. Downtown design guidelines shall be adopted with changes to the zoning map to create boundaries for this overlay and shall be used by the design review board as a basis of their recommendations and decisions.

Historic zoning overlay (H-1) districts, which have their own boundaries and guidelines, shall not be included within the D-1 overlay.

E. *Design review board: Creation, responsibilities, membership and administrative rules.* For the purpose of making decisions relative to the downtown design guidelines, a downtown design review board shall be established. The design review board's function is not to impose any architectural preferences. In no way are the guidelines meant to bring uniformity in design or approach or to require specific materials. They are meant to be applied in as flexible manner as possible to meet the needs of the building designer while encouraging the design to respect the context of nearby buildings and the streetscape. The guidelines are thus not a rigid set of rules, but rather a set of key principles to guide development. The review board's task is to provide certainty that both immediate surroundings as well as downtown as a whole are taken into account with each building project. Administrative rules, including rules governing the board, terms of membership and application schedules, shall be approved by the metropolitan planning commission. The responsibilities of the board and its membership are outlined below.

Responsibilities:

1. Review the designs for all public projects, including, but not limited to, street and sidewalk design, landscaping, park improvements, public facility improvements and public way-finding systems.
2. Review and approve private development plans, based upon the adopted design guidelines as set forth at the time of amendments to the zoning map.
3. Advise the mayor, city council, metropolitan planning commission and historic zoning commission on means to improve downtown design, incentives that could be used to foster good design, and programs that should be pursued to foster beautification, safety and related public purposes downtown.

Composition:

- ~~1. Membership:~~ The design review board shall be appointed by the mayor with the approval of a majority of the city council and shall be composed of permanent staff and other rotating members set forth as outlined below.

Staff (permanent members):

- (a) Metropolitan planning commission executive director (or designee), who shall be an ex officio non-voting member.

(b) City's director of policy development (or designee).

Other (rotating members):

- (a) One architect (from a slate recommended by AIA Knoxville).
- (b) One urban design professional with a background in architecture or urban planning (selected from nominations from AIA Knoxville and the local chapter of the American Planning Association).
- (c) Two downtown residents.
- (d) Two businesses, development or real estate professionals whose work is largely focused upon downtown.
- (e) A member of the central business improvement district board (from a slate proposed by the board).
- (f) A member of the city's historic zoning commission.

Ex-officio members: The following may be called on to serve as non-voting members when cases require their technical and professional expertise.

- (a) Metropolitan planning commission and historic zoning commission staff.
- (b) Building official (or designee).
- (c) City engineering director (or designee).
- (d) Central business improvement district staff.
- (e) Knoxville Utilities Board staff.
- (f) Knoxville's community development corporation staff.
- (g) City Law Department staff.**

Administrative rules: The board shall adopt administrative rules and shall submit the rules to the metropolitan planning commission for adoption. The rules shall outline the terms of board members, election of its chair, its schedule of meetings, voting procedures, application requirements regarding certificates of appropriateness, and appeal processes to the planning commission.

F. Administrative procedures.

Public improvements

1. The design of projects that are initiated by the city and Knoxville Utility Board, such as improvements to or new construction of streets, sidewalks, way-finding and other signs, lighting, parks and civic buildings, must be submitted to the review board for approval. The board shall send a report to the mayor and city council, and utility board director regarding their findings.
2. The board may request the mayor's assistance to pursue board review of other public projects, including those of county, state and federal governments.

Private development: The board must issue a certificate of appropriateness before a building permit can be issued. The following procedures are to be utilized:

1. The developer shall meet with staff (see subsection E) to discuss preliminary concepts of the proposed development; staff may waive this provision should

they find the project to be of a minor nature (such as window, door or sign board replacement) or if the renovation is not oriented to a publicly-oriented space (such as a street, plaza or pedestrian way). Sketches, draft architectural drawings or photographs of similar projects are means which may be used to provide an understanding of the project. Staff, in turn, will discuss the implications of the design guidelines relative to the proposed concept. A brief report will be provided to the developer. Any requests for sign lighting or electronic message center exceptions within the D-1 (Downtown Design Overlay) shall be reviewed and approved by the downtown design review board and a certificate of appropriateness issued to the applicant.

2. An application for a certificate of appropriateness shall be filed with the metropolitan planning commission and shall include the application form and the following information for the review board's consideration:
 - a. A site plan, including property lines, sidewalk location, building footprint, landscaping, and parking and access points (as applicable);
 - b. Building elevations, showing entrances, windows, sign(s), construction materials and parapet or other structures to avoid visual or noise problems associated with heating/cooling or other utility units (other drawings such as perspectives are encouraged, but not required by the review board); and
 - c. A written description, stating the intended uses for the floors of the building(s); these may be presented as notes on the elevation(s).
3. Certificates of appropriateness will be issued in accordance with the following:
 - a. All applications for certificates of appropriateness shall be considered by the review board, which shall have the power to approve, approve with conditions or deny certificates of appropriateness.
 - b. No permit shall be issued for the following activities without issuance of a certificate of appropriateness by the ~~design review~~ **Board**:
 - (1) New construction,
 - (2) Facade changes to a publicly-oriented space or interior changes that would obscure windows and doors (such as drop ceilings or display cases), (3) Parking facility development or redevelopment, and
 - (4) ~~Demolition of buildings and~~ **Removal of** building features facing a publicly-oriented space.

- c. Exemptions to the board's review include ordinary repairs, removal of signs (without replacement), temporary signs or structures, emergency safety repairs and interior alterations that do not obscure windows.
- d. Staff may approve the following when they find that the design conforms to adopted guidelines: new signs, ~~demolition of non-historic features on publicly-oriented facades and demolition of historic features to be replaced in-kind,~~ **in-kind replacement of building features, removal of non-historic building features facing a publicly-oriented space,** replacement of windows at ground level with transparent glass, or other replacements of building features that are consistent with the design guidelines.
- e. The review board shall, within thirty (30) days following the availability of sufficient data, grant a certificate of appropriateness with or without attached conditions or deny said certificate, and shall state the reasons for denial or the conditions attendant with the granting of a certificate in writing.

Appeals: As to application for certificates of appropriateness located within the D-1 Design Guidelines Overlay boundaries of the city, the applicant submitting an application, or any person who was a party for or against the application at the downtown design review board meeting, may appeal approval, conditions of approval, or disapproval of such application to the metropolitan planning commission, in accordance with article IX of the city downtown design review board administrative rules and procedures. A staff decision, based on judgment, may be appealed to the downtown design review board, in accordance with article VII, section 3, city downtown design review board administrative rules and procedures.