

Memo

To: Mayor and City Council
From: Cynthia Brubaker MacDonald
Date: 11/3/04
Re: Changes to Historic District Ordinance

I have attached the Historic District Chapters of the Salisbury City Code, with proposed revisions to bring it into compliance with State law and procedures generally accepted among historic district commissions. Many of the additions were made to address issues previously omitted from the Code. For example, I have supplemented the definitions by including several terms and their definitions from the State Code. I have also added provisions regarding the application process, enforcement, routine maintenance and severability. These provisions are all taken from the state code.

Also in accordance with State law, I have given council the power to designate a site or structure deemed to be of historic or other significance. This allows the council to call for the preservation of a site or structure that is not located in an historic district.

The section regarding appointment of members of the Commission has been modified so that the Mayor makes the appointments with the advice and consent of the Council. This is in conformance with the manner of appointment for most other commissions in the City. Furthermore, the ordinance requires the Council to establish criteria for qualifying as a member of the Commission.

I have modified the powers and duties of the Commission in accordance with state law. The most significant change here is that the Commission can now modify its procedural rules without the approval of the council. State law does not require such approval.

The level of scrutiny given to an application is determined by whether a structure contributes to the historic or other significance of the district. Originally, state law and our ordinance said that the Commission should be strict in its review of plans for a structure or site that has significance and lenient if the structure does not have significance. Terminology in the state law changed to remove the term "lenient." I have revised the ordinance accordingly, and it now says that the Commission "may not strictly judge" plans for work at a noncontributing property.

Finally, we have provided that approval for a project will expire if the work has not begun within one year after approval or if it is suspended for more than six months. An applicant may request an extension from the Commission, if necessary.

**CITY OF SALISBURY
ORDINANCE NO. 1916**

AN ORDINANCE of the Mayor and the Council of the City of Salisbury to amend Historic Districts Chapters of the City Code, being Chapters 17.52, 17.56, 17.60 and 17.64.

WHEREAS, the Mayor and City Council of the City of Salisbury desire to amend the City's Historic District Ordinance to comply with State law and comply with procedures generally accepted among historic district commissions; and

WHEREAS, the Mayor and City Council of the City of Salisbury have determined that it is in the best interest of the citizens of the City of Salisbury to amend such Historic District Ordinance.

NOW, THEREFORE, be it enacted and ordained by the City Council of the City of Salisbury, in regular session, as follows:

1. That Chapter 17.52 of the Salisbury City Code shall be amended as follows:

CHAPTER 17.52

HISTORIC DISTRICTS - GENERAL PROVISIONS

Sections:

Article I Legislative Intent and General Provisions

- | | |
|-----------|------------------------------|
| 17.52.010 | Intent. |
| 17.52.020 | Definitions. |
| 17.52.030 | Establishment of boundaries. |

Article II Historic District Commission

- | | |
|-----------|---|
| 17.52.040 | Appointment: <u>Application for permission to construct, alter, reconstruct, move or demolish.</u> |
| 17.52.050 | Membership: <u>Routine maintenance or landscaping not affected.</u> |

- 17.52.060 ~~Organization:~~ Enforcement.
- 17.52.070 ~~Meetings:~~ Appointment.
- 17.52.080 ~~Powers and procedure:~~ Membership.
- 17.52.090 ~~Special powers:~~ Meetings.
- 17.52.100 ~~Approval or rejection of application.~~ Power and procedures duties.
- 17.52.110 ~~Appeals:~~ Special Powers.
- 17.52.120 Approval or rejection of application; reapplication.
- 17.52.130 Appeals.
- 17.52.140 Severability.

Article I Legislative Intent and General Provisions

Section 17.52.010. Intent.

A. The intent in establishing historic districts is to safeguard and promote the history of Salisbury by preserving areas, structures and sites of cultural, social, economic, political, architectural and historical significance; to strengthen and improve the local economy by stabilizing and improving property values in these areas; to foster civic beauty; and to promote the use and preservation of these areas for the education, welfare and pleasure of the public. These areas contain numerous structures and sites representing a variety of historic and architectural periods which, once lost, cannot be replaced.

B. The regulations within these district are established:

1. To protect against destruction of or encroachment upon these areas and the structures and premises therein;
2. To encourage uses which will lead to their continuance, conservation and improvement in a manner appropriate to the preservation of a cultural, social, economic, political and archeological heritage of the City;
3. To prevent creation of environmental influences adverse to such purposes;
4. To assure that new structures and uses within such districts will be in keeping

with the character to be preserved and enhanced.

C. The following general regulations and historic districts are based upon this intent, which is consistent with the historic preservation goals and recommendations contained in the City's adopted metro core comprehensive plan. (Prior code § 150-106)

Section 17.52.020. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

"Demolition" includes any willful neglect in the maintenance and repair of a structure, other than the structure's appurtenances and environmental settings, that:

(i) Does not result from a financial inability to maintain and repair the structure; and

(ii) Threatens to result in a substantial deterioration of the exterior features of the structure.

"District" means a significant concentration, linkage, or continuity of sites, structures, or objects united historically or aesthetically by plan or physical development.

"Historic District" means an area in the City which is deemed to be of historic, archeological, or architectural ~~value~~ significance, the boundaries of which shall be established in accordance with Section 17.52.030.

"Routine Maintenance" means work that does not alter the exterior fabric or features of a site or structure and has no material effect on the historical, archeological, or architectural significance of the site or structure.

"Site" means the location of an event of historic significance or a standing or ruined structure that possesses historic, archeological, or cultural significance.

~~“Structure” means a combination of material to form a construction that is stable, including, among other things, buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences and display signs, and shall be interpreted to include natural land formations. The term structure shall be construed as if followed by the words “or part thereof.” (Prior code § 150-107)~~

(i) “Structure” means a combination of material to form a construction that is stable.

(ii) “Structure” includes buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, bridges, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences, and display signs visible or intended to be visible from a public way.

(iii) “Structure” also includes a natural land formation and an appurtenance and environmental setting.

(iv) “Structure” includes a part of a structure.

Section 17.52.030. Establishment of boundaries.

A. Boundaries for historic districts shall be established by the City Council in accordance with the procedure for establishment of zones set forth in Chapter 17.228. Such boundaries shall be shown on the official zoning map overlaying the existing zoning. These boundaries may be changed from time to time by the City Council, and it shall not be necessary to show a mistake in the original boundaries or a change in the neighborhood. (Prior Code § 150-108)

B. The City Council may also designate sites or structures deemed to be of historic, archeological or architectural significance by following the same procedures.

Section 17.52.040. Application for permission to construct, alter, reconstruct, move or demolish.

A. Before a person may construct, alter, reconstruct, move, or demolish a site or structure located within an historic district, if any exterior changes are involved which would affect the historic, archeological, or architectural significance of a site or structure, any portion of which is visible or intended to be visible from a public way, the person shall file an application with the historic district commission.

B. An application filed under subsection A of this section shall be considered by the historic district commission and approved, modified or rejected by the commission.

C. An applicant may not resubmit an application that is identical to a rejected application for 1 year after the rejection.

D. The Department of Building, Housing and Zoning may not grant a permit for a change to a site or structure located in a district until the historic district commission has acted on the application as provided under §17.52.120 of this Chapter.

Section 17.52.050. Routine Maintenance or landscaping not affected.

This Chapter may not be interpreted to prevent routine maintenance or landscaping that does not have a material effect on the historic, archeological, or architectural significance of a designated site, structure, or district.

Section 17.52.060. Enforcement.

A historic district commission may request that the Department of Building,

Housing and Zoning institute any of the remedies and penalties provided by law for any violation of an ordinance or resolution adopted under this Chapter.

~~Section 17.52.040~~ 17.52.070. Appointment.

The historic district commission shall be appointed by the Mayor, and with the advice and consent of the Council of the City of Salisbury. Members shall be appointed for terms of three years, except that, in making initial appointments, some appointments shall be established for less than three years in order that all appointments shall not expire at the same time. Members shall be eligible for reappointment. In the event of a vacancy on the commission, the mayor and council shall make an interim appointment for the remainder of the unexpired term. (Prior code § 150-109)

~~Section 17.52.050~~ 17.52.080. Membership.

The historic district commission shall have a membership of seven persons, all of whom are residents of the city of Salisbury, all of whom are qualified by special interest, knowledge or training in such fields as history, architecture, preservation or urban design and who have knowledge of and have demonstrated an interest in the preservation of historic and architectural areas of the city. The City Council shall establish and publicly adopt criteria for qualifying as a member of the Commission. (Prior code § 150-110)

~~17.52.060 Organization.~~

~~A. The commission shall organize annually and from its membership select a chairman.~~

~~B. The commission shall adopt rules of procedure necessary in discharging its duties.~~

~~C. The director of the department of building, housing and zoning shall act as secretary to the commission:~~

~~—— D. Rules and Regulations:~~

~~1. The commission shall promulgate rules and regulations relating to its functions and responsibilities hereunder, provided that:~~

~~a. Such rules and regulations are presented and approved by the mayor and city council and made available for public comment prior to adoption; and~~

~~b. They are consistent with the general regulations for historic districts:~~

~~2. Such rules and regulations shall have among their primary purposes:~~

~~a. Provision for appropriate public notice to interested local groups or neighbors of various classes of applications;~~

~~b. Assurance that the commission can act in an advisory and informal fashion in advance of requests for permits in order to encourage improvements, demolition and reconstruction in ways that will enhance the historic district;~~

~~c. To assure that bureaucratic requirements are minimized;~~

~~d. To classify the various structures and features thereof within the historic district so that the requirements of Section 17.52.080(E) can be~~

~~more readily applied and informal prompt approval procedures initiated for those referred to in Section 17.52.080(E)(2).~~

~~E. The council of the city of Salisbury may, from time to time, appoint professional advisors to the commission. (Prior code § 150-111)~~

~~Section 17.52.070~~ 17.52.090 Meetings.

A. All meetings of the commission shall be open to the public. Any person, or his duly constituted representative, shall be entitled to appear and be heard on any matter before the commission reaches a decision.

B. The commission shall keep a record of its proceedings and actions, which shall be on file for public view in the office of the secretary, and retained according to the file retention schedule of the City.

C. Notice of the commission's meetings shall be given in accordance with provisions for public notice established in the historic district's rules and regulations.

~~D. Three members for a five-member commission and Four members for a seven member commission shall constitute a quorum for all business not requiring a larger number of votes. (Prior code § 150-112)~~

~~Section 17.52.080~~ 17.52.100 Powers and procedures duties.

A. The historic district commission shall have the following powers and duties in addition to any other powers and duties provided in this Chapter.

1. A. It shall be the duty of an historic district commission t To review any application to construct, alter, reconstruct, move or demolish any site or structure within an historic district if any such changes would affect its exterior appearance and to approve

or reject such application any exterior changes are involved which would affect the historic, archeological, or architectural significance of the site or structure, any portion of which is visible or intended to be visible from a public way, and to approve, modify, or reject such application.

~~B. Any person, individual, firm or corporation proposing to construct, alter, reconstruct, move, demolish or repair any structure within an historic district, if such changes would affect its exterior appearance, shall file an application for the same with the historic district commission at the office of the bureau of inspections of the city of Salisbury, who shall forward the application, together with all maps, plans and all other data to the historic district commission. Each application shall include all necessary data required by the rules of the historic district commission and shall be advertised in such manner as provided for in the rules of the commission.~~

2. To direct studies, reports, and surveys to identify historically, culturally, archaeologically, or architecturally significant landmarks, sites, structures, and districts that exemplify the cultural, social, economic, political, or architectural history of the city, state or nation.

3. To adopt and utilize in its review of applications for rehabilitation and new construction design guidelines and criteria for designated landmarks, sites, structures, and districts which are consistent with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995. Guidelines may include design characteristics intended to meet the needs of particular types of landmarks, sites, structures, and districts, and may identify categories of changes that, because they are minimal in nature, do not

affect historic, cultural, archaeological, or architectural significance, and do not require review by the commission. Guidelines shall be presented to the Mayor and City Council for approval.

4. To adopt rules of procedure necessary in discharging its duties, provided that said rules:

a. Are consistent with the general regulations for historic districts;

b. Provide for appropriate public notice to interested local groups or neighbors of various classes of applications;

c. Permit the commission to act in an advisory fashion in advance of requests for permits in order to encourage improvements, demolition and reconstruction in ways that will enhance the historic district; and

d. Assure that bureaucratic requirements are minimized.

5. To appoint professional advisors.

E. B. In reviewing an application and plans, an historic district commission shall give consideration to:

1. The historic, archeological and or architectural ~~value~~ or significance of the site or structure and its relationship to the historic, archeological or architectural ~~value~~ significance of the surrounding area;

2. The relationship of the exterior architectural features of the structure to the rest remainder of the structure and to the surrounding area;

3. The general compatibility of exterior design, scale, proportion,

arrangement, texture, and materials proposed to be used; and

~~4. Special features in historic areas, such as their architectural integrity and spatial relationships among buildings. Spatial relationships include courtyards, street patterns, the scale of buildings and open space;~~

5: ~~4.~~ Any other factors, including aesthetic, which the commission deems to be pertinent.

~~D: C.~~ An historic district commission shall pass only on exterior features of a structure and shall not consider interior arrangement, nor shall it ~~disapprove~~ reject applications except with regard to the considerations set forth above.

~~E: Intent:~~

~~1. It is the intent of these regulations that the commissions be strict in their judgment of plans for structures deemed to be valuable according to studies performed for districts of historic, or architectural value.~~

~~2. It is not the intent of these regulations to limit new construction, alteration or repair to any one period of architectural style or to the same style as the structure being changed or that of its neighbors. It is also the intent of these regulations that an historic district commission shall be lenient in its judgment of plans for new construction except where such plans would seriously impair the historic or architectural value of surrounding structures. If the proposed new construction materially impairs the historic value of neighboring buildings, the commission can reject the proposal.~~

~~3. It is recognized that there are a number of structures within~~

~~historic districts that are neither architecturally nor historically significant or valuable and that most changes to such structures, including in many cases demolition thereof, would not be detrimental to an historic district but indeed would represent improvement thereof which, itself, is a principal purpose of these regulations. To this end the city council directs that all applications relating to such structures shall be processed expeditiously and without any needless delays.~~

D. Strictness in judgment of plans; limiting architectural style to one period.

1. The commission shall strictly judge plans for sites or structure determined by research to be of historic, archeological, or architectural significance.

2. Unless the plans would seriously impair the historic, archeological, or architectural significance of the surrounding site or structure, the historic district commission may not strictly judge plans:

a. For a site or structure of little historic, archeological, or architectural significance; or

b. Involving new construction.

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

F: E. Special Consideration.

1. In the case of an application for construction, reconstruction, or alteration affecting a site or the exterior appearance of a structure or for the moving or demolition of a structure, which a commission deems of unusual importance to the city or unusual importance to the entire state or nation, the

~~commission shall endeavor to work out with the owner an economically feasible plan for the preservation of such structure attempt, with the owner of the structure, to formulate an economically feasible plan to preserve the site or structure.~~

2. Unless a commission is satisfied that proposed construction, alteration, reconstruction, moving or demolition will not materially impair the historic, archeological, or architectural significance value of a site or structure, the commission shall reject the application and shall file with the department of building, housing and zoning a copy of the rejection of such application.

~~3. No new application for the same or similar work shall be filed within one year after such rejection, except in the event of a change in such structure arising from casualty.~~

4. 3. If an application is submitted for construction, reconstruction, alteration or for moving or demolition of a site or structure that a commission deems of unusual importance, and no economically feasible plan can be formulated, the commission shall have ninety (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 building site or structure.

E. F. Approval Under Certain Circumstances. In any case of any site or structure deemed to be valuable for its historical, archeological, or architectural significance ~~the period of architecture it represents and important to the~~

neighborhood or area within which it exists, a the commission may approve proposed construction, reconstruction, alteration, moving or demolition, despite the fact that the changes come within the provisions of Section 17.52.100(E) of this Chapter if: file with the department of building, housing and zoning of the City of Salisbury its approval of such application to move, demolish or alter such structure if any of the circumstances under which approval might have been given under the preceding sections are in existence and shall file approval if:

1. Such The site or structure is a deterrent to a major improvement program which will be of substantial benefit to the city;
2. Retention of such structure would cause undue financial hardship to the owner; or
3. Retention of such structure would not be in the best interest of a the majority of persons in the community. (Prior code §150-113)

Section ~~17.52.090~~ 17.52.110. Special Powers.

A. The City of Salisbury shall have the right to accept and use gifts for exercise of a commission's functions, provided that such gifts shall be turned over to the City Treasurer and be subject to the charter and laws of the City of Salisbury.

B. The commissions may designate the Maryland Historical Trust to make an analysis of and recommendation concerning the preservation of structures of historic, archeological or architectural value significance within the City. Such report may include proposed boundaries of districts as well as identify and designate particular structures recommended to be preserved.

C. The commission shall have the right to petition the Salisbury-Wicomico County Planning and Zoning Commission for the designation of appropriate areas as historic districts.

D. The City of Salisbury may ~~purchase~~ acquire architectural easements in connection with structures located in or adjacent to an historic district. Such easements shall grant to a commission, the residents of the historic district and the general public the perpetual right to have the exterior appearance of any structure upon which it is applied retained in substantially the same character as when the easement took effect. (Prior code § 150-114)

Section ~~17.52.100~~ 17.52.120 Approval or rejection of application; reapplication.

A. The commission shall file with the department of building, housing and zoning ~~their~~ its certificate of approval or rejection of all applications submitted to ~~them~~ it for review. The commission shall set forth, in writing, its reason for approval, modification or rejection of an application.

B. No work shall begin until such certificate shall have been filed.

C. Every certificate of approval and any permit arising as a result thereof shall become invalid unless the work on the site authorized by such certificate of approval or permit is commenced within one (1) year after its issuance, or if the work authorized by such certificate of approval or permit is suspended or abandoned for a period of one hundred eighty (180) days after the time the work is commenced. The commission is authorized to grant, in writing, one or more extensions of time, for periods not more than one hundred eighty (180) days each. The extension shall be requested in writing in justifiable cause demonstrated.

~~C~~: D. In the case of rejection, such certificate shall be binding on the director of the department of buildings, housing and zoning, and no permit shall be issued.

~~D~~: E. Failure of the commission to act within forty-five (45) days from the date an application is filed shall constitute approval unless an extension is agreed upon mutually by the applicant and the commission. (Prior code §150-115)

F. No new application for the same or similar work shall be filed within one year after such rejection, except in the event of a change in such structure arising from casualty.

Section ~~17.52.110~~ 17.52.130. Appeals.

Any person or persons, jointly or severally, or firm or corporation or any person who is a resident and/or property owner of a district, aggrieved by a decision of the historic district commission shall have the right of appeal of that decision to the Circuit Court of Wicomico County. (Prior code § 150-116)

Section 17.52.140. Severability.

A. The provisions of this Chapter are severable.

B. If any provision of this Chapter is held unconstitutional by a court of competent jurisdiction, the decision of the Court does not affect or impair any of the remaining provisions.

2. That Chapter 17.56.020 of the Salisbury City Code shall be amended as follows:

CHAPTER 17.56

CAMDEN HISTORIC DISTRICT

Section 17.56.020 Historic district commission.

A. The historic district commission established in accordance with Sections ~~17.52.040 and 17.52.050~~ 17.52.070 and 17.52.080 shall serve as the commission for the Camden Historic District.

B. Any neighborhood association within the Camden Historic District or any other interested organization may submit to the city council names of persons for consideration as members of the historic district commission. (Prior code §150-120.2)

3. That Section 17.56.030 of the Salisbury City Code shall be amended as follows:

Section 17.56.030 Certificate of approval.

A. Prior to the construction, demolition, alteration or moving of any site or structure which may affect its exterior appearance, a certificate of approval issued in accordance with ~~Section 17.52.080~~ Chapter 17.52 shall be obtained from the historic district commission.

B. No approval shall be required for routine maintenance or repair of any structure, including roof coverings and color of paint. (Prior code § 150-120.3)

4. That Section 17.60.020 of the Salisbury City Code shall be amended as follows:

Section 17.60.020 Downtown historic district commission.

A. The historic district commission established in accordance with the provisions of Sections ~~17.52.040 and 17.52.050~~ 17.52.070 and 17.52.080 shall serve as the commission for the downtown historic district.

B. The downtown merchants association or any other interested organization may submit to the city council names of persons for consideration as members of the historic district commission.

C. In addition to the requirements of Section ~~17.52.080~~ 17.52.100(C), when reviewing applications and plans, the commission shall consider the “traditional main street” concept enunciated in the R/UDAT report, dated May, 1980, and the desirability of new buildings and diversity in architecture.

D. The local members of the Chesapeake Bay Chapter of the Maryland Society of Architects are authorized to serve as professional advisors to the downtown historic district commission.

E. The city council is aware that the tasteless use of commercial paint colors under the guise of ordinary maintenance may have a very detrimental effect on buildings in the district and, in fact, do violence to the very intent of the district. Therefore, the commission shall adopt a color chart with a large selection of suitable exterior colors and, in adopting this color chart, employ and consolidate charts from various paint stores, dealers and companies, which shall be kept available in the office of the building inspector for consideration by property owners. The commission shall informally consult with property owners upon request as to possible colors and combinations thereof prior to actual filing of an application by a property owner in order to minimize delay in approval.

(Prior code § 150-122)

5. That Section 17.60.030 of the Salisbury City Code shall be amended as follows:

Section 17.60.030 Certificate of approval.

A. Prior to the construction, demolition, alteration, moving or painting of any site or structure which may affect its exterior appearance, a certificate of approval issued in accordance with ~~Section 17.52.080~~ Chapter 17.52 shall be obtained from the historic district commission.

B. No approval shall be required for routine maintenance or repair of any structure, including roof coverings and color of paint. (Prior code § 150-120.3)

6. That Section 17.64.020 of the Salisbury City Code shall be amended as follows:

Section 17.64.020 Newtown historic district commission.

A. The historic district commission established in accordance with the provisions of Sections ~~17.52.040 and 17.52.050~~ 17.52.070 and 17.52.080 shall serve as the commission for the Newtown historic district.

B. Any neighborhood association within the Newtown historic district or any other interested organization may submit to the city council names of persons for consideration as members of the historic district commission.

7. That Section 17.64.030 of the Salisbury City Code shall be amended as follows:

Section 17.64.030 Certificate of approval.

A. Prior to the construction, demolition, alteration, moving or painting of any site or structure which may affect its exterior appearance, a certificate of approval issued in accordance with ~~Section 17.52.080~~ Chapter 17.52 shall be obtained from the historic district commission.

B. No approval shall be required for routine maintenance or repair of any structure, including roof coverings and color of paint. (Prior code § 150-119)

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the changes and amendments set forth in this Ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the ____ day of _____, 2004, and having been published as

required by law, in the meantime, was finally passed by the Council on the _____ day of _____, 2004.

Brenda J. Colegrove, City Clerk

Michael P. Dunn,
President of the Council of
the City of Salisbury

Approved by me, this _____
day of _____, 2004.

Barrie P. Tilghman,
Mayor of the City of Salisbury