



Town of New Castle **Planning and Code
Administration Department**
450 W. Main Street
PO Box 90 **Phone:** (970) 984-2311
New Castle, CO 81647 **Fax:** (970) 984-2716

Memo

To: Mayor Bob Gordon and Town Councilors
From: Tim Cain
Date: August 13, 2015
RE: Text Amendment – Chapters 15.44, 17.36, 17.40 & 17.44

Background and Discussion:

Town Council had asked for Historic Preservation Commission input about whether it advisable to change the Municipal Code sections by way of a text amendment relative to altering the exterior of historic structures in the C-1 and R-1 Zone Districts. The HPC has discussed the issues about who should review application for one who wants to alter the exterior of historic structures within the C-1 and R-1 Zone Districts and have recommended to the Planning and Zoning Commission changes be made to the code.

P&Z met on August 12, 2015 to review the text amendment recommending said changes. P&Z approved of the text amendment whereby HPC will review any historic structures that have been “designated” as such. Other historic structures will be reviewed by the Town Planner and have to be done so within 7 days of application. Assistant Town Attorney, Haley Carmer, has drafted the ordinance making said changes to the code and it will be heard on first reading on August 18, 2015

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 14, 2015

MEMORANDUM

TO: New Castle Town Council
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 provide that such properties be subject only to the HPC approval process. 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. It would be at the planner's discretion to consult with HPC regarding a certificate of approval for non-Designated Properties.

Under the Code as currently written, it is the opinion of the Town Attorney that the Town planner has the ultimate certificate of approval power with respect to alterations to properties, including Designated Properties, in the C-1 and R-1 Districts. 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, HPC can call a special meeting to review a pending certificate of approval. Moreover, vesting HPC with certificate of approval authority over Designated Properties (1) relieves the town planner of the 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.

At its meeting on August 12, 2015, the Town P&Z Commission approved the text amendment set forth in Ordinance No. TC-2015-3. Town Council is not bound by P&Z's recommendation and has several options regarding the proposed text amendment:

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 decide whether or not to require that the Town planner consult with HPC before making a decision on an application for certificate of compliance.

I look forward to discussing these issues with the Commission at its August 18th meeting.

TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. TC-2015-3

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL AMENDING
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, HPC has not designated the entirety of the C-1 or R-1 zones as a historic district; 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 (1) located in C-1 or R-1 and (2) designated by HPC as historic sites or landmarks, which could lead to confusion for Town staff and property owners; and

WHEREAS, pursuant to section 17.92.030(B) of the New Castle Municipal Code the Planning Commission (“Commission”) held a public hearing on August 12, 2015, to consider a proposed amendment of the text of Chapters 17.20, 17.36, and 15.44 to resolve the confusion; and

WHEREAS, as set forth in Resolution PZ No. 2015-1, the Commission recommended approval of the proposed text amendment; and

WHEREAS, the Town Council desires to amend Chapters 17.20, 17.36 and 15.44 to allow for more orderly administration and regulation of C-1 and R-1.

NOW, THEREFORE, BE IT ORDAINED BY THE NEW CASTLE TOWN COUNCIL AS FOLLOWS:

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

2. Amendment. The Town Council hereby approves 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. 17.20.170 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 17.20.170 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.

3. Effective Date. This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on August 18, 2015, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on _____ 2015, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By: _____
Bob Gordon, Mayor

ATTEST:

Melody Harrison, Town Clerk

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 10 to 0 on the 12th day of August, 2015.



NEW CASTLE PLANNING AND ZONING COMMISSION

By: [Signature]
Chairman

ATTEST:

[Signature]
Town Clerk/Deputy Town Clerk

1 **New Castle Planning and Zoning Commission Meeting**
2 **Wednesday, August 12, 2015, 7:00 p.m.**

3
4 **Call to Order**

5 Commission Chair Apostolik called the meeting to order at 7:00p.m.
6

7 **Roll Call**

8 Present Commissioner Apostolik
9 Commissioner Borgard
10 Commissioner Stuckey
11 Commissioner Riddile
12 Commissioner Slack
13 Commissioner Urnise
14
15 Absent Commissioner Taylor
16

17 Also present at the meeting were Assistant Town Attorney Haley Carmer, Town
18 Planner Tim Cain and Deputy Town Clerk Mindy Andis.
19

20 **Meeting Notice**

21 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting
22 in accordance with Resolution TC-2015-1.
23

24 **Conflicts of Interest**

25 There were no conflicts of interest.
26

27 **Citizen Comments on Items NOT on the Agenda**

28 There were no citizen comments.
29

30 **Public Hearing**

31 Commission Chair Apostolik opened the public hearing at 7:01p.m.

32 **To recommend approval of an amendment to portions of Chapters 17.20,**
33 **17.36 and 15.44 of the Town of New Castle Municipal Code concerning the**
34 **certificate of approval process in the C-1 zone district.**
35 **Resolution PZ 2015-1**
36

37 Planner Cain explained that any structure in the C-1 and R-1 zone district would
38 need to get a certificate of approval to do minor changes to the exterior of the
39 structure that would not need a building permit, such as painting. The proposed
40 amendment would go through an approval process for minor exterior changes to
41 the structure would be reviewed by the planner, who would have 7 days to make a
42 decision whether or not it's appropriate.
43

44 Planner Cain stated it is the desire of Historic Preservation Commission to be
45 involved in the decision making when a designated property wants to make minor
46 exterior changes to the structure.

1
2 Attorney Carmer explained the New Castle Municipal Code contains arguably
3 duplicative provisions regarding review and approval of alterations to designated
4 historic structures within the Town's C-1 and R-1 Districts that do not require a
5 building permit. Specifically, Sections 17.20.170 and 17.36.110(A)(3) of the code
6 allow the Town Planner to administratively approve such requests, including color
7 alteration, without consulting the Historic Preservation Commission ("HPC"), the
8 entity responsible for designating historic sites, landmarks, and districts
9 ("Designated Property or Properties") within the Town. Additionally, Section
10 15.44.300 of the Code requires anyone desiring to alter the exterior appearance of
11 a Designated Property to receive written approval from HPC before proceeding.
12 These provisions create confusion and uncertainty as to which entity—the town
13 planner or HPC—has the ultimate authority to grant a certificate of compliance.

14
15 HPC recommended vesting final approval authority with the town planner and
16 requiring the planner to consult with HPC before making his or her decision on an
17 application for certificate of compliance. After further consideration, HPC felt that
18 the cleanest, most efficient option was to exempt Designated Properties from the
19 zoning requirements and give HPC the final say when it comes to such properties.
20 In order to reconcile the overlapping provisions identified above, the proposed
21 amending Sections 17.20.170 and 17.36.110 of the Code to provide that the HPC
22 has the ultimate authority to grant certificates of compliance with respect to
23 Designated Properties. For those properties located within the C-1 or R-1 districts
24 that are not Designated Properties, the town planner will retain the power to grant
25 certificates of compliance.

26
27 Under the Code as currently written, the town planner has the ultimate approval
28 power with respect to alterations to properties, including Designated Properties, in
29 the C-1 and R-1 Districts that do not require a building permit. The benefit of this
30 structure is that residents only have to wait seven days for a decision on their
31 application. If HPC becomes the deciding agency instead of the town planner,
32 applicants will be at the mercy of HPC's meeting schedule for decisions on their
33 applications. For example, if an applicant submits an application to HPC two days
34 after an HPC meeting, they will have to wait another month for a decision.
35 However, vesting HPC with certificate of approval authority over Designated
36 Properties (1) relieves the town planner of the proposed obligation to consult with
37 HPC; (2) simplifies the approval procedure; and (3) ensures that the entity that
38 created the Designated Properties maintains some control and oversight over the
39 historical characteristics of those properties.

40
41 Attorney Carmer said the Planning & Zoning Commission had several options
42 regarding the text amendment proposed in Resolution 2015-1:

- 43
44 1. Find that revision of the Code is unnecessary and recommend denial of the
45 amendments;
46
47 2. Find that revision of the Code is necessary and recommend approval of the

- 1 amendments as proposed; or
2
3 3. Find that revision of the Code is necessary, but recommend that the Town
4 planner be vested with the final authority over certificates of approval for
5 Designated Properties; and
6 a. Decide whether or not to recommend that the Town planner consult with HPC
7 before making a decision on an application for certificate of compliance, and
8
9 b. Direct the Town Attorney to come back to the Commission with proposed
10 changes or
11
12 c. Direct the Town Attorney to make the changes recommended by the
13 Commission and present its recommended text amendments to Town Council.

14
15 Commission Chair Apostolik closed the public hearing at 7:16pm with no comments
16 from the public.

17
18 **Motion: Commissioner Riddile made a motion to approve Resolutions PZ**
19 **2015-1. Commissioner Slack seconded the motion and passed**
20 **unanimously.**

21
22 **Items for Next Planning and Zoning Agenda**

23 Planner Cain stated there would be a land use application coming before the
24 commission on September 9, 2015.

25
26 **Commission Comments/Reports**

27 None reported

28
29 **Staff Reports**

30 Planner Cain reported that building permits have increased. There are currently 18 new
31 dwelling units. Last year there was a total of 16.

32
33 The senior housing project was not awarded the tax credit program, however the
34 organization (Community Recourse Housing Development Corp) will continue to move
35 forward with the project. The organization was invested in the project, and they plan on
36 completing the public process even though they didn't get the funding this year. There of
37 the 31 projects that applied for the tax credit program, only 14 were funded.

38
39
40
41 Warrior paid for the permit for the clubhouse and should be breaking ground within the next
42 few weeks.

43
44 The town is working with Colorado Department of Transportation to devolve portions of
45 Main Street. This will provide the town the opportunity to create angled parking downtown.

46 **Review Minutes from Previous Meeting**

