

CHAPTER 20. HC HISTORIC AND CULTURAL CONSERVATION DISTRICTS*

*Cross references: Historic preservation program, § 6-4041 et seq.

Sec. 16-20.001. Statement of intent.

Within zoning districts now existing or hereafter created, it is the intent of this chapter to permit in general areas of substantial historic, architectural, and/or cultural significance, or for individual buildings or sites designated as having such significance, the creation and regulation of the following categories of zoning protection:

- (1) Landmark Buildings and Sites;
- (2) Historic Buildings and Sites;
- (3) Landmark Districts;
- (4) Historic Districts; and
- (5) Conservation Districts.

The council finds that many buildings, sites and districts as herein defined, having a special character or a special historic or aesthetic interest or value, or representing the finest architectural products of distinct periods in the history of the city, have been destroyed or uprooted, notwithstanding the feasibility of preserving and continuing the use of such buildings, sites and districts, and without adequate consideration of the irreplaceable loss to the people of the city of aesthetic, educational, economic and historic values represented by such buildings, sites and districts. In addition, distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the finding of the council that the standing of this city as the capital of government, culture, business and education and as a major tourist and convention center must be maintained and enhanced by preserving the historical and architectural heritage of the city and by preventing the destruction of such cultural assets.

It is hereby declared as a matter of public policy that the identification, protection, enhancement, perpetuation and use of buildings, sites and districts of special character or of a special historic or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety, education and general welfare of the people. Accordingly, the public policy objectives of this chapter are as follows:

- (1) To effect and accomplish the protection, enhancement and perpetuation of such buildings, sites and districts which represent or reflect special elements of the city's cultural, social, economic, and architectural history;
- (2) To safeguard the city's historic, cultural heritage, as embodied and reflected in such buildings, sites and districts;
- (3) To stabilize and improve property values in such buildings, sites and districts;
- (4) To foster civic pride in the beauty and noble accomplishments of the past;
- (5) To protect and enhance the city's attractions to tourists and visitors and thereby support and stimulate business and industry;

- (6) To strengthen the economy of the city;
- (7) To promote the use of buildings, sites and districts for the education, pleasure and general welfare of the people of the city;
- (8) To promote attention to sound design principles in areas of new development and redevelopment;
- (9) To raise the level of community understanding and expectation for quality in the built environment; and
- (10) To implement the Comprehensive Development Plan of the City of Atlanta.

(Code 1977, § 16-20.001)

Sec. 16-20.002. Definitions.

As used in this chapter, unless specifically stated otherwise, the following terms shall mean and include:

Alteration: Any change of any kind whatsoever to the exterior of a building, structure or site, or any change of any kind whatsoever to a designated interior of a building, structure or site, or any change of any kind whatsoever to a nondesignated interior of a building, structure or site which is visible from the public way, except ordinary repair and maintenance, and except demolitions. An alteration shall be deemed to be a "minor alteration" if it is an alteration which does not significantly affect the historic, cultural or architectural integrity, interpretability or character of a building, structure, site or district. In general, minor alterations would include the kind of work which is normally done without the aid of a professional drafter or professional quality plans. An alteration shall be deemed to be a "major alteration" if it is an alteration which does affect the historic, cultural, or architectural integrity, interpretability, or character of a building, structure, site or district. In general, major alterations would include the kind of work which is normally done with the aid of a professional drafter or professional quality plans. All variances as defined herein shall be deemed to be "major alterations."

Archaeological: Relating to the science or study of the material remains of past life or activities and the physical site, location or context in which they are found, as delineated in the Department of the Interior's Archaeological Resources Protection Act of 1979.

Area: Any geographic division of real property.

Building: Any structure.

Commission: The Atlanta Urban Design Commission.

Contributing Building, Structure or Site: A building, structure or site which reinforces the visual integrity or historic interpretability of a district, historic area or historic zone.

Demolition: An act or process that destroys or razes in whole or in part a building, structure or site, including an interior space within a district, or permanently impairs its structural integrity.

Designated Interior: An interior, or portion of an interior, of a Landmark Building or Site which is accessible to the public and which meets the criteria for nomination and designation to a Landmark Building or Site provided for in this chapter.

Director: The Executive Director of the Atlantic Urban Design Commission.

District: A combination or combinations of a building, structure or site whose boundaries are specifically delineated and which have a unifying theme.

Economic Return: A profit, capital or other appreciation that accrues from investment or labor from use or ownership of a building, structure, site or district.

Historic Area: An historic zone, as defined herein.

Historic Zone: Any structure, site, building or district which, individually or collectively, meets the criteria for nomination and designation to any category of historic protection provided for in this chapter.

Integrity: A characteristic of a building, structure, site or district in which a sufficient amount of the character-defining materials and design features survives in a manner that allows the observer to interpret how the building, structure, site or district looked during its significant period of history.

Interpretability: The ability to recognize or visualize, through appearance, the historic significance or character of an historic resource.

Inventory: A systematic listing of cultural, historical, architectural or archaeological resources following standards for inclusion on said listing set forth in this chapter.

Noncontributing Building, Structure or Site: A building, structure or site which detracts from the visual integrity or the historic interpretability of an historic district, area or historic zone.

Ordinary Repair and Maintenance: Any work, the purpose or effect of which is to correct any deterioration or decay of, or damage to, a building, structure or site, or any part thereof, and to restore the same, as nearly as may be practicable, to its condition prior to such deterioration, decay or damage, using the same materials, or, where the same materials are not available, those materials available which are as similar as possible to the original.

Person: Any individual, firm, association, authority, organization, club, partnership, trust, company, corporation, owner, or authorized agent.

Property: Any building, structure, site, district or other real estate of any kind.

Public Way: Any public right-of-way, or other place, whether privately or publicly owned, upon which the public is regularly allowed or invited to be.

Site: Real property upon which is or was located a significant event, a park, an open space, a landscaped area, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains an historical or archaeological value and integrity, regardless of the value of any existing structures.

Structure: Anything existing, constructed or erected with a fixed location in or on the ground or attached to something having a fixed location in or on the ground.

Variance: Any nonuse change to the requirements contained in this chapter except for those changes which otherwise require a certificate of appropriateness. Provided, however, that for regulatory purposes and not definitional purposes, all variances from this chapter shall require a type III certificate of appropriateness.

(Code 1977, § 16-20.002)

Sec. 16-20.003. Miscellaneous provisions.

(a) *Transition of HC Historic and Cultural Conservation Districts to Landmark Districts:* All Historic and Cultural Conservation Districts, and regulations pertaining thereto, existing at the time of adoption of this chapter shall automatically become and be called Landmark Districts upon the adoption of this chapter and without compliance with either section 16-20.005 or 16-20.006 of this part, or article D of chapter 4 of part 6 of the Code of Ordinances, or any other procedural requirements. All previously existing regulations governing said districts, including those contained in chapters 16-20A through 16-20F, inclusive, shall continue in force and effect. Original land descriptions and other definite data previously applicable to said Historic and Cultural Conservation Districts shall remain the same and shall apply to the newly designated Landmark

Districts.

(b) *Relationship to Zoning:* The adoption of an ordinance enacting the designation of a building, site or district as a Landmark Building or Site, and Historic Building or Site, Landmark District, or Historic District, pursuant to article D of chapter 4 of part 6 of the Code of Ordinances, including designated transitional areas, if any, may either:

- (1) Supplant zoning districts or portions of zoning districts existing at the time of creation of a particular building, site or district designation; or
- (2) Supplement existing zoning district regulations which remain in force and effect, except to the extent that the particular amendment may modify such existing regulations.

(c) *Preparation of Ordinances:* Ordinances for Landmark Buildings or Sites, Historic Buildings or Sites, Landmark Districts, or Historic Districts shall be prepared as is provided in section 6-4047(A) of the Code of Ordinances.

(d) *Variances:* Matters which would typically be considered variances shall, for Landmark Buildings and Sites, Historic Buildings and Sites, Landmark Districts, and Historic Districts, be deemed to require certificates of appropriateness in areas having such designations. All such variances shall be heard and decided by the commission pursuant to the standards and procedures for variances generally as are provided in chapter 26 of this part.

(e) *Other Procedures:* Applications for zoning amendments, special use permits, special exceptions and special administrative permits regarding any property designated for historic protection under any category of protection contained in this chapter, shall be submitted to the urban design commission for review before any final action is taken on such matters. No action resulting from such applications shall have the effect of eliminating the requirement for certificates of appropriateness which are otherwise required by this chapter.

(Code 1977, § 16-20.003)

Sec. 16-20.004. Categories of protection.

(a) *Establishment of Categories:* There shall be five (5) categories of protection for historic properties in the City of Atlanta, as follows:

- (1) Landmark Building or Site;
- (2) Historic Building or Site;
- (3) Landmark District;
- (4) Historic District; and
- (5) Conservation District.

(b) *Criteria:* The criteria to be applied to determine whether any building, site or district qualifies for inclusion into a category of protection for historic properties established by this part shall be as follows:

(1) *Minimum eligibility criteria:* At a minimum, all Landmark Buildings, Sites and Districts, Historic Buildings, Sites and Districts, and Conservation Districts shall be determined by the commission to be architecturally, historically or culturally significant and eligible for protection if they possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- a. Are associated with events that have made a significant contribution to the broad patterns of our history; or

- b. Are associated with the lives of persons significant in our past; or
- c. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. Have yielded, or may be likely to yield, information important in prehistory or history.

(2) *Individual category criteria:* A building, site or district shall additionally meet the following criteria for that category of protection to which it is nominated:

a. *Landmark Building or Site:* A Landmark Building or Site is one of exceptional importance to the city, state or nation and whose demolition would represent an irreparable loss to the city. A Landmark Building or Site shall meet the criteria specified within at least one (1) of the following three (3) groups:

(i) *Group I: Historic significance:* Each Landmark Building or Site qualifying under this group must meet at least one (1) of the following criteria:

1. A building or site closely associated with the life or work of a person of exceptionally high significance to the city, the state or the nation.
2. A building or site associated with an extremely important historical event, or trend of national, state or local significance.
3. A building or site associated with an extremely important cultural pattern or social, economic or ethnic group in the history of the city, the state or the nation.

(ii) *Group II: Architectural significance:* Each Landmark Building or Site qualifying must meet at least five (5) of the following criteria:

1. A building or site that clearly dominates or is strongly identified with a street scene or the urban landscape.
2. A building or site which is the work of an exceptionally important master architect or builder.
3. A building or site which is an exceptionally fine example of a style or period of construction that is typical of the City of Atlanta.
4. A building or site which is an example of a style that is extremely rare in the City of Atlanta.
5. A building or site which is an example of an exceptionally fine unique style or building type.
6. A building or site whose design possesses exceptionally high artistic values.
7. A building or site whose design exhibits exceptionally high quality craftsmanship.
8. A building or site associated with an exceptionally significant technology or method of construction, including the use of materials in a significant way.
9. A building or site which has an exceptionally high degree of integrity.

10. A building or site which has virtually all character-defining elements intact.

11. A building or site whose original site orientation is maintained.

(iii) *Group III: Cultural significance:* Each Landmark Building or Site qualifying under this group must meet at least one (1) of the following criteria and at least three (3) other individual criteria from group I or II above:

1. A building or site that has served at a major, city-wide scale as a focus of activity, a gathering spot, or other specific point of reference in the urban fabric of the city.

2. A building or site by its location is broadly known or recognized by residents throughout the city.

3. A building or site which clearly conveys a sense of time and place and about which one has an exceptionally good ability to interpret the historic character of the resource.

b. *Historic Building or Site:* An Historic Building or Site is one that is close to a Landmark Building or Site in importance, but lacks some of the exceptional qualities of a Landmark. An Historic Building or Site shall meet the criteria specified within at least one (1) of the following three (3) groups:

(i) *Group I: Historic significance:* Each Historic Building or Site qualifying under this group must meet at least one (1) of the following criteria:

1. A building or site associated with the life or work of a person of moderately high significance to the city, the state or the nation.

2. A building or site associated with a moderately important historical event or trend of national, state or local significance.

3. A building or site associated with a moderately important cultural pattern or social, economic or ethnic group in the history of the city, the state or the nation.

(ii) *Group II: Architectural significance:*

1. A building or site that strongly influences or is identified with a street scene or the urban landscape.

2. A building or site which is the work of a recognized master architect or builder.

3. A building or site which is a very good example of a style or period of construction that is typical of the City of Atlanta.

4. A building or site which is an example of a style that is rare in the City of Atlanta.

5. A building or site which is an example of a very good unique style or building type.

6. A building or site whose design possesses very high artistic values.

7. A building or site whose design exhibits very high quality craftsmanship.

8. A building or site associated with a very significant technology or method of construction, including the use of materials in a very significant way.

9. A building or site which has a moderately high degree of integrity.

10. A building or site which has major character-defining elements intact and in which basic form and materials survive. Original materials may be covered, but evidence indicates they are intact. Although some minor alterations may have occurred, they are generally reversible.

11. A building or site whose original site orientation is maintained.

(iii) *Group III: Cultural significance:* Each Historic Building or Site qualifying under this group must meet at least one (1) of the following criteria and at least three (3) other individual criteria from group I or II above:

1. A building or site that has served at a major neighborhood-wide scale as a focus of activity, a gathering spot, or other specific point of reference in the community.

2. A building or site that by its location is broadly known or recognized by residents throughout a neighborhood.

3. A building or site which clearly conveys a sense of time and place and about which one has a good ability to interpret the historic character of the resource.

c. *Landmark Districts:* A Landmark District is one of exceptional importance to the city, the state or the nation, having exceptionally strong associations with the criteria for district designation. A Landmark District shall meet the criteria specified within at least one (1) of the following three (3) groups:

(i) *Group I: Historic significance:* Each Landmark District qualifying under this group must meet at least one (1) of the following criteria:

1. A district that includes structures and spaces closely associated with the lives or works of persons of exceptionally high significance in the history of the city, the state or the nation.

2. A district that includes structures and spaces closely associated with extremely important historical events, or trends of national, state or local significance.

3. A district that includes structures and spaces closely associated with an extremely important cultural pattern or social, economic, or ethnic group in the history of the city, the state or the nation.

(ii) *Group II: Architectural significance:* Each Landmark District qualifying under this group must meet at least five (5) of the following criteria:

1. A district that includes structures and spaces which are exceptionally strongly related, either functionally or aesthetically.

2. A district that includes exceptionally important elements of the streetscape which are functionally or aesthetically related.

3. A district that includes structures and spaces which are the works of exceptionally important master architects or builders.

4. A district that includes an exceptionally fine collection of buildings which express a unity of architectural style.
5. A district that includes an exceptionally fine collection of buildings which express a variety of architectural styles.
6. A district that includes exceptionally fine examples of a style or period of construction which is typical of the City of Atlanta.
7. A district that includes exceptionally fine examples of a style that is rare in the City of Atlanta.
8. A district that includes a collection of structures and spaces which possess exceptionally high artistic values.
9. A district that includes a collection of structures and spaces which exhibit exceptionally high quality craftsmanship.
10. A district that includes a collection of structures associated with an exceptionally significant technology or method of construction, including the use of materials in a significant way.
11. A district that includes a collection of structures and open spaces with an exceptionally high degree of visual integrity.
12. A district that includes a collection of structures in which virtually all retain their character-defining design elements.
13. A district that includes a collection of structures in which virtually all retain their original site orientation.
14. A district that includes relatively few intrusions or noncontributing structures that detract from the visual integrity of the area.

(iii) *Group III: Cultural significance:* Each Landmark District qualifying under this group must meet at least one (1) of the following criteria and at least three (3) other criteria from group I or II above:

1. A district that is readily definable by manmade or natural boundaries that are recognized throughout the city. These may include distinct land forms, views, vistas, "edges," or focal points.
2. The district clearly conveys a sense of time and place and about which one has an exceptionally good ability to interpret the historic character of the district.
3. The district has very few intrusions or noncontributing structures that detract from the sense of time and place.

d. *Historic Districts:* An Historic District is one of importance to the city, the state, or the nation, or to a neighborhood in the city, having strong associations with the criteria for district designation. Each Historic District shall meet the following criteria specified within at least one (1) of the following three (3) groups:

(i) *Group I: Historic significance:* Each Historic District qualifying under this group must meet at least one (1) of the following criteria:

1. A district that includes structures and spaces closely associated with the lives and works of persons of moderately high significance to the history of the city, the state or the nation.

2. A district that includes structures and spaces closely associated with important historical events or trends of national, state or local significance.

3. A district that includes structures and spaces closely associated with an important cultural pattern or social, economic or ethnic group in the history of the city.

(ii) *Group II: Architectural significance:* Each Historic District qualifying under this group must meet at least five (5) of the following criteria:

1. A district that includes structures and spaces which are very strongly related, either functionally or aesthetically.

2. A district that includes very important elements of the streetscape which are functionally or aesthetically related.

3. A district that includes structures and spaces which are the works of important master architects or builders.

4. A district that includes a very good collection of structures that express a unity of architectural style.

5. A district that includes a very good collection of structures that express a variety of architectural styles.

6. A district that includes very good examples of a style or period of construction that is typical of the City of Atlanta.

7. A district that includes very good examples of a style that is rare in the City of Atlanta.

8. A district that includes a collection of structures and spaces which possess very high artistic values.

9. A district that includes a collection of structures which exhibit very high quality craftsmanship.

10. A district that includes a collection of structures associated with a very significant technology or method of construction, including the use of materials in a significant way.

11. A district that includes a collection of structures and spaces with a high degree of visual integrity.

12. A district that includes a collection of structures in which most retain their character-defining design elements, although some alterations have occurred.

13. A district that includes a collection of structures in which most retain their original site orientation.

14. A district that includes moderately few intrusions which detract from the visual integrity of the area.

(iii) *Group III: Cultural significance:* Each Landmark District qualifying under this group must meet at least one (1) of the following criteria and at least three (3) other criteria from group I or II above:

1. A district that is readily definable by manmade or natural boundaries that are recognized throughout the city or neighborhood.

2. The district conveys a sense of time and place and about which one has a good ability to interpret the historic character of the district.
3. The district has moderately few noncontributing structures that detract from the sense of time and place for the area.

e. *Conservation Districts:* A Conservation District is one that has retained an adequate amount of its historic character for interpretation, although some alterations may have occurred. A Conservation District shall meet the criteria specified within at least one (1) of the following three (3) groups:

(i) *Group I: Historic significance:* Each Conservation District qualifying under this group must meet at least one (1) of the following criteria:

1. A district that includes a number of structures and spaces moderately associated with the lives or works of persons of general significance in the history of the city, the state or the nation.
2. A district that includes structures and spaces associated with moderately important historical events or trends of national, state or local significance.
3. A district that includes structures and spaces associated with a moderately important cultural pattern or social, economic or ethnic group in the history of the city.

(ii) *Group II: Architectural significance:* Each Conservation District qualifying under this group must meet at least five (5) of the following criteria:

1. A district that includes structures and spaces which are moderately related, either functionally or aesthetically.
2. A district that includes elements of the streetscape which are functionally or aesthetically related.
3. A district that includes structures and spaces which are the works of recognized master architects or builders.
4. A district that includes a good collection of structures that express a unity of architectural styles.
5. A district that includes a good collection of structures that express a variety of architectural styles.
6. A district that includes good examples of a style or period of construction which is typical of the City of Atlanta and for which other examples also exist.
7. A district that includes a collection of good surviving examples of styles that are moderately rare in the neighborhood.
8. A district that includes a collection of structures and spaces which possess generally high artistic values.
9. A district that includes a collection of structures and spaces which exhibit generally high quality craftsmanship.
10. A district that includes a collection of structures associated with a generally significant technology or method of construction or for which materials are used in a moderately significant way and for

which other examples exist.

11. A district that includes a collection of structures and spaces with a moderate degree of visual integrity.

12. A district that includes a collection of structures in which major character-defining elements are intact and in which basic form and materials survive, although some alterations have occurred. Original materials may be covered, but evidence indicates they are intact.

13. A district that includes structures to which alterations may have occurred to significant ornament and detail and even some openings.

14. A district that includes a collection of buildings in which many retain their original site orientation, however some may have been relocated from their original positions.

15. A district that includes only a moderate number of intrusions which detract from the visual integrity of the area.

(iii) *Group III: Cultural significance:* Each Conservation District qualifying under this group must meet at least one (1) of the following criteria and at least three (3) other criteria from group I or II above:

1. A district that is readily definable by manmade or natural boundaries that are recognized throughout the neighborhood.

2. A district that conveys a sense of time and place and about which one has a moderate ability to interpret the historic character of the district.

3. A district that has few noncontributing structures that detract from the sense of time and place of the district. Although these structures are noticeable as intrusions, the historic character of the area is generally interpretable.

(Code 1977, § 16-20.004)

Sec. 16-20.005. Nominations.

(a) Applications.

(1) *Authority to apply:* Nominations initiated by the director do not require an application. Except for nominations initiated by the director, an application shall be required to begin the nomination process set forth in this section. The following persons are empowered to file an application with the director for the nomination of a building, site or district to any category of protection provided by this part: the Atlanta City Council; for buildings or sites, the owner(s) of the building or site to be nominated, or an authorized agent; for districts, the owners of at least 10 properties, or the owners of 10 percent of the total number of properties within the proposed district, whichever is less, for each proposed district. Applications required by this section shall not be construed as zoning amendment applications required in Code of Ordinances section 16-27.001 et seq.

(2) *Form of application.* When required as set forth above, applications for nominations shall be in the following form: Applications by the city council shall be in the form of a resolution requesting that the director initiate a nomination. Applications by property owners shall be made on forms prescribed by the director and available to the public. No such owner application shall be deemed to be complete until all supporting documentation

required in the nomination process has been provided in a form prescribed by the director. Further, all owner applications shall be verified by each owner or each owner's authorized agent.

(3) *Processing of application:* After an application is received in proper form, the director shall begin the nomination procedures set forth in this part within a reasonable time after receipt based upon the availability of the research and information necessary for the nomination and the availability of staff resources.

(b) *Initiation of Nomination Process:* The process of nomination is initiated by a written notice of intent to nominate a building, site or district to any category of protection provided by this part. Said notice, which shall be prepared and mailed by the director, shall be sent by first class mail to the owner or owners of each such building or site, or in the case of districts to each individual owner of property within such district. Said notice shall describe the building, site or district proposed for nomination, including its location and/or boundaries; shall specify the category of protection to which it is proposed for nomination; shall specify the existing zoning classification, and/or boundaries, and historic protection, if any; shall state that the property could be nominated to another category of protection during the nomination process; shall announce the time, date and place of the public hearing by the commission to consider said nomination; shall include a statement notifying the property owner(s) of the automatic interim controls provided for in subsection (c) below; and shall include a copy of the interim control ordinance. In addition to the written notice of intent to nominate which initiates the nomination process, the director shall also, at least 15 but not more than 45 days prior to the hearing before the commission, cause to be published a notice within a newspaper of general circulation within the territorial boundaries of the city. This published notice shall state the time, date, place and purpose of the hearing. This published notice shall also include the location and/or boundaries of the property or properties, the existing zoning classification and historic protection, if any, the category of protection proposed, and a statement that the property could be nominated to another category of protection during the nomination process.

(c) *Interim Control:*

(1) *Findings and purpose:* The governing body finds that immediate but temporary interim controls prohibiting any alteration or demolition of any building or site for which a notice of intent to nominate has been mailed are required in furtherance of the city's comprehensive historic preservation program. Temporary preservation of the status quo is essential to effectively evaluate each proposed nomination and to allow consideration of appropriate designations of all proposed landmark or historic districts, buildings or sites, and to prevent circumvention of the intent of this part.

(2) *Control regulations:* Therefore, any property or properties for which a notice of intent to nominate has been mailed shall receive the full legislative protection of, and be controlled by, the regulations governing that category of protection to which said property is proposed to be nominated, as specified in this part [section] and chapter 20 of part 16 of the Code of Ordinances governing protection and treatment of properties so categorized. Said protection shall become automatically effective without further action of any kind immediately upon the date and time that the director of the urban design commission mails the notice of intent to nominate required by subsection (b) above. Except as provided below, the period of this mandatory interim protection shall not exceed 120 days commencing on the date and time of the mailing of said notice of intent to nominate. This interim control period allows and is based upon approximately 45 days for public hearing, evaluation of, and action on the proposed nomination by the commission and approximately 75 days for public hearing and review by the zoning review board, action by the zoning committee, and final action by the city council and the mayor as specified in this part. This 120-day period may be extended by resolution of council only if said extension is due to delay in the legislative process and only for a period of time equal to any such

delay, but in no event shall the total interim control period permitted by this section exceed a maximum of 180 days.

(3) *Enforcement:* The director of the commission shall deliver a copy of each notice of intent to nominate to the director of the bureau of buildings at or before the time and date each notice is mailed by the director of the commission. The director, bureau of buildings shall immediately take all steps necessary to accomplish the requirements of this section, and is prohibited from accepting any application or issuing any permit of any kind for any building, site or district specified in each notice of intent of nominate, unless the director of the bureau of buildings certifies that such permits are necessary due solely to unanticipated emergency public safety reasons or are approved pursuant to a valid certificate of appropriateness as provided for in this part [section] and in chapter 20 of part 16 of the Code of Ordinances. Violations of this section shall be punishable as provided for in section 16-30.002 of the Code of Ordinances, as amended.

(d) *Preparation of Report:* Prior to the commission's public hearing to consider any nomination(s) to any category of protection, the director shall conduct research and compile a written report in the nature of findings and recommendations regarding the historic, architectural and/or cultural significance of each proposed nomination. This report shall include a statement on each of the following to the extent that they apply to the proposed nomination(s):

1. The criteria upon which the nomination of the building, site or district and its boundaries is based, including a finding that the proposed nomination either does or does not meet the minimum criteria required for nomination and designation;
2. A description of the building(s) and/or site(s), as well as features of significance, including date of construction, architect or builder, and architectural style and materials used;
3. A description of the boundaries of each building, site or district, including any proposed transition zone, which may be in the form of either a metes and bounds description or a plat or map. For all district nominations, the proposed boundaries shall be drawn to include all contributing properties reasonably contiguous within an area. Where reasonably feasible in relation to the purpose of each district, boundaries shall include frontage on both sides of streets, and shall divide the proposed district from other districts at rear lot lines, side lot lines, or at other points where divisions will create minimum inter-district friction. Internal boundaries may subdivide the district into subareas and transition areas for regulatory purposes. All descriptions shall be attached to the written report;
4. If the proposed district is visually related to surrounding areas in such a way that actions in the surrounding area might have potentially adverse environmental influences on the district, proposed boundaries for such transitional areas shall be shown, and shall be called transitional zones;
5. The existing zoning classification of the proposed designation;
6. A reference to that section of the Zoning Ordinance of the City of Atlanta which permits the transfer of development rights of Landmark Buildings or Sites, or Historic Buildings or Sites; and
7. All economic incentives which may be available to assist in the preservation of each Landmark Building or Site, or Historic Building or Site.

(e) *Commission Action:*

(1) *Public hearing:* The commission shall hold a public hearing to consider the nomination of each building, site or district proposed as a Landmark Building or Site, Historic Building or Site, Landmark District, Historic District, or Conservation District. Notice of the hearing shall be given as provided in subsection (b) of this section. The commission

shall review and consider the staff report prepared pursuant to subsection (d) of this section as well as any other relevant information or documentation presented to it. The commission may solicit expert testimony regarding the historic, architectural or cultural importance of the building, site or district under consideration for nomination.

The commission shall afford to the owner or agent of any property which is being considered for nomination or any interested member of the public a reasonable opportunity to present testimony and documentation regarding the historic, architectural or cultural importance of the building, site or district proposed for nomination.

(2) *Successive nominations:* A two-year waiting period shall be required before a building or site can be renominated for designation to the same category from which it was disapproved by the council.

(3) *Decision and transmittal:* The commission shall make a decision in public with respect to each proposed nomination in the form of a written resolution within fifteen (15) days after the initial public hearing date. The resolution of nomination by the commission shall set forth those findings of fact which constitute the basis for the nomination and shall affirmatively state that the building, site or district meets or exceeds the criteria required for nomination. Upon adoption of the resolution of nomination by the commission, the director of the commission shall promptly transmit such resolution, including all supporting documentation, to the chair of the zoning committee of the city council and to the commissioner of the department of community development. The director shall also notify by first class mail the owner or owners of the property or properties which are the subject of said resolution of nomination of the decision of the commission.

(Code 1977, § 16-20.005)

Sec. 16-20.006. Designations.

(a) *Preparation of Designation Ordinance:* Upon the nomination by the commission of any building, site or district to any category of protection provided by this part, the director of the urban design commission, in consultation with the bureau of planning, shall prepare a proposed zoning designation amendment accomplishing the intent of the resolution of nomination. For proposed Landmark or Historic District(s) the ordinance shall include proposed detailed regulations to be applied and which may be designed to supplant or to modify any existing regulations, including regulations pertaining to the use of land, buildings or structures within the districts, including any and all subareas of the districts according to section 16-20.005 of the Code of Ordinances. Such regulations may be drafted to require, for a particular district or its subareas, if any, certificates of appropriateness in addition to those required in section 16-20.007 of the Code of Ordinances. Such regulations may be prepared with the advice and assistance of the owner or owners of all such properties within the district, neighborhood groups, historic preservation groups, or other organizations or individuals qualified by interest, training and experience in achieving the objectives set forth in this chapter. The director shall present this proposed ordinance to the chair of the zoning committee for consideration.

(b) *Zoning Committee Action:* Upon receipt of a resolution of nomination and proposed designation legislation, the zoning committee shall proceed at or before its next regular meeting to act upon the proposed designation ordinance.

The zoning committee may, by majority vote, modify any nomination by the urban design commission to another category provided that the reasons for such modification by the zoning committee shall be made a part of the record of the committee proceedings. The proposed designation ordinance, along with supporting documentation, shall then be presented by the chair of the zoning committee at the next regular meeting of the city council at which time said proposed ordinance shall be referred to the

zoning review board for public hearing.

(c) *Public Hearing:*

(1) A public hearing on each proposed designation ordinance, except for Conservation Districts, shall be held by the zoning review board. Since the adoption by the city council and approval by the mayor of an ordinance that designates a building, site or district to any category of protection provided in this part except Conservation Districts is a zoning action which establishes either (1) an overlay zoning district with accompanying district regulations and map or (2) an overlay zoning regulation, notice as is provided in this chapter shall be followed for all such designation actions; provided however, that designation of Conservation Districts, and interim protection(s) afforded any property or properties pursuant to section 16-20.005(c) of the Code of Ordinances are not zoning actions and does not require the above-referenced notice and hearing procedures.

(2) In addition to the requirements of chapter 27 of part 16 of the Code of Ordinances relating to amendments to the zoning ordinance, and prior to action by the zoning review board on any proposed designation of a building, site or district to any category of protection permitted by the chapter, except Conservation Districts, the department of community development, through the bureau of planning, shall evaluate each such proposed designation and shall also consider the following matters:

- a. City goals and policies as are contained in the comprehensive development plan;
- b. Impact of proposal on transportation, urban design, other planning and development goals and objectives of the city;
- c. Potential impacts of tax abatements and other financial incentives which may be available to the property owner to assist in preservation; and
- d. Potential impacts of tax abatements and other financial incentives on the city budget.

In conducting such evaluation, the department of community development shall request assistance and information from other city departments and agencies, including the department of finance, as may be appropriate to the specific proposal under construction.

(d) *Final Action:* After public hearing by the zoning review board, each proposed designation ordinance shall be returned to the zoning committee for action and then reported to the city council for final action.

(e) *Post-Adoption Actions:*

(1) Within 20 days after any designation ordinance becomes law, the director of the commission shall send to the owner or owners of record of each such property so designated, by first class mail, a copy of the ordinance, a statement of the regulations governing their property, and a statement of the economic incentive which may be available for their property.

(2) Within 20 days after any designation ordinance becomes law, the director of the commission shall send notice of such action to the following officials and agencies:

- a. Commissioner of the department of planning and community development;
- b. Commissioner of the department of public works;
- c. Commissioner of the department of parks, recreation and cultural affairs;
- d. Commissioner of the department of watershed management;

- e. Director, bureau of planning;
- f. Director, bureau of buildings;
- g. Director, bureau of housing and code compliance;
- h. Police chief;
- i. Fire chief; and
- j. State historic preservation officer.

(3) Within 20 days of any designation ordinance becomes law, except designations of conservation districts, the director of the commission shall file in the office of the clerk of the Superior Court of Fulton County or in the office of the Clerk of the Superior Court of DeKalb County, as is appropriate to said property, a certificate of notification that such property has such designation, and said certificate of notification shall be maintained on the public records until such time as the designation may be withdrawn by the city council and mayor.

(4) The director of the commission may cause to be created a suitable plaque appropriately identifying each designated building, site or district. Such plaques shall be affixed to private property only with the written consent of the owner or owners of said property.

(Code 1977, § 16-20.006; Ord. No. 2003-07, § 1, 1-28-03; Ord. No. 2003-98, § 1, 10-14-03)

Sec. 16-20.007. Certificates of appropriateness; generally.

(a) *When Required, Generally:* In addition to other permits which are required pursuant to any city ordinance, and in addition to any certificate of appropriateness which may be required pursuant to any other landmark or historic building, site or district regulation contained in part 16 of the Code of Ordinances, certificates of appropriateness shall, unless provided otherwise in the detailed regulations governing Landmark or Historic Districts contained within a designation ordinance as provided in section 16-20.006 of the Code of Ordinances, be required for any of the following actions within each of the following categories:

(1) *Landmark buildings and sites:*

- a. To change the exterior appearance of any Landmark Building or Site;
- b. To change the interior appearance of any Landmark Building or Site which has a designated interior;
- c. To erect a new structure or to make an addition to any Landmark Building or Site;
- d. To demolish or move any Landmark Building or Site in whole or in part; or
- e. To vary any applicable regulation.

(2) *Historic buildings and sites:*

- a. To change the exterior appearance of any Historic Building or Site;
- b. To erect a new structure other than a replacement structure referred to in section 16-20.008(e), or to make an addition to any Historic Building or Site which is visible from the public way; or
- c. To vary any applicable regulation.

(3) *Landmark Districts:*

- a. To change the exterior appearance of any structure within any Landmark District;
- b. To erect any new structure or to make an addition to any structure within a Landmark District;
- c. To demolish or move any structure, in whole or in part, within a Landmark District; or
- d. To vary any applicable regulation.

(4) *Historic Districts:*

- a. To change the exterior appearance of any structure within an Historic District;
- b. To erect a new structure or to make an addition to any structure within an Historic District;
- c. To demolish or move any contributing structure in whole or in part, within an Historic District; or
- d. To vary any applicable regulation.

(b) *Conservation Districts Exempted:* Certificates of appropriateness are not required for Conservation Districts. However, no person shall construct, alter, demolish or move, in whole or in part, any building, structure or site located within a Conservation District until the commission shall have reviewed the proposed action(s) and made written recommendations regarding any such action to the owner(s) of the property. Upon application of the owner of any property within any such Conservation District for a building or other development permit, the director, bureau of buildings shall promptly refer such applicant to the urban design commission. The applicant shall provide the director of the commission with complete plans regarding the permit for which application has been made, and the director of the commission shall present the plans at the next regular meeting of the urban design commission. At said meeting, the commission shall review the subject plans and shall transmit, through the director, the written recommendations of the commission regarding such permit application to the applicant, with a copy to the bureau of buildings. The recommendations shall be sent by first class mail to the owner within five days following the date of the commission review. Such recommendations constitute an advisory review only, and the owner may elect to modify plans in order to incorporate said recommendations, or may elect to proceed with the original plans for the permit application. If the commission fails to provide said written advisory comments to the owner(s) within 30 days of the owner(s) initial application to the bureau of buildings, the bureau of buildings shall issue the permit(s) at the request of the owner without compliance with this subsection.

(c) *Demolition or Moving of Historic Building and Sites Exempted:* A certificate of appropriateness is not required to demolish or move any Historic Building or Site. However, prior to the demolition or moving of any historic building or site, an application shall be required in accordance with the following procedures:

(1) Each applicant shall submit on the same day to both the bureau of buildings and the director of the urban design commission all applications, plans and information required by the bureau of buildings to obtain such a permit.

(2) In addition, the applicant shall submit, at the same time and in the same manner, a site plan and drawings, including elevations, indicating the floor area and height of the proposed new building and the impact of the proposed building or alteration on the historic site, as the term "building" is defined in section 16-29.001 of the Code of Ordinances, and provided that such building has a total square footage at least equal to the square footage of the footprint of the building or site proposed to be demolished or moved.

(3) The urban design commission shall have 45 days following the receipt of all materials required in subparts (1) and (2) above to renew the application and provide to the applicant written comments advising the applicant about actions which could be taken to maintain the integrity of the Historic Site.

(4) During the 45-day commission review, the bureau of buildings shall process and review the application in accordance with its usual procedures, but shall issue no permit prior to the expiration of said 45-day period.

(5) Immediately after the expiration of said 45-day commission review period of an alteration or demolition permit application, and whether or not the commission's comments are favorable, but providing that the application otherwise meets existing regulations generally applicable to such permits, the director, bureau of buildings shall issue to the applicant a written certificate stating that the demolition permit application is in order; and a demolition permit will be issued when the applicant is issued a foundation permit for the building which is to be placed on the site, and further stating that the certificate shall remain in force for period of 18 months or until the City of Atlanta enacts legislation designating the site as a Landmark Building or Site, whichever occurs sooner.

(6) The requirements of this section are intended to ensure that no Historic Building and Site be demolished unless the owner(s) has the intent and financial ability to construct a new building replacing the Historic Building or Site proposed to be demolished.

(Code 1977, § 16-20.007)

Sec. 16-20.008. Same; types and procedures.

There shall be four (4) types of certificates of appropriateness. When a certificate of appropriateness is required under the provisions of section 16-20.007, general requirements for certificates of appropriateness, or under the regulations of a particular Landmark or Historic Building or Site, or under the regulations of a particular Landmark or Historic District, the following procedures shall govern, according to the type of certificate of appropriateness required to obtain the result(s) desired by the applicant, as follows:

(a) *Type I: Certificates of Appropriateness for Ordinary Repairs and Maintenance:* Ordinary repair and maintenance of a Landmark Building or Site, Historic Building or Site, or property located in Landmark or Historic Districts, shall require a type I certificate of appropriateness. Said type I certificates may be approved by the director. Applications for said certificates shall be submitted to the director on forms provided by the director and in accordance with the following requirements.

Those activities which constitute ordinary repair and maintenance include but are not restricted to:

- (1) Repair using the same material and design as the original;
- (2) Repainting, using the same color;
- (3) Reroofing, using the same type and color of material; and
- (4) Repair of sidewalks and driveways using the same type and color of materials.

A clear photograph of the building, object or structure to be repaired, a brief description of the intended work, and samples of replacement materials or paint for comparison with the existing building, or structure must be furnished with the application.

Appeals from the decision of the director regarding the issuance of type I certificates may be taken by any aggrieved person by filing with the director a notice of

appeal specifying the grounds thereof within five (5) days after the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from. The commission shall fix a reasonable time for the hearing of the appeal and give notice thereof as well as due notice to the parties of record in interest. Upon the hearing any party may appear in person or by agent or by an attorney. The commission shall decide the appeal within a reasonable time. An appeal shall be sustained upon an expressed finding by the commission that the director's action was based on an erroneous finding of a material fact, or that the director acted in an arbitrary manner. In exercising its powers the commission may reverse or affirm, wholly or partly, or may remand to the director with discretion.

(b) *Type II: Certificates of Appropriateness for Minor Alterations:* Minor alterations to Landmark or Historic Buildings or Sites, or buildings or sites within Landmark or Historic Districts, shall require a type II certificate of appropriateness. Said certificate shall be granted according to the following procedures and standards:

(1) *Application:* Applications shall be filed with the director of the commission on forms which the director shall promulgate for application purposes. All such applications shall be accompanied by detailed plans, designs, photographs, reports and other exhibits required by the director. No application shall be deemed to be filed until it is made on forms promulgated by the director and contains all required supporting plans, designs, photographs, reports and other exhibits required by the director.

(2) *Acceptance of applications and timing of hearings:* The director shall publish a calendar of the regular meetings of the commission and shall establish reasonable deadlines for the receipt of applications for each such meeting. All applications shall be scheduled for hearing before the commission no later than 30 days after receipt by the director of such application, except where a longer period is established in writing and by mutual agreement of the director and the applicant. The applicant shall be notified of the hearing date at the time the application is filed.

(3) *Meetings of the commission:* All meetings at which the commission shall consider applications for said certificates of appropriateness shall be held in the City Hall building. The director shall prepare and the commission shall adopt an annual schedule of the regular meeting dates of the commission, which schedule shall be made available to the public on request. The chair of the commission may call special meetings of the commission. However, at any meeting, whether a regular or special meeting of the commission, at which an application for said certificate of appropriateness is to be considered, notice of said meeting shall conform to the notice requirements established by this section.

(4) *Notice of hearings:* Prior to any meeting of the commission at which an application for a type II certificate of appropriateness shall be considered, the following forms of notice are all required:

a. The director shall provide written notice to the applicant at least one week prior to a hearing at which the commission shall consider said application. Such written notice shall be sent by first class mail and shall contain the date, time and place of the hearing which will be held by the commission to consider said application for a certificate of appropriateness.

b. Notice of all applications for certificates of appropriateness shall be published on the official City of Atlanta web site at least one week prior to such meeting. Said notice shall state the date, time, place and purpose of said hearing. The notice shall include the location of the property and the present zoning classification of the property.

c. A sign shall be posted on each property for which an application for certificate of appropriateness is made to the commission. Such sign shall be posted in a conspicuous place on the property, shall be at least six square feet in area, and shall be posted at least one week prior to the meeting of the commission at which the application will be considered. Said sign shall state the date, time, place and purpose of the hearing which will be held by the commission.

(5) *Time limit on decision of commission:* Decisions of the commission on said applications shall be made within 45 days from the date on which the director receives a complete application from the applicant.

(6) *Failure to decide in due form within time limits:* Failure by the commission to decide said application within the 45-day time limit described above shall be deemed to be approval of the application for said certificate of appropriateness; and upon request of the applicant, the director, bureau of buildings shall issue any permit dependent upon such application for certificate of appropriateness, if otherwise lawful, and shall record as authorization for such action the provisions of this paragraph.

(7) *Testimony:* At any meeting at which an application for said certificate of appropriateness is considered, the commission shall provide a reasonable opportunity for the presentation of facts and the expression of views by the applicant and any other person or persons desiring to be heard.

(8) *Records of meetings and maintenance of files:* Records of the proceedings of all meetings of the commission shall be made and maintained as is provided in article D of chapter 6 of part 6 of the Code of Ordinances of the City of Atlanta. Copies of all certificates of appropriateness granted, together with all pertinent exhibits and reports of the commission, shall be maintained by the director. Copies of such documents shall be made available to the director, bureau of buildings as are necessary for the inspection and enforcement of the terms and conditions contained therein.

(9) *Decisions:* The commission may grant the application for certificate of appropriateness, grant it with specified conditions, or deny it. The applicant shall be deemed to have effective notice of the decision of the commission on the date on which the commission enters such decision. The director shall reduce said decision of the commission to writing and shall include all findings of fact and reasons for approval, conditional approval, or denial of said application. A copy of this written confirmation of the decision of the commission shall be transmitted to the applicant and to the director, bureau of buildings within five working days after such decision is made.

(10) *Conditional approval of applications:* Where the commission grants conditional approval of an application for a certificate of appropriateness, the director, bureau of buildings shall issue permits for developments only in strict compliance with such conditions as have been imposed by the commission.

(11) *Standards of review:* The commission, in reviewing all applications for type II certificates of appropriateness, shall apply the standards specified in section 16-20.009 of the Code of Ordinances. The burden of proof is on the applicant to establish before the commission that the required standards have been met. If the commission finds that said standards are satisfied, after said public hearings, the commission shall issue the appropriate type II certificate of appropriateness conditionally or otherwise. If the commission finds that the applicant has failed to

present sufficient evidence that the standards are satisfied, the type II certificate of appropriateness shall be denied.

(c) *Type III: Certificates of Appropriateness for Major Alterations:* Major alterations to Landmark or Historic Buildings or Sites, or buildings or sites within Landmark or Historic Districts, shall require a type III certificate of appropriateness. Said certificates shall be granted according to the following procedures and standards:

(1) *Applications, timing of hearings, meetings of the commission, etc.:* Requirements (1), (2), (3), (7), (8), (9) and (10) contained within and required for type II certificates of appropriateness above, subsection (b), shall also be required for all type III certificates of appropriateness, and are hereby incorporated into this subsection.

(2) *Notice of hearings:* Prior to any meeting of the commission of which an application for a type III certificate of appropriateness shall be considered, the following forms of notice are required:

a. Notice of all applications for certificates of appropriateness shall be published on the official City of Atlanta web site at least 15 days prior to such meeting. Said notice shall state the date, time, place and purpose of said hearing. The notice shall include the location of the property and the present zoning classification of the property.

b. *Posting the property:* In addition to the published notice above, the director shall cause the property involved in the proposed change to be posted at least 15 days prior to the hearing. Such posting shall be in a conspicuous place on the property by a sign or signs (as provided below) not less than six square feet in area, bearing information as to the time, date and place of the hearing and the nature of the proposed change.

One such sign shall be placed adjacent to each street the property abuts, as described in the application for changes in zoning status, for each 600 feet for which the property abuts such street, provided that not less than one sign shall be erected, that where there are intersections with another street or streets at least one sign shall be placed between such intersections, and that if there is a remainder from multiples of 600 feet, an additional sign shall be erected.

Notwithstanding the above requirements, if the property under consideration does not abut a street and is not a part or parts of property abutting a street, no posting is required. If said property is part or parts of properties abutting a street, posting shall be required above, with the notice indicating the relation of the parts proposed for hearing to the parts abutting streets.

c. *Notice by regular mail:* The director shall also cause notice of the time, date and place of the hearing and the nature of the proposed change to be given by regular mail, with mailing at least 15 days prior to the hearing. Such mail shall be addressed to property owners (as ownership and address appears on the tax records of Fulton/DeKalb County) of all property within 300 feet of the property involved in the proposed change.

(3) *Time limits on hearings of the commission:* Hearings of the commission on type III applications shall be held within 90 days from the date on which the director receives in due form a complete application from the applicant. The commission shall make a decision on said applications within 21 days of the date of the final

public hearing held on said application.

(4) *Standards of review:* The commission, in reviewing all applications for type III certificates of appropriateness, shall apply the standards specified in section 16-20.009 of the Code of Ordinances. The burden of proof is on the applicant to establish before the commission that the required standards have been met. If the commission finds that said standards are satisfied, after said public hearings, the commission shall issue the appropriate type III certificate of appropriateness, conditionally or otherwise. If the commission finds that the applicant has failed to present sufficient evidence that the standards are satisfied, the type III certificate of appropriateness shall be denied.

(5) *Exemption for condition of unreasonable economic return or public health and safety:* In any case in which the commission has denied a type III certificate of appropriateness because of the applicant's failure to meet the standards required in subsection (4) above, the applicant may, within 30 days of the date of said denial, apply to the commission for a condition of unreasonable economic return or public safety exemption. Said application(s) for exemption shall follow all the procedures and standards set forth in subsection (d), governing type IV certificates of appropriateness.

(6) *Failure to decide in due form within time limits:* Failure of the commission to decide said application within the time limits set forth in subsection (c)(3) shall be deemed to be approval of the application for said certificate of appropriateness, and upon request of the applicant, the director, bureau of buildings shall issue any permit dependent upon such application for certificate of appropriateness, if otherwise lawful, and shall record as authorization for such action the provisions of this paragraph.

(d) *Type IV: Demolitions:* Demolition of a Landmark Building or Site, a building or site in a Landmark District, or a contributing building or site in an Historic District, constitutes an irreplaceable loss to the quality and character of the City of Atlanta. Therefore, all demolitions of said specified buildings or sites shall require a type IV certificate of appropriateness. Said certificates shall be granted according to the following procedures and standards:

(1) *Conditions:* Type IV certificates of appropriateness shall be issued by the commission only when one (1) or both of the following two (2) conditions have been established pursuant to the standards and criteria required below:

- a. The demolition is required to alleviate a threat to public health and safety; and/or
- b. The demolition is required to rectify a condition of unreasonable economic return.

(2) *Standards and criteria:* The standards and criteria required to be shown in order to establish the existence of the conditions specified in subsection (d)(1) above shall be as follows:

a. *Threats to public health and safety:* To prove the existence of a threat to public health and safety, the applicant must establish, and the commission must find, the following:

- (i) Demonstrate through independent analyses and supporting information that a major and imminent threat to public safety exists;
- (ii) Present all reasonable alternatives for rectifying the threat and analysis of all such alternatives; and

(iii) Demonstrate that the costs associated with rectifying the threat would create a condition whereby the investments in the project are incapable of earning a reasonable economic return as described in subsection (d)(2)b below.

b. *Unreasonable economic return*: To prove the existence of a condition of unreasonable economic return, the applicant must establish, and the commission must find, both of the following:

(i) That the building or site is incapable of earning a reasonable economic return. This finding shall be made by considering, and the applicant shall submit to the commission evidence establishing, each of the following factors:

1. The applicant's knowledge of the landmark designation at the time of acquisition, or whether the property was designated subsequent to acquisition.
2. The current level of economic return on the property as considered in relation to the following:
 - A. The amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.
 - B. The annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
 - C. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the prior three (3) years.
 - D. Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations.
 - E. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property.
 - F. The fair market value of the property immediately prior to its designation and the fair market value of the property (in its protected status as a designated building or site) at the time the application is filed.
 - G. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or both.
 - H. Any state or federal income tax returns on or relating to the property for the past two (2) years.
3. That the property is not marketable or able to be sold, considered in relation to any listing of the property for sale or rent, price asked, and offers received, if any, within the previous two (2) years, including testimony and relevant documents regarding:
 - A. Any real estate broker or firm engaged to sell or lease the property.
 - B. Reasonableness of the price or rent sought by the applicant.
 - C. Any advertisements placed for the sale or rent of the property.
4. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
 - A. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
 - B. Estimate of the cost of the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the

commission concerning the appropriateness of proposed alterations.

C. Estimated market value of the property in the current condition; after completion of the proposed construction, alteration, demolition, or removal; and, in the case of a proposed demolition, after renovation of the existing property for continued use.

D. In the case of a proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.

E. The infeasibility of new construction around, above or below the existing protected building or site, and the infeasibility of a transfer of development rights, including an assessment of the monetary value that could be derived from such a transfer, pursuant to section 16-28.023 of the Code.

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

(ii) That the applicant has the present intent and the secured financial ability, demonstrated by documentary evidence and by those plans and materials which would otherwise be required in order to secure a foundation permit from the bureau of buildings, to replace the Landmark Building or Site with a replacement building, as the term "building" is defined in section 16-29.001 of the Code of Ordinances, which has a total square footage at least equal to the square footage of the footprint of the building or site proposed to be demolished or moved.

(3) *Procedures:* The following procedures shall be followed for all type IV certificates of appropriateness:

a. *Application:* Applications for type IV certificates of appropriateness shall be filed with the director of the commission on forms which the director shall promulgate for application purposes.

The applicant shall be required to present documentation and/or other evidence at the time of application on each standard and criteria listed in subsection (d)(2) above sufficient to permit the commission to adequately analyze the application in relation to said standards.

The director shall be required to notify the applicant of any deficiencies in the documentation or other evidence provided. Failure of the applicant to submit said required documentation and/or evidence shall be construed as a failure on the part of the applicant to meet that standard for which the documentation and/or evidence is lacking.

After receipt of a completed application in which all required information is attached, the commission shall make a determination on said application in accordance with the time frames set forth herein.

For type IV applications based upon a purported condition of a threat to public health and safety, a copy of the application and all supporting documents shall be delivered within five (5) days of receipt of a complete application by the director of the commission to the director, bureau of buildings.

The bureau of buildings shall evaluate each such application

in accordance with the standards contained in this section and will prepare a written evaluation and report. Said report shall be presented to the commission at or before the commission's initial public hearing on the application.

b. *Notice of public hearing:* Notice of the public hearings required for type IV certificates shall be as is provided for in subsection (c)(2) above.

c. *Hearings on certificates:* The commission shall hold an initial public hearing on every type IV certificate of appropriateness application within 45 days of receipt of the completed application required in subsection (3)a above. At such hearing, the commission shall provide a reasonable opportunity for the presentation of facts, documentation, and the expression of view by the applicant and any other person(s) desiring to be heard. Records of the hearing(s) shall be maintained as is required by subsection (b) above. At said hearing, one of the following procedural courses shall be followed:

(i) For type IV applications based on a condition of a threat to public health and safety, the commission, after hearing from all interested persons, including the bureau of buildings, shall determine whether a certificate shall be granted based upon the standards for said applications set forth in this section.

Said decision shall be made in public within 21 days from the date the commission holds its initial public hearing and shall be made as is required by subsection (b)(9) above.

(ii) For type IV applications based on a condition of unreasonable economic return, the applicant shall have the burden of showing that the property in question is incapable of earning a reasonable economic return in the absence of such a demolition in accordance with the standards and criteria set forth in subsection (d)(2)b above. As a part of the showing, the commission shall cause to be established a three-person economic review panel. Said economic review panel shall be comprised of three (3) real estate and redevelopment experts knowledgeable in real estate economics in general, and more specifically, in the economics of renovation, redevelopment and other aspects of rehabilitation.

The panel shall consist of one (1) person selected by the commission, one (1) person selected by the applicant and one (1) person selected by the first two (2) appointees. If the first two (2) appointees cannot agree on a third person within 30 days of the date of the initial public hearing, the third appointee shall be selected by the commissioner of the department of community development within five (5) days after the expiration of the 30-day period; and the commissioner shall notify the director in writing of his selection.

All of the evidence and documentation presented at the initial public hearing shall be made available to and reviewed by the economic review panel. Further, the commission shall announce at the initial public hearing that further evidence or documentation from any interested party may be made a part of the record by submitting such

evidence or documentation to the director by a date certain, and the director shall transmit said materials to the economic review panel. The economic review panel shall convene at its discretion and shall review the evidence of unreasonable economic return in relation to the standards and criteria set forth in subsection (d)(2)b. The economic review panel may, in its discretion, convene a meeting to hear testimony or oral argument by any interested party, provided that notice for such meeting shall be as is provided for in subsection (c)(2) above. Within 45 days after the economic review panel is established, the panel shall complete an evaluation of unreasonable economic return, applying the standards and criteria set forth in subsection (d)(2)b and shall complete and forward a written report on this evaluation to the commission.

At the next regular commission hearing following receipt of the report from the economic review panel, the commission shall reconvene its public hearing to take final action on the application. If, after reviewing all of the evidence, the commission finds that said standards and criteria set forth in subsection (d)(2)b are satisfied, the commission shall issue the appropriate type IV certificate of appropriateness, conditionally or otherwise. If the commission finds that the applicant has failed to present sufficient evidence that the standards and criteria are not satisfied, said certificate shall be denied. Provided, however, that the commission's decision shall be consistent with the conclusions reached in the economic review panel's report unless, based on all of the evidence and documentation presented to the commission, the commission finds by a vote of a three-fourths majority of a quorum present that the economic review panel acted in an arbitrary manner, or that their report was based on an erroneous finding of a material fact. Provided, further, however, that if the report of the economic review panel is that an economic hardship exists, then the commission may defer action on the certificate for a period of 90 days while the commission prepares or causes to be prepared a plan to save the building from demolition pursuant to subsection (4) below.

(4) *Preservation plan:* After a finding by the commission that the conditions for either a threat to public health and safety or an unreasonable economic return have been met, the commission may, within 60 days, prepare or cause to be prepared a plan under which the subject building or site (1) is preserved in a manner to effectuate the purposes of this chapter, and (2) is capable of providing a reasonable economic return to the property owner(s). The plan may include complete or partial tax abatements, tax credits, authority for alteration or construction not inconsistent with the purposes of this chapter and other actions allowable by law.

This plan will be reviewed by the economic review panel to determine if the plan is capable of providing a reasonable economic return. If the commission does not produce a plan within 60 days, the commission shall issue a certificate of appropriateness for demolition. If the commission develops a plan which is judged by the panel as capable of earning a reasonable economic return, the commission may deny the certificate of

appropriateness for demolition.

If a plan is developed, but the plan is deemed by the economic review panel as incapable of earning a reasonable economic return, the commission may, within 30 days of the decision of the panel, recommend to the mayor that the city or a willing private buyer acquire a specified appropriate protective interest, including obtaining title or easements in the building or site involved. If, within an additional 15 days, the city does not initiate eminent domain proceedings to obtain ownership of the appropriate protective interest and neither the city nor a private buyer has made a firm offer to enter into a contract with the owner to acquire such interest, the commission shall issue a certificate of appropriateness for demolition. The commission shall also issue a certificate of appropriateness if an offer is forthcoming but is not equal to or greater than the fair market value of the property immediately prior to designation adjusted for inflation between the time of designation and the time of application for a demolition permit.

The owner may reject any offer for purchase. However, the commission may deny a certificate of appropriateness if the owner rejects an offer which is equal to or greater than the fair market value of the property immediately prior to designation adjusted for inflation between the time of designation and the time of application for a demolition permit.

(5) *Salvage plan*: In connection with any type IV certificate of appropriateness, the commission may prepare and submit to the applicant, at or before the issuance of any said permit, a salvage plan. Said plan may suggest salvage and preservation, for reuse in restoration elsewhere, specified classes of building materials, architectural details and ornaments, fixtures and the like. Also, in connection with any type IV certificate, the commission may require the preservation of trees, shrubs and other landscaping of substantial significance.

(Code 1977, § 16-20.008; Ord. No. 2003-08, §§ 1, 2, 1-28-03)

Sec. 16-20.009. Same; further standards.

In deciding individual applications for certificates of appropriateness, the commission shall be guided by the purposes set forth in section 16-20.001, by findings contained in ordinances designating buildings and sites for protection, by purposes and objectives which are contained within individual Landmark and Historic District regulations, and by findings contained in reports prepared in support of Landmark and Historic District regulations as are required in article D of chapter 4 of part 6. Furthermore, in considering whether to grant approval, conditional approval or denial of an application for a type II or type III certificate of appropriateness, the commission shall apply the following standards:

- (1) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure or site and its environment.
- (2) The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (3) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (4) Distinctive stylistic features or examples of skilled craftsmanship which characterize a

building, structure, object or site shall be kept where possible.

(5) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(6) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.

(7) Wherever possible, new additions or alterations to buildings, structures or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure or site would be unimpaired.

(8) Considerations on proposed moving of structures, in whole or in part, shall include the effect on the neighborhood from which the move is made. In general, where the structure forms a significant part of a complex of similarly meritorious buildings, preference shall be given to relocation on a site elsewhere in the district. Where the structure does not form part of such a complex, preference shall be given to removal to a location in which the addition will reinforce existing complexes of buildings of significant historic, architectural and/or cultural character.

(Code 1977, § 16-20.009)

Sec. 16-20.010. Judicial review of decisions on certificates of appropriateness.

(a) Any person aggrieved by a final decision of the commission on a certificate of appropriateness, or any officer, department or board of the city, may appeal from such decision to the Superior Court of Fulton County by filing with the clerk of said court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the final decision of the commission is rendered.

(b) Upon such filing, the clerk of Superior Court shall give immediate notice thereof to the executive director of the urban design commission. Within the time prescribed by law, the commission shall cause to be filed with said clerk a certified copy of the proceedings held before the commission, including a transcript of the evidence heard before the commission and the decision of the commission.

(c) Thereafter at the next term of the Superior Court or in vacation upon 10 days' notice to the parties, the judge of such court shall proceed to hear and pass upon the appeal. In determining the questions presented by the appeal, the court shall determine whether the decision of the commission is correct as a matter of law.

(d) The filing of an appeal in the Superior Court from a decision of the commission shall not ipso facto act as a supersedeas, but a supersedeas may be granted by the court upon such terms and conditions as may seem reasonable and proper.

(Code 1977, § 16-20.010)

Sec. 16-20.011. Further provisions.

(a) *Inspections:* The director shall from time to time inspect, in cooperation with a designee of the director, bureau of buildings, work undertaken pursuant to decisions of the commission. The director shall take all necessary and legal steps to assure conformity to the requirements thereof. In any cases where the director of the commission becomes aware of work being undertaken on any designated property without or in violation of a certificate of appropriateness, the director of the commission shall immediately notify the director, bureau of buildings, who shall issue an immediate stop-work order. Further, the director, bureau of buildings shall furnish the director of the commission a quarterly report concerning all designated properties, number and nature of inspections made, number of correction notices issued, and steps being taken to remedy violations.

(b) *Maintenance and Enforcement:* The owner or owners, or the owner's agent, of each building or site designated to a category of protection pursuant to this chapter shall keep in good repair all of the exterior portions of such building or site and all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portion of such building or site to deteriorate, decay, or become damaged or otherwise to fall into a state of disrepair. Further, said owner or owners shall keep in good repair all portions of the building or site which, if not so maintained, may cause or tend to cause such portions to deteriorate, decay, or become damaged or otherwise fall into a state of disrepair. The provisions of this section shall be in addition to all other provisions of law requiring any such building or site to be kept in good repair. The director, bureau of buildings shall be responsible for the enforcement of the maintenance provisions contained within this section.

(c) *Interpretation:* In their interpretation and application, the provisions of this chapter shall be construed to be the minimum requirements or maximum limitations, as the case may be, commensurate with promotion of the purpose of historic preservation. Whenever the requirements of these regulations are at a variance with the requirements of any other governmentally adopted statute, rule, regulations, ordinance or code, the most restrictive or that imposing the higher standard shall govern.

(d) *Penalties:* Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 of the Code of Ordinances of the City of Atlanta, as amended. Each day's continuance of a violation may be considered a separate offense. The owner of any building, structure or site, or part thereof, where anything in violation of this chapter exists, and any architect, builder, contractor or agent of the owner, or any tenant, who commits or assists in the commission of any violation, shall be guilty of a separate offense.

(e) *Separability of Provisions:* Should any section or provision of this chapter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this chapter as a whole or any section thereof other than the section or provision specifically declared to be invalid.

(Code 1977, § 16-20.011)

**//Atlanta, Georgia/CODE OF ORDINANCES City of ATLANTA, GEORGIA Codified through
Ord. No. 2008-18(06-O-1947), enacted March 25, 2008. (Supplement No. 40)/Part 16
ZONING*/CHAPTER 20. HC HISTORIC AND CULTURAL CONSERVATION DISTRICTS***