

7.5.1605: CONSTRUCTION, ALTERATION, DEMOLITION OR RELOCATION OF DESIGNATED RESOURCES:

A. Work Requiring Building, Demolition, Moving Or Sign Permit: Action on an application for a building, demolition, moving or sign permit for properties within the historic preservation overlay zone shall be deferred by a Regional Building Official except as provided in subsection H of this section, until the application is accompanied by a report of acceptability from the Board for the proposed work when the proposed work involves any of the following which are visible from a public right of way:

1. Alteration or reconstruction of or addition to the exterior of any structure including signs, or improvement which is within a historic preservation overlay zone for which a building permit is required.
2. Demolition or relocation of any structure including signs or improvement or object to or from a historic preservation overlay zone for which a permit is required.
3. Construction or erection of or addition to any structure including signs or improvement upon any land which is within a historic preservation overlay zone for which a permit is required.

B. Application For Report Of Acceptability:

1. Minor Work: Minor work is any work that will not alter any distinctive feature or any improvement of the historic structure. In order to obtain a report of acceptability for minor work, the applicant shall submit with the application for a building permit such documentation as determined necessary by the Board. A minor work committee of the Board, consisting of three (3) members of the Preservation Board, shall review the application for a report of acceptability for minor work within eighteen (18) working days after its receipt. If the minor work submitted by a majority vote finds that the proposed work is of a nature that will not erode the authenticity of or destroy any distinctive exterior feature of the structure of improvement and is compatible with both the distinctive characteristics of the historic preservation overlay zone and with the spirit and purpose of the Zoning Code, the minor work committee shall so advise the applicant in writing by issuing a report of acceptability and shall affix the Board's seal to the plans and specifications for the proposed work.

2. Major Work: Major work is any work referred to the Board by the minor work committee upon finding the proposed work will alter any distinctive feature or any improvement of the historic structure. The Board shall act on the application for a report of acceptability within twenty eight (28) days after its receipt by the Board.

C. Board Approval Of Proposed Work: If upon receipt of an application for a report of acceptability pursuant to subsection B of this section, the Board finds that the proposed work is of a nature which will not erode the authenticity of or destroy any distinctive exterior feature of the structure or improvement and is compatible with both the distinctive characteristics of the historic preservation overlay zone and with the spirit and purpose of this Zoning Code, the Board shall so advise the applicant in writing by issuing a report of acceptability and shall affix its seal to the plans and specifications for the approved work. Upon receipt of the Board's report of acceptability and plans and specifications, the Regional Building Official may proceed with the review of the application for a building permit. No change which would defeat the purpose of this Zoning Code shall be made in an application for a building permit or the plans and specifications for the proposed work approved by the Board without resubmittal to the Board and approval of such changes in the same manner as the original application. In determining the decision to be made concerning the issuance of a report of acceptability, the Board shall consider the following criteria:

1. The effect of the proposed work upon the general historical and/or architectural character of the historic preservation overlay zone.
2. The architectural style, arrangement, texture and materials of existing and proposed structures, and their relation to the structures in the historic preservation overlay zone.
3. The effects of the proposed work in creating, changing or destroying the exterior architectural features of the structure upon which such work is to be done.
4. The effect of the proposed work upon the protection, enhancement, perpetuation and use of the historic preservation overlay zone.

D. Action Of The Board On Unacceptable Work On Property Other Than On The National Register Of Historic Places: If the proposed work is not found acceptable, the Board shall explore with the applicant all means for substantially preserving the improvement which would have been affected by the required permit. This decision to investigate other ways to preserve a designated resource may be appealed to City Council. If

the Board and applicant, after a period of ninety (90) days from the date of receipt of the application by the Board regarding the appropriateness of the desired change are unable to develop either alternative plans or an appropriate public or private use for the structure, the Board shall affirmatively act to set out reasons for the inability of the Board and applicant to agree, and the applicant may obtain the appropriate permit from the Regional Building Official to do as the applicant desires as long as the applicant's request complies with all other city codes. The investigations by the Board with the applicant under this section may include, by way of example and not of limitation:

1. Feasibility of modification of the plans.
2. Feasibility of any alternative private use of the structure or structures which would substantially preserve the original character thereof.
3. The possibility of public acquisition of the structure or structures involved for a public purpose.

E. Action Of The Board On Unacceptable Work On Property Listed In The National Register Of Historic Places: If the proposed work is not found acceptable, the Board shall explore with the applicant all means for substantially preserving the improvement which would have been affected by the required permit. No demolition or alteration of property listed in the National Register of Historic Places, except as provided in this section shall be permitted unless the Board first finds that an unreasonable economic or noneconomic hardship will result to the owner if not allowed to demolish or otherwise alter. If the proposed work is not approved by the Board, the applicant shall be so advised and no building permit shall be issued unless a certificate of hardship has been issued. No reapplication shall be submitted pursuant to this part under the plans and specifications found unacceptable by the Board except upon a showing of changed circumstances sufficient to justify the reapplication as determined by the Board.

F. Determination Of Economic Hardship: If the Board denies approval of an application for a report of acceptability, it may, upon application or on its own motion, consider issuing a certificate of economic hardship.

1. Application And Hearing; Notice And Procedure: If the Board denies approval of an application for acceptability, the Board may, upon application or on the Board's own motion, consider issuing a certificate of economic hardship. The applicant must, however, submit the application to the Secretary of the Board within ten (10) days of the Board's decision denying approval of the application for acceptability. Upon application or motion for a certificate of economic hardship, the Board shall schedule a public hearing on that application or motion. The public hearing shall be scheduled for the next regular meeting of the Board or may be scheduled as a special meeting of the Board. The hearing shall be noticed to the public as an item on the Board's agenda. The Board shall determine who may present evidence or testimony during the hearing. The hearing may be continued provided that, prior to the adjournment or recess of the Board meeting, a clear announcement is made by the Board specifying the date, time and place at which the hearing will be continued. Any action of the Board approving or denying an application or motion for economic hardship shall be made in open session by a majority vote with at least four (4) Board members present during the vote. The Board's decision to approve or deny shall set forth the Board's findings of fact and, in the event of approval, shall include any special conditions of approval considered by the Board to be necessary to mitigate impacts upon and protect the intent and spirit of this part and the Zoning Code. The Board's decision may be appealed to City Council.

2. Data To Be Provided By The Applicant: The Board may solicit expert testimony or require that the applicant for a certificate of economic hardship make submissions of information before rendering its decision.

3. Determination Of Economic Hardship: The Board shall review all of the evidence and information required of an applicant for a certificate of economic hardship and if the Board finds that without approval of the proposed work the property owner cannot obtain any reasonable economic return, not just profit, on the property, the Board shall:

- a. Make a finding that denial of approval of the proposed work would impose an economic hardship on the property owner; and
- b. Immediately issue a certificate of economic hardship and proceed as in this section.
- c. At its discretion, postpone the issuance of the certificate of economic hardship.

(1) This suspension period shall not exceed thirty (30) days unless otherwise agreed to by the applicant. During this suspension period, the Board shall investigate plans and make recommendations to the City Council to allow the property owner a reasonable economic return from the property, or to otherwise preserve the subject property. Such plans and recommendations may include, but are not limited to, a

relaxation of the provisions of this section, financial assistance, Building Code modifications and/or changes in zoning regulations.

(2) The Board may request an extension of the suspension period by the City Council. If the City Council determines that there is a program or project underway which could result in public or private acquisition of the building or structure and the preservation or restoration of such building or structure, and that there are reasonable grounds to believe that the program or project may be successful, the Council may extend the suspension period for an additional period for a total suspension period of not more than ninety (90) days from the date of application for a regulated permit.

(3) If at the end of the suspension period:

(A) The Board finds that, after review of all of the alternatives, without authorization of the proposed work or demolition, the property owner still cannot obtain any reasonable economic return from the property; and

(B) The applicant has not withdrawn his/her application for a building permit; and

(C) The applicant otherwise complies with the codes of the City;

then the Board shall issue a certificate of economic hardship authorizing the work or demolition.

If the Board finds otherwise, it shall deny the application or motion for a certificate of economic hardship.

G. Determination Of Noneconomic Hardship: After the Board denies an application for a report of acceptability submitted by an applicant acting in a religious, charitable or otherwise not for profit tax exempt capacity, it may, upon application or on its own motion, consider issuing a certificate of noneconomic hardship.

1. Application And Hearing; Notice And Procedure: If the Board denies an application for a report of acceptability which was submitted by an applicant acting in a religious, charitable or otherwise not for profit tax exempt capacity, the Board may, upon application or on the Board's own motion, consider issuing a certificate of noneconomic hardship. The applicant must, however, submit the application to the Secretary of the Board within ten (10) days of the Board's decision denying approval of the application for acceptability. Upon application or motion for a certificate of noneconomic hardship, the Board shall schedule a public hearing on that application or motion. The public hearing shall be scheduled for the next regular meeting of the Board or may be scheduled as a special meeting of the Board. The hearing shall be noticed to the public as an item on the Board's agenda. The Board shall determine who may present evidence or testimony during the hearing. The hearing may be continued provided that, prior to the adjournment or recess of the Board meeting, a clear announcement is made by the Board specifying the date, time and place at which the hearing will be continued. Any action of the Board approving or denying an application or motion for noneconomic hardship shall be made in open session by a majority vote with at least four (4) Board members present during the vote. The Board's decision to approve or deny shall set forth the Board's findings of fact and, in the event of approval, shall include any special conditions of approval considered by the Board to be necessary to mitigate impacts upon and protect the intent and spirit of this part and the Zoning Code. The Board's decision may be appealed to City Council.

2. Data To Be Provided By The Applicant: The Board may solicit expert testimony or require that the applicant for a certificate of noneconomic hardship make submissions of information before rendering its decision.

3. Determination Of Noneconomic Hardship: The Board shall review all of the evidence and information required of an applicant for a certificate of noneconomic hardship and if the Board finds that without approval of the proposed work the property is either substantially inadequate for the owner's legitimate needs, or either physically and/or financially prevents or seriously interferes with the owner's religious, charitable or otherwise not for profit purpose, the Board shall:

a. Make a finding that denial of approval of the proposed work would impose a noneconomic hardship on the property owner; and

b. Immediately issue a certificate of noneconomic hardship and proceed as in this section.

c. At its discretion, postpone the issuance of the certificate of noneconomic hardship.

(1) This suspension period shall not exceed thirty (30) days unless otherwise agreed to by the applicant. During this suspension period, the Board shall investigate plans and make recommendations to the

City Council to render the property adequate for the owner's legitimate needs, or remove serious physical or financial interference with the owner's religious, charitable or otherwise not for profit purpose, or to otherwise preserve the subject property. Such plans and recommendations may include, but are not limited to: a relaxation of the provisions of this section, financial assistance, Building Code modifications and/or changes in zoning regulations.

(2) The Board may request an extension of the suspension period by the City Council. If the City Council determines that there is a program or project under way which could result in public or private acquisition of the building or structure and the preservation or restoration of such building or structure, and that there are reasonable grounds to believe that the program or project may be successful, the Council may extend the suspension period for an additional period for a total suspension period of not more than ninety (90) days from the date of application for a regulated permit.

(3) If at the end of the suspension period:

(A) The Board finds that, after review of all of the alternatives, without authorization of the proposed work or demolition, the property owner still cannot adequately use the property for legitimate needs, or is either physically and/or financially prevented or seriously hindered from advancing religious, charitable or otherwise not for profit purposes; and

(B) The applicant has not withdrawn his/her application for a building permit; and

(C) The applicant otherwise complies with the codes of the City;

then the Board shall issue a certificate of noneconomic hardship authorizing the work or demolition.

If the Board finds otherwise, it shall deny the application or motion for a certificate of noneconomic hardship.

H. Remedying Of Dangerous Conditions: In any case where the Regional Building Official, the Fire Department, or any other public authority having the power to do so orders or directs the construction, reconstruction, alteration, repair, relocation or demolition of any structure in a historic preservation overlay zone for the purpose of remedying conditions determined by that official, department or authority to be imminently dangerous to life, health or property, nothing contained herein shall be construed as making it unlawful for any person to comply with such order. Any such official, department or authority shall take immediate steps to notify the Board of the issuance of any such order or directive and may include in such order or directive any timely received requirements or recommendations of the Board.

I. Waiver Of Conditions: Upon a showing of substantial hardship or to protect against an arbitrary result, or both, the Board may waive such conditions and requirements as are set forth in this Zoning Code, provided that the spirit and purpose of this Zoning Code are not significantly eroded.

J. Limitation On Further Application: Whenever a request for a report of acceptability, determination of economic hardship or determination of noneconomic hardship has been finally disapproved by the Board, or if appealed, by the City Council, no further application shall be made for a report of acceptability, economic hardship or noneconomic hardship affecting the same property, or a part thereof, for a period of twelve (12) months from the date of the final action of disapproval. A property owner may apply to the Board for an exception to this limitation by specifying and showing that, due to a change of circumstances and the existing condition of the property, a request for a report of acceptability, determination of economic hardship or determination of noneconomic hardship is substantially different from the previous application. The decision of the Board denying an exception may be appealed to the City Council.

K. Appeal Of Decisions: Decisions of the Board regarding any application under this section may be appealed to City Council in accord with the procedures set forth in part 9 of this article. (Ord. 88-228; Ord. 90-9; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 07-35)