



Town of New Castle **Planning and Code**
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Memo

To: Chairman Chuck Apolstolik & Members of Planning & Zoning Commission
From: Tim Cain
Date: August 6, 2015
RE: Text Amendment – Chapters 15.44, 17.36, 17.40 & 17.44

Background and Discussion:

After consulting with Town Attorney, David McConaughy, there seems to be procedural conflicts and other inconsistencies in the Town codes relative to Historic Preservation and Rehabilitation.

In response, the Town Council has asked for Historic Preservation Commission input about whether it is advisable to change the Municipal Code sections by way of a text amendment relative to altering structures in the C-1 Zone District. The HPC has discussed the issues found below and have recommended that changes be made to the code. The next step is for P&Z to review the attached Resolution recommending said changes.

Sections 15.44.300, 310 and 320 set forth procedures for review and approval of building permits and other proposed work either for designated structures "or districts" by the HPC, including alterations of color only when no building permit is required. Those sections contemplate HPC review of such applications based on their regular meeting schedule. HPC declined to name the C-1 Zone District as a Historic District. This is important because not every property owner in this district is agreeable to having their property deemed "Historic" meaning the zoning regulations would require every one seek permission to alter the exterior of their property including getting permission to paint their home or business. If HPC were to designate C-1 a Historic District, every single property owner would have to agree to its designation and that does not appear feasible.

Chapter 17.36 sets forth the zoning regulations for the C-1 Zone district, which includes all structures on the north and south side of Main St. from 8th to 1st St. on the north side and Mattivi Ave. on the south side.

Section 17.36.110 (A)(3) has a procedure for approval of work not requiring a building permit, which would include color changes. That section provides review and approval by the Town Planner within 7 (seven) working days. Appeals go to the Board of Zoning Adjustment (BOZA). BOZA consists of members from the Town Council. This can cause procedural conflict with HPC duties and responsibilities in Chapter 15.44.

Chapter 17.40 is titled BUILDING DESIGN STANDARDS IN C-1 COMMERCIAL DISTRICT and section 17.40.110 discusses Building materials and colors. This section may require additional procedural language or other changes such that it is consistent with other code sections previously mentioned.

Chapter 17.44 is titled HISTORIC PRESERVATION IN C-1 COMMERCIAL DISTRICT. And it, too,

could be subject to possible text amendment to, once again, provide procedural consistency relative to other code sections.

Recommendation:

I believe it is necessary to provide text amendments to relevant sections of the code so we can have clear and concise language that is consistent and easy for the general public to understand.

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August 6, 2015

MEMORANDUM

TO: New Castle Planning and Zoning Commission
FROM: Haley M. Carmer, Assistant Town Attorney
RE: Amendment to Town Code Chapters 17.20, 17.36, and 15.44

It has come to the town staff's attention that the New Castle Municipal Code contains arguably duplicative provisions regarding review and approval of alterations to designated historic structures within the Town's C-1 and R-1 Districts that do not require a building permit. Specifically, Sections 17.20.170 and 17.36.110(A)(3) of the Code allow the Town Planner to administratively approve such requests, including color alteration, without consulting the Historic Preservation Commission ("HPC"), the entity responsible for designating historic sites, landmarks, and districts ("Designated Property or Properties") within the Town. Additionally, Section 15.44.300 of the Code requires anyone desiring to alter the exterior appearance of a Designated Property to receive written approval from HPC before proceeding. These provisions create confusion and uncertainty as to which entity—the town planner or HPC—has the ultimate authority to grant a certificate of compliance. These sections could also be read to require certificates of compliance with two sets of standards that are essentially the same. The former scenario is troublesome from a legal standpoint, and both scenarios are undesirable from a practical standpoint.

This issue was brought to HPC's attention at its July meeting. HPC recommended vesting final approval authority with the town planner and requiring the planner to consult with HPC before making his or her decision on an application for certificate of compliance. After further consideration, however, it is our opinion that the cleanest, most efficient option is to exempt Designated Properties from the zoning requirements and give HPC the final say when it comes to such properties. In order to reconcile the overlapping provisions identified above, the Town Attorney proposes amending Sections 17.20.170 and 17.36.110 of the Code to provide that the HPC has the ultimate authority to grant certificates of compliance with respect to Designated Properties. For those properties located within the C-1 or R-1 districts that are not Designated Properties, the town planner will retain the power to grant certificates of compliance.

Under the Code as currently written, it is the opinion of the Town Attorney that the Town planner has the ultimate approval power with respect to alterations to properties, including Designated Properties, in the C-1 and R-1 Districts that do not require a building permit. The benefit of this structure is that residents only have to wait seven days for a decision on their application. If HPC becomes the deciding agency instead of the Town planner, applicants will be at the mercy of HPC's meeting schedule for decisions on their applications. For example, if an applicant submits her application to HPC two days after an HPC meeting, she will have to wait another month for a decision. However, vesting HPC with certificate of approval authority over Designated Properties (1) relieves the town planner of the proposed obligation to consult with HPC; (2) simplifies the approval procedure; and (3) ensures that the entity that created the Designated Properties maintains some control and oversight over the historical characteristics of those properties.

The Planning & Zoning Commission has several options regarding the text amendment proposed in Resolution 2015-1:

1. Find that revision of the Code is unnecessary and recommend denial of the amendments;
2. Find that revision of the Code is necessary and recommend approval of the amendments as proposed; or
3. Find that revision of the Code is necessary, but recommend that the Town planner be vested with the final authority over certificates of approval for Designated Properties; and
 - a. Decide whether or not to recommend that the Town planner consult with HPC before making a decision on an application for certificate of compliance, and
 - b. Direct the Town Attorney to come back to the Commission with proposed changes or
 - c. Direct the Town Attorney to make the changes recommended by the Commission and present its recommended text amendments to Town Council.

I look forward to discussing these issues with the Commission at its August 12th meeting.

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. PZ 2015-1**

**A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING
COMMISSION RECOMMENDING APPROVAL OF AN AMENDMENT TO
PORTIONS OF CHAPTERS 17.20, 17.36, AND 15.44 OF THE NEW CASTLE
MUNICIPAL CODE CONCERNING THE CERTIFICATE OF APPROVAL
PROCESS IN THE C-1 AND R-1 ZONE DISTRICTS.**

WHEREAS, Chapter 17.36 of the Town of New Castle (“Town”) municipal code (“Code”) sets forth the provisions and regulations relevant to the Town’s C-1 Commercial Zone District (“C-1”); and

WHEREAS, Chapter 17.20 of the Code sets forth the provisions and regulations relevant to the Town’s R-1 Residential Zone District (“R-1”); and

WHEREAS, the goals for C-1 and R-1 are to promote the historical characteristics of the structures therein; and

WHEREAS, several structures located in C-1 and R-1 have been designated by the Town’s Historic Preservation Commission (“HPC”) as historic sites or landmarks; and

WHEREAS, Chapter 15.44 of the Code governs HPC and designated historic sites, landmarks, and districts; and

WHEREAS, Chapters 17.20, 17.36, and 15.44 contain provisions regarding certificates of approval for proposed work to be done to structures that does not require a building permit; and

WHEREAS, the provisions of Chapters 17.20, 17.36 and 15.44 impose differing requirements on those structures that are both located in C-1 or R-1 and designated historic sites or landmarks, which could lead to confusion for Town staff and property owners; and

WHEREAS, HPC has not designated the entirety of the C-1 or R-1 zones as a historic district; and

WHEREAS, Town Staff has requested an amendment to Chapters 17.20, 17.36 and 15.44 to allow for more orderly administration and regulation of C-1 and R-1; and

WHEREAS, pursuant to section 17.92.030(B) of the New Castle Municipal Code the Planning Commission held a public hearing on August 12, 2015, to consider the Town’s application to amend the municipal code; and

WHEREAS, based on the testimony presented by staff and the general public, the Planning Commission desires to recommend that the Town Council approve changes to the municipal code as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW CASTLE PLANNING AND ZONING COMMISSION AS FOLLOWS:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the New Castle Planning Commission.

2. Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council approve the following amendments to the New Castle Municipal Code. Language added to the Code is underlined, while language removed from the code is ~~stricken~~:

A. 17.20.160 is amended as follows:

17.20.160 - Optional zone district regulations—~~R-1-HC—Residential-historic-character.~~

~~Certain lots or properties may be identified by the town planning commission or by the town historic preservation commission as being subject to optional regulations to allow historic character buildings. Pursuant to Chapter 15.44 of the code, the Historic Preservation Commission may designate certain lots or properties as historic sites, landmarks or districts (“Designated Property or Properties”). The town clerk shall maintain an official register of all properties so identified. Such properties~~ Designated Properties shall be subject to all regulations and requirements of the R-1 residential district except as expressly modified below in this section.

A. ~~Lots Subject to Designation.~~ The provisions of this section shall be limited to the areas of the historic town, which boundaries are described in Section 17.20.020, originally adopted by town Ordinance No. 261, 1983. ~~This section shall apply only to single-family detached residential and accessory buildings.~~

B. Modifications to Zone District Regulations for ~~Historic Character Buildings~~ Designated Properties.

1. Minimum lot dimensions are thirty-six (36) feet wide at the street front and one hundred (100) feet long (deep) from the street front.
2. Minimum side yard building setbacks combined are twelve (12) feet.
3. Minimum width of one side yard building setback is four feet.
4. Minimum separation between buildings on the lot and on any adjacent lots is ten (10) feet.

~~C. To obtain a district certificate of compliance for an historic character building, the applicant must obtain approval by the town planner of the design of the outside appearance and materials of the building(s), and of a detailed site development plan of the lot, which shall depict the subject building(s) as well as accessory buildings, landscaping, fencing, access, vehicle parking space(s), and buildings on adjacent lots.~~

B. 17.20.171 is amended as follows:

Any person proposing to do any work as described in this section, unless said work is to be performed on a Designated Property, shall first obtain the required review and approvals as set forth in this section by obtaining a certificate of compliance with district historical characteristics from the town. The provisions of this section 17.20.171 shall not apply to any Designated Property; the provisions of Chapter 15.44 shall control with respect to such properties.

C. 17.36.110 is amended as follows:

Any person proposing to do any work as described in this section, unless said work is to be performed on a designated historic site, landmark or district, shall be required to obtain the required review and approvals as set forth in this section by obtaining a certificate of compliance with district historical characteristics from the town planner. The provisions of this section 17.36.110 shall not apply to real property designated by the Historic Preservation Committee as a historic site, landmark, or district that is located within the C-1 District; the provisions of Chapter 15.44 shall control with respect to such properties.

D. 15.44.310(B) is amended as follows:

6. The conformance of the proposed work to the general standards of the zoning district in which the historic site, landmark, or district is located; and

~~6.7.~~ Such additional criteria, as established by the historic preservation commission, which it deems to be in the best interests of the town.

THIS RESOLUTION PZ 2015-1 was adopted by the New Castle Planning and Zoning Commission by a vote of ___ to ___ on the 12th day of August, 2015.

NEW CASTLE PLANNING AND
ZONING COMMISSION

By: _____
Chairman

ATTEST:

Town Clerk/Deputy Town Clerk