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## 8.5 Specific Development Review Procedure Requirements.

### 8.5.7 Heritage Preservation Site Designation.

(A) **Applicability.**

- (1) The city may, from time to time, determine that certain places, buildings, structures, properties, or district areas or properties within the community are of significance in American history, architecture, archeology, engineering, landscaping, and culture and those locations should be subject to additional review as it relates to this LDC.
- (2) An application for heritage preservation site designation may be initiated by the property owner, heritage preservation commission, planning commission, or city council.

(B) **Approval Procedure.** Heritage preservation site designation shall be subject to the Type 4 review procedure (See Section 8.4.7, Type 4 Review Procedure (Planning Commission or Heritage Preservation Commission Recommendation and City Council Decision)) as modified herein.

- (1) **Reports.** The city council may direct the city planner or other city staff to prepare studies which catalog buildings, land, areas, districts, or other objects to be considered for designation as a heritage preservation site prior to review as established in Section 8.4.7, Type 4 Review Procedure (Planning Commission or Heritage Preservation Commission Recommendation and City Council Decision).
- (2) **Review and Recommendation by the Heritage Preservation Commission and Planning Commission.**
  - (a) The heritage preservation commission shall review the application for designation in accordance with the Type 4 review procedure as established in Section 8.4.7, Type 4 Review Procedure (Planning Commission or Heritage Preservation Commission Recommendation and City Council Decision) and shall make a recommendation to the city council.
  - (b) In addition to the approval criteria as established in Section 8.5.7(C), the heritage preservation commission may also refer to the applicable Secretary of the Interior standards, and current procedure as recommended by the state historic preservation office when determining if a site should qualify as a heritage preservation site.
  - (c) After the heritage preservation commission has made a recommendation, the planning commission shall review the application for designation in accordance with the Type 4 review procedure as established in Section 8.4.7, Type 4 Review Procedure (Planning Commission or Heritage Preservation Commission Recommendation and City Council Decision) and shall make a recommendation to the city council.
- (3) **Communication with State Historic Preservation Office.**
  - (a) Prior to designating a proposed heritage preservation site, the heritage preservation commission shall forward information concerning the proposed designation to the state historic preservation office for comment within 60 days.
  - (b) The recommendation of the heritage preservation commission and decision of city council shall be sent to the state historic preservation office in accordance with applicable state statutes.
- (4) **Review and Decision by the City Council.**

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- (a) The city council shall review and make a decision on a heritage preservation site application in accordance with Section 8.4.7, Type 4 Review Procedure (Planning Commission or Heritage Preservation Commission Recommendation and City Council Decision).
  - (b) Prior to making a decision, the city council may request a review and recommendation by the planning commission for the designation's conformance with the comprehensive plan.
  - (c) The city council shall adopt findings in support of any decision to designate a heritage preservation site.
  - (d) The decision of the city council shall be made in the form of an ordinance.
- (C) **Approval Criteria.** All of the following criteria shall be considered in the review of heritage preservation site designation applications:
- (1) That the quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, landscaping, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association; or
  - (2) That are associated with events that have made a significant contribution to the broad patterns of our history; or
  - (3) That are associated with the lives of persons significant in our past; or
  - (4) That 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
  - (5) That have yielded, or may be likely to yield, information important in prehistory or history; or
  - (6) That have a unique location or singular physical characteristics representing established and familiar aspects of a view, vista, site, area or district in the city.
- (D) **Acquisition of Property.** The heritage preservation commission may recommend to the city council that certain property eligible for designation as a heritage preservation site be acquired by gift, by negotiation, or other legal means as provided in applicable state statutes.
- (E) **Heritage Preservation Site Designation Amendment or Delisting.** The procedure for an amendment or delisting of a heritage preservation site designation shall comply with the same procedure set forth herein for designation of a heritage preservation site, as provided in Section 8.5.7 (B), except that the following approval criteria shall be considered and findings shall be made on one (1) or more of the same:
- (1) Procedural or professional errors were made in the designation process.
  - (2) The designated property has been destroyed or radically altered to the point where the majority of its original historic qualities have been lost or removed and cannot economically be replaced.

(Ord. No. 1046, §§ 3, 4, 10-18-2022)

#### **8.5.8 Heritage Preservation Commission's Certificate of Appropriateness.**

- (A) **Applicability.** Unless otherwise exempted in Section 7.8.3, Exemptions, or unless otherwise provided in this Section, no zoning certificate or building permit for construction, exterior alteration or rehabilitation, moving, or demolition of a building or structure on a city-owned or privately owned heritage preservation site shall be issued until the project has been submitted to, and received approval of a certificate of appropriateness from either the heritage preservation commission or the city planner subject to the below review procedures. The city planner or the city's planner's designee

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shall classify proposed work as described below into one of the following two categories, which shall determine the applicable review procedure as provided in clause (C) of this Section:

- (1) Major Work:
  - (i) New construction including the expansion or enlargement of an existing building or site.
  - (ii) Demolition in whole or in part.
  - (iii) Moving of historic buildings, structures, or objects.
  - (iv) Remodeling, exterior alteration or rehabilitation that will change the exterior appearance including but not limited to signage, painting, lighting, landscaping, and awnings.
  - (v) Any other major work determined by the city planner, in the city planner judgment, not meeting the definition of minor work.
- (2) Minor Work (minor alterations in keeping with the integrity of the heritage preservation site and do not impact the overall architectural character and visual character):
  - (i) Ordinary and routine maintenance such as tuck-pointing.
  - (ii) Maintenance or reconstruction where any exterior surface materials are to be replaced with historically appropriate identical materials and where such replacement materials will be installed to the original historical configuration. This includes, but is not limited to; repainting, reroofing, residing, and replacement of windows with the same form, materials and finish.

(B) **Exemptions.** A certificate of appropriateness shall not be required for the following activities:

- (1) A COA is not required for building permits for work (electrical, interior structural, etc.) on the interior of the structure provided that the work for which the building permit is requested will not alter the external appearance or the gross floor area of the structure.
- (2) A COA is not required for structures required to be demolished in accordance with Minn. Stat., Ch. 463, related to hazardous or substandard buildings.
- (3) A COA is not required in emergency situations where immediate, temporary repair is needed to protect the safety of a building or structure and its inhabitants as determined and approved jointly by the City Administrator and City Building Official. In the case of an emergency repair permit issued pursuant to this Section, the City Administrator or Building Official, as applicable, shall subsequently notify the heritage preservation commission of the temporary, emergency repair and specify the facts or conditions necessitating the emergency repairs. Unless approved by the heritage preservation commission, temporary repairs shall extend for a period not to exceed 180 days from the date of approval by the City Administrator and City Building Official. If a certificate of appropriateness is otherwise required by this Section, all final repairs shall be reviewed pursuant to the approval procedure as provided in clause (C) of this Section.
- (4) A COA is not required for any physical improvements within public rights-of-way and immediately adjacent property affected by such work, including but not limited to: curb and gutter, street, utility reconstruction; routine maintenance, repair, or emergency work such as street patching; street overlays; driveway installations; boulevard tree planting; accessibility ramp improvements; utility repairs; or sidewalk repair or replacement.
  - (i) For public street improvement projects exceeding an estimated cost of one million dollars as determined by the city engineer and located within the H-O District, the heritage preservation commission may, prior to the city council public improvement hearing on the project, provide written comments to the city council on the historic aspects of the project.

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Failure of the heritage preservation commission to timely provide written comments on or before the scheduled public improvement hearing on the project shall be deemed to have satisfied this provision.

(C) **Approval Procedure.** For major work as defined in clause (A) of this Section, certificates of appropriateness shall be subject to the Type 3 review procedure as established in Section 8.4.6, Type 3 Review Procedure (Heritage Preservation Commission Decision), except that the heritage preservation commission shall be responsible for review instead of the planning commission. For minor work as defined in clause (A) of this Section, certificate of appropriateness shall be subject to the Type 1 review procedure as established in Section 8.4.4, Type 1 Review Procedure. The city planner is authorized to determine the applicable review procedure for an application as defined in clause (A) of this Section.

(D) **Approval Criteria.**

(1) For proposed new construction, as well as alteration, remodeling, rehabilitation, relocation or addition to an existing building, structure or historic object, the heritage preservation commission or the city planner, based upon the applicable review procedure for an application, shall consider the following in evaluating an application for a certificate of appropriateness for a zoning certificate and/or building permit, and shall make written findings regarding approval or denial of the same by resolution. Criterion (a) below must be met and criteria (b) through (g) shall be considered, if applicable to an application:

- (a) For all applications, the proposed action fully complies with all applicable requirements of this LDC;
- (b) That the proposed action is in harmony with the purpose of the H-O district for sites located in the H-O district;
- (c) That the proposed action would complement other structures within the H-O district for sites located in the H-O district;
- (d) That the proposed action is consistent with the Downtown Preservation Design Guidelines for sites located in the H-O district, and consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties for sites located within or outside the H-O district;
- (e) Consideration should be given to the amount and quality of original material and design remaining in the building or structure when applying criteria, guidelines and standards;
- (f) For new construction, the building or addition should be compatible with:
  - (i) scale, texture, materials, and other visual qualities of the surrounding buildings and neighborhoods;
  - (ii) the height, width, depth, massing and setback of the surrounding buildings; and
  - (iii) the amount of solid wall to window and door openings, and the replacement of window and door openings, should be proportional to that of the surrounding buildings and neighborhood; and
- (g) Consideration shall be given to clear cases of economic hardship or to deprivation of reasonable use of the owner's property.

The applicant bears the burden of proof of meeting the foregoing criteria as well as all costs of the same without reimbursement from the commission or city.

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- (2) For proposed demolition of a building or historic object, the heritage preservation commission in considering an application for a certificate of appropriateness shall make written findings regarding approval or denial of the same by resolution based on the following criteria:
- (a) In the case of demolition, that the structure could not be rehabilitated and used for a conforming purpose with reasonable efforts or whether the structure is without substantial historic or architectural significance;
  - (b) Consideration shall be given to the significance or architectural merit of the building itself, in terms of unusual or uncommon design, texture, or materials that could not be reproduced or reproduced only with great difficulty or expense, and, if applicable, the contribution the building makes to the historic or architectural character of the district;
  - (c) Consideration shall be given to the economic value, usefulness and replacement cost of the building as it now stands and as remodeled or rehabilitated, in comparison to the value or usefulness of any proposed structures designated to replace the present building or buildings, and to what viable alternatives may exist;
  - (d) Consideration shall be given to the present structural integrity of the building to determine whether or not it constitutes a clear and present danger to the health, welfare and safety of the public; whether the building could be considered a hazardous building or hazardous property as defined in Minn. Stat. § 463.15; and whether other nuisance conditions or City Code violations exist on the subject property. The foregoing consideration shall be based on an analysis and report prepared by the Building Official and submitted to the commission. The applicant may, at the applicant's cost and expense, prepare and submit an analysis/report of the foregoing and/or a professional estimate of the structural integrity of the building and an estimate of the cost for the property owner to correct dangerous deficiencies or other evidence of the same to the commission. The commission shall consider any such reports and/or evidence submitted by the applicant;
  - (e) Consideration shall be given as to whether or not the demolition is necessary to facilitate a defined public purpose;
  - (f) Consideration shall be given to the length of time that the building or property has remained secured or unsecured, unused, abandoned, substandard and/or vacant; and
  - (g) Consideration shall be given to clear cases of economic hardship or to deprivation of reasonable use of the owner's property.

The applicant bears the burden of proof of meeting the foregoing criteria as well as all costs of the same without reimbursement from the commission or city.

**(E) Appeals.**

- (1) Appeals of the heritage preservation commission's decision may be made to the city council in accordance with this LDC and state law. Any party aggrieved by a decision of the heritage preservation commission may appeal such decision by filing a written notice of appeal with the city clerk no later than ten days after the decision of the heritage preservation commission. If not so filed, the right of appeal shall be deemed waived and the decision of the heritage preservation commission shall be final. Following receipt of the appeal, the city clerk shall schedule a time for the appeal to be heard by the city council, which appeal hearing shall be scheduled within 30 days of the date of receipt of the notice of appeal by the city clerk. Following hearing the appeal, the city council shall by resolution, in its discretion, either affirm, modify and amend, or overrule the heritage preservation commission's decision. The resolution shall contain written findings supporting the city council's decision and shall be adopted by an affirmative vote of a majority of all the members of the city council.

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(2) An appeal of the city staff's decision on a certificate of appropriateness (minor work) following the Type 1 Review Procedure shall be made to the heritage preservation commission and reviewed in the same manner as a new certificate of appropriateness (major work) in accordance with a Section 8.4.6, Type 3 Review Procedure. Any party aggrieved by city staffs decision on a certificate of appropriateness (minor work) under the Type 1 Review Procedure may appeal such decision by filing a written notice of appeal with the city clerk no later than ten days after the decision of city staff, along with any additional required documentation necessary for review in accordance with a Section 8.4.6, Type 3 Review Procedure, for subsequent consideration by the heritage preservation commission. Subsequent appeals of the decision of the heritage preservation commission following its Section 8.4.6, Type 3 Review Procedure shall be made in accordance with clause (E)(1) of this Section.

(F) **City Council Review and Decision.** Notwithstanding the foregoing, any denial of a certificate of appropriateness by the heritage preservation commission of a city government project located upon or within city-owned property shall be reviewed by the city council within 45 days of the heritage preservation commission's decision. The city council shall by resolution, in its discretion, either affirm, modify and amend, or overrule the heritage preservation commission's decision. The resolution shall contain written findings supporting the city council's decision and shall be adopted by an affirmative vote of a majority of all the members of the city council.

(Ord. No. 1046, § 5, 10-18-2022)