

McMinn County Libertarian Party
Position Paper
Expansion of City Zoning to Include
Historic Overlay Districts

Summary: The McMinn County Libertarian Party is for the right of property owners to choose the architecture, design, and materials of their own property but not that of their neighbors.

History: Statewide there has been a movement to expand local zoning laws to include the designation of select areas deemed to have historic value by a minority of citizens. Cities such as Cleveland, Jackson, Maryville, Chattanooga, Knoxville and Cookeville have adopted such programs. A few citizens of the Athens have lobbied the Athens City Council and the Athens Regional Planning Commission to create such an expansion of local zoning laws in Athens. No attempt has been made to place such an increase in the powers of zoning laws before the citizens of Athens in the form of a vote.

Proposed Law: In order to bring the desire of the proponents to reality, Ordinance No. 932 has been brought before the Athens City Council for adoption. This ordinance would require the establishment of a Athens Historic Preservation Commission (AHPC) consisting of seven members. The Commission, after studying the “resources” of the city, will nominate both local landmarks and designated districts to the city council for inclusion into the new zoning classification. Appendix A contains the Ordinance.

Achievements: Peter VanDoren, who studies the economics of zoning and land-use issues and is editor of Regulation magazine, writes historic designation is just another way to achieve economic segregation. "You can't get away with saying, 'let's keep this neighborhood all upper-middle- and upper-class,'" VanDoren said. "But make a neighborhood historic and it achieves the same end." He sees historic designation primarily as achieving three goals: restricting entry, limiting development and reducing the potential capital gains that can be realized from land. Historic designation benefits only current residents, VanDoren said.¹

Floating Dollars: The Tennessee state government is starting to throw dollars towards those that adopt historic zoning overlays. ²

In Claiborne County: Lincoln Memorial University – \$8,500 to conduct an archeological survey of the Lincoln Memorial University campus in Harrogate

In Cocke County: Cocke County – \$24,000 to restore the original wooden and metal casement windows in the Cocke County Courthouse

In Davidson County The Temple, Congregation Ohabai Sholom – \$15,000 to restore the wall

and tombstones in the Temple Cemetery

In Grundy County: Grundy County Swiss Historical Society – \$12,000 to rehabilitate the exterior of the Stoker-Stampfli Farmhouse

In Hamilton County: Chattanooga Historic Zoning Commission – \$10,000 to prepare design review guidelines for the Missionary Ridge Historic District

In Hardeman County: Bolivar Historic Zoning Commission – \$12,000 to survey all structures 50 or more years old within the corporate limits of the city

In Henry County: Robert E. Lee School Association – \$25,000 to continue the interior and exterior restoration of the Robert E. Lee School

In Knox County: Coal Creek Watershed Foundation - \$25,000 to restore and repair the Briceville Community Church

In Maury County: The Land Trust for Tennessee, Inc. – \$12,500 to develop the preservation component of a land protection plan for the Leipers Creek and Snow Creek watersheds in northern Maury County & Tennessee Children’s Home – \$22,500 to restore Ferguson Hall to its 1950s appearance

In Shelby County: City of Memphis/Landmarks Commission – \$45,000 to continue the Memphis Survey

In Williamson County: Heritage Foundation of Franklin and Williamson County – \$10,000 to update the design guidelines for Franklin’s Historic Zoning Overlay Districts & City of Franklin – \$20,000 to update and complete the digital historic resources survey inside Franklin’s Urban Growth Boundary

The Problems: Several conflicts with liberty will result should this Ordinance be passed. The two major difficulties arising are both in the writing of the ordinance itself and the implementation of the resulting interpretation of the ordinance.

The Ordinance

1. Composition of the board: The seven member board will not be selected from citizens at large, it will consist of an Athens City Council member, a member of the Athens Municipal Regional Planning Commission and 5 volunteer citizens. It is highly unlikely that any of the above will be anything other than proponents of expansion of this ordinance. The members, as is the usual case with such citizens commissions , will have an interest in advancing the cause of the commission

more than the interest of the property owner.

2. The way in which the ordinance is written, the Athens City Council must approve every district or landmark which is brought before it; there is no option to reject it. “The Athens City Council will review the recommendations of the APHC and formally approve the recommendation through an ordinance prior to establishment of a Local Historic Overlay District or Local Landmark.” Other cities are considerate enough to let those in the proposed districts vote on whether or not they wish to be involved. Cookville requires two-thirds of the property owners to agree on surrendering their rights to the overlay zone.³ Columbia, Tennessee requires approval by 51% of the property owners.⁴ In November of 2005 the residents of a section of Missionary Ridge of the Chattanooga area were allowed to vote on whether they would be zoned historic or not, they rejected the proposal by an overwhelming majority (30 against/17 for).⁵

3. The term Certificate of Appropriateness is offensive in itself. For the government to tell a citizen what is appropriate behavior with his own property is demonstrative of the disregard that government has for the rights of its citizens.

4. Lack of respect for the privacy of the citizens is exemplified by giving to the commission the power “...at reasonable times, to enter upon private land or water for the examination or survey thereof.” Surely, “reasonable” means different things to different people. After studying how the program works in other communities it is evident that windows are one of the most disputable items. This ordinance gives the AHPC the power to enter a person’s land, walk up to the windows and gaze at anytime it deems reasonable, without prior notice. Pity the poor person who’s bathroom windows needed examined!

5. Appealing the decisions of the AHPC is political. The fact “Anyone who may be aggrieved by any final order or judgment of the commission may have said order of judgement reviewed by the Athens City Council...” is alarming. To have a political body be the first line of appeal puts the citizen in a very tenuous position, or a very good position if he is well connected. The fact that The Athens City Council only allows three minutes for comments from the audience further compromises the ability of the citizen to present his case.

6. A less intrusive alternative to historical zoning overlay was not chosen by the council. Had the conservation overlay zoning become law only the exterior work determined to be visible from the public rights-of-way would be reviewed, only projects initiated by the owner would be reviewed, and owners would not be forced to work on, repair, or alter their homes.⁶

Implementation of the Ordinance

The ordinance tells us very little as to what will actually happen under the new law. Fortunately, there are examples in other Tennessee communities of what life will be like under the new historical zoning overlay law.

Applications: All those owning property will seek approval for any changes to their property. Appendix A is Cookville's application

A certificate of Appropriateness can be required for everything from the obvious to the trivial.

A proposed alteration to a Designated Historic site and/or structure may only require an administrative review to obtain a Certificate of Appropriateness if the proposed alteration falls under the following minor alterations, which are also referred to, for the purposes of this ordinance, Minor Projects. These would include, but not be limited to, the following:

- A. Minor repairs to the outside of the structure.*
- B. Minor roof repairs.*
- C. Minor landscaping.*
- D. Installation and/or replacement of air conditioning units.*
- E. Minor repairs to chimneys and masonry.*
- F. Minor modifications to accommodate access for the disabled.*
- G. Minor repairs to existing signs.*
- H. Exterior painting on previously painted surfaces. Paint colors must be selected from pre-approved paint palette.*
- I. Replacement or moving of existing mailbox due to damage or destruction.⁷*

Cost: *There is a \$50.00 filing fee for a hearing with the Historic Zoning Commission for a Certificate of Appropriateness.⁸*

Landscaping

a. Retaining walls and planters on the front yard or façade shall not be constructed with wood timbers, railroad ties, or pre-formed concrete blocks. These may be added on the sides and rear of property except if visible from the street.

b. New retaining walls shall be of brick or stone or stone-faced concrete block, or should match the foundation material of the accompanying dwelling.⁹

To demonstrate the complexities of landscaping issues the notes of a Knoxville Historic Commission meeting follow:¹⁰

Barbara Simpson , 1302 Luttrell St., 4th and Gill neighborhood representative – mentioned the letter from the president of the neighborhood organization, dated Aug 16th

5 items would like addressed:

- no landscape plan*
- entry on east side steps stop short, just to grass – original entrance steps to flat area and then slope to sidewalk*
- roof on 2nd floor be done in metal, no asphalt shingles, copper roof in line w/original*
- 2nd floor addition should be brick, not siding*
- using river sand around concrete for sidewalk and patio areas*

Mr. Eid stated he believed landscape plan follows at a later time.

David Dewhirst said landscape plan would be presented at time of building permit, will keep similar. Cypress can't be trimmed or transplanted, but will be replaced. Landscape will be around parking lot, river sand around concrete, and metal roof on bay area. Steps not going down to Luttrell Street because very few people would be using them and grade is steep, instead will be attached to existing walkway.

Ann requested no large shrubs near building.

Awnings:

a. Awnings shall be historically appropriate to the structure.

b. Awnings of metal, vinyl, and similar materials shall not be applied on façades or readily visible elevations; canvas, vinyl-coated canvas, and acrylic are the most appropriate awning materials for pre-1945 residences.

c. Awnings shall fully cover window, door or porch openings but not be oversized to conceal areas of the façade or detailing.¹¹

Doors:

The original size and shape of door openings should be maintained.

Original transoms, side lights, and door should be maintained.

Replacement doors should be compatible with original doors in terms of style and material. Flush doors are generally inappropriate.

Painted aluminum storm doors, screen doors and blind stop and full view storm doors are more appropriate than shiny raw mill finished storm doors and screen doors.

Generally, new door openings should not be introduced on facades visible from the street.

*Original door openings should not be filled in.*¹²

Fences

*Wood plank fences and solid wall brick fences walls shall not be placed between the street and the structure.*¹³

*The use of chain link, vinyl, and similar material shall be prohibited.*¹⁴

*The preferred type of fencing is of formal wrought iron or brick. Generally, wood or chain link fences on the front of the lot should be avoided.*¹⁵

Signs

1. All signs shall be subject to design review by the Town of Nolensville prior to the issuance of a permit in order to assure that the sign's size and style is compatible with the historic building and does not obscure significant architectural detailing or features.

2. All signs, identifying logos, initials, marks or graphics shall be considered a part of the signage of any project.

3. No signs with changeable copy shall be permitted except for gasoline service, theaters and places of large public gatherings.

4. All signs shall be designed for visual communication to pedestrian traffic.

5. Existing painted wall signs deemed by the Town of Nolensville as having historic significance shall not be removed, defaced, painted over or covered. Building owners are encouraged to restore these signs and maintain their historic character.

6. New signs painted directly on the building wall or facade shall not be permitted.

7. No sign shall have more than two faces, and both faces shall be identical.

8. Property addresses must be visible from the street.

B. Wall Signs

1. Wall signs on each building elevation shall be no greater than the number of tenants in a building.

2. Wall signs on either the front or rear building elevation shall be limited in area to one square foot for each lineal foot of a tenant's street frontage. Sign length maximum of 20 feet.

3. Letter height is restricted to a maximum of 24 inches and a minimum of

15 inches. Multiple lines of text are permitted in compliance with the sign are requirements.

4. Wall signs shall be located in logical “signable” areas such as surfaces which are void of windows, doors, or other architectural detail buildings. The most appropriate place for signs may be on the lintel strips on transom panels above display windows. For newer buildings, continuous areas of masonry which are often immediately above the top of the storefront offer opportunities for sign placement.

C. Projecting Signs

1. One projecting sign is permitted per tenant, in lieu of a wall sign.

2. Projecting signs on either the front or rear building elevation shall be limited in area to one square foot per sign face for each lineal foot of a tenant’s street maximum area of 15 square feet per face.

3. Signs shall be located to provide at least eight feet of vertical grade at the lowest point of the sign.

D. Hanging Pedestrian (Blade) Signs

1. One hanging pedestrian sign is permitted per tenant, in addition to permitted wall or projecting signs.

2. Hanging signs shall be limited in area to eight square feet per sign face.

3. Signs shall be located perpendicular to and directly above the sidewalk with at least eight feet of vertical clearance provided between the grade and the lowest point of the sign.

E. Window Signs

1. Window sign area shall be calculated as part of the total allowable area for wall signs.

2. Window sign with solid background shall be limited to ten percent of the window in which it is located.

3. Window sign consisting of lettering only shall be limited to twenty percent of the window in which it is located.

F. Awnings

1. Awnings containing signs, graphics, logos, or marks shall be considered signs, and shall be calculated as part of the total allowable area for wall signs.

2. Signage on awnings shall not exceed thirty percent of the projected area of the awning. Projected area is that area as indicated when drawn as part of the building elevation.

3. Translucent, backlit plastic awnings are prohibited.

Letter Styles

Letter style shall be in keeping with the historic character and style of the building. Letter style shall be consistent, bold and easy to read the letters of the sign. ¹⁶

Satelites Dishes: *Satellite dishes installed on the front of historic structures, in the front yards and within public view takes away from the historic character the community is trying to preserve. The majority of the College Hill Historic District encompasses the designated district registered in the National Register of Historic Places. Over the past few years, the City has notified numerous property owners that satellite dishes were installed in violation of applicable regulations. In such cases, it was necessary for the property owner/tenant and/or the satellite dish company to spend time and materials to remove or relocate the dishes so that they comply with regulations. Prior to the installation of any satellite dish in the National Register of Historic Places District, it is required that property owners submit proposed satellite dish locations, including dishes that are less than one meter in diameter, for review to the Maryville Historic Zoning Commission.¹⁷*

Windows:

The original size and shape of windows should be maintained.

The original number and arrangement of panes should be maintained.

The characteristic window shape in the area is vertically rectangular-higher than it is wide. Horizontally proportioned windows are generally not appropriate.

Painted aluminum storm windows, screens and blind stop windows are more appropriate than shiny raw mill finished storm windows and screens.

Shutters, unless appropriate to the style of the building, should not be introduced. Shutters should fit an opening in height and width so that if they were closed, the opening would be covered.

New window openings should not be introduced unless they match the existing window configuration and their placement harmonizes with the existing rhythm of opening.

Original windows should not be filled in.¹⁸

Interior Changes: The proposed Athens ordinance reads “*The AHPC does not have jurisdiction over interior arrangements of buildings and structures, **except** where such change will affect the exterior of the building and structures.*” (**Empasis added**) No doubt some overzealous commissioner will complain that what can be seen through the windows from the road will “affect” the exterior.

Exterior Changes

Paint colors shall not be restricted with the exception that fluorescent colors shall not be used.

Masonry walls, chimney, and foundations shall not be painted. Even masonry walls that have had extensive replacement or rebuilding resulting in a patchwork of brick and/or contrasting mortar, shall not be painted.¹⁹

Expansion of the Program: After the initial classification of areas as Historical, there is an endless searching of new areas to classify. Franklin, Tennessee advocates want to make the entire downtown area. *Expand Historic Zoning (see “We’re almost in the zone!”) Expand historic zoning to the entire 15-block original downtown area, including both sides of the boundary streets. A patchwork of spot zoning currently exists.”²⁰*

Politics: Property owners in Nashville who foolishly believed the neighborhood was protected from development from unapproved items learned that politics reigned supreme when the *“The Metropolitan Council took the bad idea of spot zoning to an outrageous extreme when it removed 740 square feet -- yes, square feet -- from the Second Avenue historic district to allow the Hard Rock Cafe to build a 32-foot neon guitar.”²¹*

Confusion: *Since construction in a historic district has taken place continuously from the late nineteenth and early twentieth centuries, a variety of building types and styles result that demonstrates the changes in building tastes and technology over the years. New buildings should continue this tradition while complementing and being compatible with the other buildings in the area.²²*

Summary

The expression “a pig in a poke” refers to a scam originating in the Late Middle Ages, when meat was scarce. At that time cats were readily available. A “poke” was a bag. Scam artists would tell unsuspecting victims there was a baby pig moving around in the poke. The poke would be purchased and only later would the purchaser find what he had actually bought. The only difference between the Historical Overlay Zoning Ordinance and buying a pig in the poke is that in this situation neither the buyer nor the seller have looked into the bag to see what is really in it.

While the supporters of the ordinance are well meaning and have convinced themselves that they are only attempting to retain their quaint neighborhood, they have failed to realize the monster being created. Those who don't live in the area currently being considered should realize that their neighborhood may be next.

Several buildings in downtown Athens have taken the initiative to spruce up their buildings by painting the bricks - that will be the end of that once the downtown district is designated as historic; many homes have switched to vinyl windows and gutters, how will the new commission view that? Every property owner in Athens must ask if this new commission really should be given the power this ordinance provides.

Appendix A

ORDINANCE NO. 932

AN ORDINANCE TO AMEND ORDINANCE NO. 914 ENTITLED “THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE”, SO AS TO AMEND CHAPTER 3, ZONING DISTRICTS, MORE SPECIFICALLY THE ADDITION OF SECTION 3.04.16 HISTORIC PRESERVATION COMMISSION AND HISTORIC OVERLAY DISTRICT.

BE IT ORDAINED BY THE CITY OF ATHENS, TENNESSEE AS FOLLOWS:

The respective section of Ordinance No. 914 Entitled “The Zoning Ordinance of Athens, Tennessee” shall be amended as follows:

CHAPTER 3, ZONING DISTRICTS, MORE SPECIFICALLY SECTION 3.04 SPECIFIC DISTRICT REGULATIONS.

SECTION 1: That the Athens, Tennessee Zoning Ordinance be amended with the addition of the following:

3.04.16. HISTORIC PRESERVATION COMMISSION AND HISTORIC OVERLAY DISTRICT:

Definitions for this Section (3.04.16)

AHPC: Athens Historic Preservation Commission.

Ordinary maintenance and repair: The regularly performed work to preserve the life, health and safety of a structure’s inhabitants, and the continued integrity of the structure.

Certificate of Appropriateness (COA): A Certificate of Appropriateness is simply a document that you receive from the AHPC stating the specified work has been approved based on consistency with applicable design guidelines or standards. A Certificate of Appropriateness is required before exterior work begins, before a building permit can be issued, and before any variance of development standards, land use variance, or rezoning can be granted.

Conditional Approval: Approval by the AHPC of a Certificate of Appropriateness subject to an amendment to the design as noted on the COA and approved by the AHPC. These changes shall bring the design into compliance with the AHPC guidelines. The intent of a Conditional Approval is to allow the project to proceed without delay. Example: An applicant states on the COA that non-confirming windows will be used in a design that otherwise meets AHPC Guidelines. The committee can grant Conditional Approval if the Applicant agrees to amend the COA to use windows that do conform to the Guidelines.

Economic Hardship: The inability of the owner or parties in interest to obtain a reasonable return or a reasonably beneficial use from the building that is subject of demolition by neglect, or the inability of the owner or parties in interest to reasonably finance the required repairs to the building.

Resource: Real property, which contributes to the cultural, historic, architectural, or economic life and well being of a community.

Rhythm: The pattern of solids and voids in a particular architectural composition. This pattern is created by the number, location, and repetition of elements in a given pattern. Example: The number, size(s), and spacing of windows in an architectural elevation: or the spacing of buildings or structures, their sizes, and distance between them in a streetscape.

A. This provision shall entitle an Athens Historic Preservation Commission (AHPC) to:

- a. Protect, enhance, and perpetuate resources which represent distinctive and significant elements of the City's historical, cultural, social, economic, political, archaeological, and architectural identity;
- b. Insure the harmonious, orderly, and efficient growth and development of the City;
- c. Strengthen civic pride and cultural stability through neighborhood conservation;
- d. Stabilize the economy of the City through the continued use, preservation, and revitalization of its resources;
- e. Promote the use of historic resources for the education, pleasure, and welfare of the people of the City;
- f. Provide a review process for the preservation and development of the City's resources.

B. HISTORIC PRESERVATION COMMISSION: COMPOSITION AND TERMS

The City of Athens hereby establishes a historic zoning commission, pursuant to the authority granted in Tennessee Code Annotated (TCA) 13-7-4. The Athens Historic Preservation Commission, hereinafter referred to as "AHPC," is authorized to preserve, promote, and develop the city's historic resources and to advise the City on the designation of Local Historic Overlay Districts and Local Landmarks and to perform such other functions as may be provided by law.

1. Creation and Appointment. In accordance with TCA 13-7-403, a Historical Preservation Commission is hereby established. The Athens City Council shall create a seven member Historical Preservation Commission. The AHPC shall consist of a representative of a local patriotic or historical organization, an architect, if available, an Athens City Council member, and a current member of the Athens Municipal-Regional Planning Commission. The Planning Commission representative shall remain a member on the AHPC only while he/she is an active member of the Planning Commission. The remaining members to be appointed shall reside within the corporate boundaries of the City of Athens. AHPC members shall be appointed by the Mayor, subject to confirmation by the Athens City Council. Appointments to membership on the AHPC shall be arranged so that the term of no more than two members shall expire each year and his/her successor(s) shall be appointed in like manner in terms of five (5) years, and members shall serve a maximum of two consecutive terms. All members shall serve without compensation.

C. POWERS OF THE AHPC

The AHPC shall have the following powers, which shall be limited to the H-i Historic Overlay District.

1. The AHPC may conduct or cause to be conducted a continuing study and survey of resources within the City; however, the AHPC is not authorized and shall not incur any financial obligation without the express authorization of the Athens City Council.
2. The AHPC shall furnish in writing to the Athens City Council, after a recommendation of the Athens Municipal-Regional Planning Commission, its recommendations regarding the nomination of Local Historic Overlay Districts and Local Landmarks. The Athens City Council shall review the recommendations of the AHPC and formally approve the recommendation through an ordinance prior to the establishment of a Local Historic Overlay District or Local Landmark.
3. The AHPC shall review applications proposing construction, alteration, demolition, or relocation of any Local Landmark or resource within a designated Local Historic Overlay District.
4. The AHPC shall grant or deny Certificates of Appropriateness, and may grant Certificates of Appropriateness contingent upon the acceptance by the applicant of specified conditions.
5. The AHPC does not have jurisdiction over interior arrangements of buildings and structures, except where such change will affect the exterior of the building and structures.
6. Subject to the express approval of the Athens City Council, and subject to the requirements of the City of Athens, the AHPC is authorized to apply for, receive, hold, and spend funds from private and public sources, in addition to any appropriations made by the city for the purpose of carrying out the provisions of this ordinance. Administration of funds will be by the City of Athens Finance Department.

7. Within the limits of any appropriations or grant in a budget approved by the Athens City Council and subject to the approval of the City Manager, the AHPC is authorized to utilize such staff, technical experts or other persons as may be required for the performance of its duties and to request the equipment, supplies, and other materials necessary for its effective operation.
8. The AHPC is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land or water for the examination or survey thereof. No member, employee, or agent of the AHPC shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

D. RULES OF ORDER (BY-LAWS)

In order to fulfill the purposes of this ordinance and carry out the provisions contained therein:

1. The AHPC shall develop and adopt rules of order (by-laws), which shall govern the conduct of its business, and shall conform to "Robert's Rules of Order". Such rules of order (by-laws) shall be a matter of public record. All meetings are subject to the open meeting's law. By-laws are subject to review by the city attorney.
2. The AHPC annually shall elect from its membership a Chairman and Vice-Chairman. It shall select a Secretary from its membership or its staff. If neither the Chairman nor the Vice-Chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.
3. The AHPC shall develop or cause to be developed design review guidelines for determining appropriateness as generally set forth in Section G of this ordinance. Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations including, but not limited to, building safety and fire codes and the *Secretary of the Interior's Standards for Rehabilitation*.
4. The AHPC shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record.
5. The AHPC shall establish its own regular meeting time; however, the first meeting shall be held after the adoption of this ordinance and within thirty (30) days after the initial appointment of the AHPC members. Regular meetings shall be scheduled at least once every month, unless there is no business on the agenda. The Chairman or any two (2) members may call a special meeting to consider an urgent matter by giving five days notice in a local newspaper.

E. DESIGNATION OF LOCAL HISTORIC OVERLAY DISTRICTS AND LOCAL LANDMARKS

The City may establish Local Historic Overlay Districts (H-i Historic Overlay District) and Local Landmarks within the area of its jurisdiction. Such Local Historic Overlay Districts and Local Landmarks shall be designated following the criteria contained in this ordinance.

The AHPC shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the City's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The AHPC shall work toward providing complete documentation for previously designated Local Historic Overlay Districts, which would include:

- a. A survey of all property within the boundary of the district, with photographs of each building.
- b. A survey which would be in format consistent with the statewide inventory format of the Tennessee Historical Commission (or State Historic Preservation Office).

2. The AHPC shall advise the Planning Commission on the designation of Local Historic Overlay Districts (H-i) and Local Landmarks and submit prepared ordinances to the Planning Commission for a recommendation (for, against, amended) to make such designation.
3. A resource or resources may be nominated for designation upon a duly approved motion by the AHPC. A nomination shall contain information (such as location and description) as specified by the AHPC. The AHPC must reach a decision on whether to recommend a proposed nomination to the Planning Commission for their recommendation to the Athens City Council within six months in the case of a Local Historic Overlay District and two months in the case of Local Landmark.
4. The AHPC shall hold a public hearing on the proposed Local Historic Overlay District or Local Landmark. If the AHPC votes to recommend to the City the designation of a proposed resource, it shall promptly forward to the Athens Municipal-Regional Planning Commission for its recommendation, in writing, together with an accompanying file.
5. The AHPC's recommendations to the Athens Municipal-Regional Planning Commission for designation of a Local Historic Overlay District or Local Landmark shall be accompanied by:
 - a. A map of the Local Historic Overlay District or Local Landmark that clearly delineates the boundaries;
 - b. A written boundary description and justification;
 - c. A written statement of significance for the proposed Local Historic Overlay District or Local Landmark.
6. Furthermore, the AHPC shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all Local Historic Overlay Districts and Local Landmarks. An updated list and map shall be maintained by such agencies and made available to the public.

F. CERTIFICATES OF APPROPRIATENESS

No exterior feature of any resource which is a designated Local Landmark or which is within a designated Local Historic Overlay District, shall be altered, added to, relocated, or demolished until after an application for a Certificate of Appropriateness of such work has been approved by the AHPC. Likewise, no construction, which affects a resource, shall be undertaken without a Certificate of Appropriateness.

1. The AHPC shall serve as a review body with the power to approve and deny applications for Certificates of Appropriateness. All applications will reviewed within 30 days, and will be either approved or denied within the 30 day period.
2. In approving and denying applications for Certificates of Appropriateness, the AHPC shall accomplish the purposes of this section (3.04.16).
3. A Certificate of Appropriateness shall not be required for work deemed by the AHPC to be ordinary maintenance or repair of any resource, and if requested by a property owner, the AHPC will provide a written statement on whether or not a Certificate of Appropriateness is required prior to work beginning. All decisions of the AHPC shall be in writing and shall state the following:
 - a. The AHPC's findings
 - b. The AHPC's recommendations
 - c. The reasons for the decision to approve or deny the application for a Certificate of Appropriateness
4. Expiration of a Certificate of Appropriateness: A Certificate of Appropriateness shall expire eighteen (18) months after its issuance.
 EXCEPTION: If work has not begun within six (6) months of its issuance, a Certificate of Appropriateness shall expire at that time. When a Certificate of Appropriateness has expired, an applicant may seek a new certificate.

5. Resubmitting of Applications: Twelve months after denial of an application for a Certificate of Appropriateness, the application may be resubmitted without change. An amended or changed application may be resubmitted at any time.

G. CRITERIA FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS

The AHPC shall use the *Secretary of the Interior's Standards for Rehabilitation* as the basics for Design Guidelines created for each Local Historic Overlay District (Hi) or Local Landmark and the following criteria in granting or denying Certificates of Appropriateness:

1. General Factors:
 - a. Architectural design of existing buildings, structure, or appurtenance and proposed alteration
 - b. Historical significance of the resource
 - c. Materials composing the resource
 - d. Size of the resource
 - e. The relationship of the above factors to, and their effect upon, the immediate surroundings, and, if within a designated Local Historic Overlay District, upon the district as a whole and its architectural and historical character and integrity
2. New Construction
 - a. The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between the width and height of the façade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the façade, the materials, the textures, the patterns, the trims, and the design of the roof.
 - b. The existing rhythm (height, setbacks) created by existing building masses and spaced between them shall be preserved.
 - c. The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the appearance of a resource, or adjacent public or private improvements like sidewalks and walls. A sketch and/or written landscape plan will be sufficient. If no change in the existing landscaping is being made then a landscape plan is not required.
 - d. No specific architectural style shall be required.
3. Exterior alteration:
 - a. All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in Section G, 1 and 2, and the design, over time, of a building, structure, object, or landscape feature shall be considered in applying these standards.
 - b. Exterior alterations shall not adversely affect the architectural character or historic quality of a Local Landmark or a resource within a designated Local Historic Overlay District.
4. In considering an application for the demolition of a Local Landmark or a resource within a designated Local Historic Overlay District, the following shall be considered:
 - a. The AHPC shall consider the individual architectural, cultural, and/or historical significance of the resource.
 - b. The AHPC shall consider the importance or contribution of the resource to the architectural character of the district
 - c. The AHPC shall consider the importance or contribution of the resource to neighboring property values.
 - d. The AHPC shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.

- e. Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, if any, as set forth in Section G, 2, prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.
- f. Applicants that have received a recommendation for demolition shall be required to have a demolition permit. A Certificate of Appropriateness for the new construction will be required. Permits for demolition and construction shall not be issued simultaneously.
- g. When the AHPC recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments, and agencies.

H. PROCEDURES FOR ISSUANCE OF CERTIFICATES OF APPROPRIATENESS, REVIEW PROCESS, AND FEES.

Anyone desiring to take any action requiring a building permit shall submit an application for such with the city building official. If the building official determines that the property is in the H-i Historic Overlay District, then the applicant will be advised that a Certificate of Appropriateness is required from the AHPC. Applications for Certificates of Appropriateness shall be accompanied by a fee of fifty (\$50.00) dollars payable to the City of Athens, Tennessee. The city building official shall take the application when the applicant has completed it. No building permit, which affects a Local Landmark or resource within a designated Local

Historic Overlay District, shall be issued by the city building official without a Certificate of Appropriateness. Such application shall be reviewed in accordance with the following procedure:

1. When any such application is filed, the city building official shall notify the AHPC Chairman, Vice-Chairman, or staff of the application having been filed.
2. The Chairman or Vice-Chairman shall set the agenda for the regular meeting date or set a time and date, which shall be no later than thirty (30) days after the filing of the application for a hearing by the AHPC, and the city building official shall be so informed.
3. The applicant shall, upon request, have the right to a preliminary hearing (work session) by the AHPC for the purpose of making any changes or adjustments, which might be more consistent with the AHPC's standards.
4. At least five days notice should be given for the said hearing, the city official designated by the City Manager shall provide written or verbal notice thereof to the applicant and to all members of the AHPC.
5. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least five (5) days before such hearing and by posting such notice in the Athens Municipal Building on the bulletin board in the Department of Community Development.
6. At such hearing, the applicant for a Certificate of Appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the City shall have the right to present any additional relevant evidence to support or deny the application.
7. The AHPC shall have the right to conditional approval.
8. Either at the meeting or within fifteen (15) days after the hearing on an application, the AHPC shall act upon it, either by approving or denying the application. Action can be deferred until the next meeting of the AHPC if there are conditions that the AHPC has required prior to taking action, giving consideration to the factors set forth in Section G hereof. Action can only be deferred twice and action to accept or deny should be taken by the AHPC by the third meeting following the deferral (approximately 90 days). Evidence of approval of the application shall be by Certificate of Appropriateness issued by the AHPC and, whatever its decision, notice in writing shall be given to the applicant and the city building official.
9. The issuance of a Certificate of Appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the City concerning zoning, construction, repair, or demolition.

ECONOMIC HARDSHIP

1. No decision of the AHPC shall cause undue economic hardship. If an applicant requests, a hearing on economic hardship shall be conducted after a Certificate of Appropriateness has been denied.

J. APPEALS

1. The AHPC shall have jurisdiction relating to historic matters. Anyone who may be aggrieved by any final order of judgment of the commission may have said order of judgment reviewed by the Athens City Council. Anyone who may be aggrieved by any final order of judgment of the City Council may have said order of judgment reviewed by the courts by procedures of certiorari as provided for in the Tennessee Code Annotated, Sections 27-9-102 and 27-9-103.

K. MINIMUM MAINTENANCE REQUIREMENT

1. In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the City's minimum housing and building codes.

L. PUBLIC SAFETY EXCLUSION

None of the provisions of this ordinance shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event that any resource designated as a Local Landmark or located within the designated Local Historic Overlay District shall be damaged by fire or other calamity to such an extent that it cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws, provided that:

1. The city building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the AHPC in writing.

M. APPROPRIATIONS

1. The Athens City Council may make appropriations on behalf of the AHPC as necessary for the expenses of the operation of the AHPC and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation, and management of historic properties.

N. DISQUALIFICATION OF MEMBERS BY CONFLICT OF INTEREST

1. Because the City may possess relatively few residents with experience in the individual fields of history, architectural history, archaeology, urban planning, law, or real estate, and in order not to impair such residents from practicing their trade for hire, members of the AHPC are allowed to contract their services to an applicant for a Certificate of Appropriateness, and, when doing so, must expressly disqualify themselves from the AHPC during all discussions and voting for that application. In such cases, the City shall, upon the request of the Chairman of the AHPC or the Vice-Chairman in his stead, appoint a substitute member who is qualified in the same field as the disqualified member and who will serve for that particular case only. If no qualified resident of the city is able to substitute for the disqualified member, the City may appoint, in this case only, a qualified substitute who is a resident. If any member of the AHPC must be disqualified due to a conflict of interest on a regular and continuing basis, the Chairman or the Vice-Chairman, in his stead, shall encourage the member to resign his AHPC seat. Failing this resignation, and if the AHPC member continues to enter into conflict of interest situations with the AHPC, the Chairman or Vice-Chairman of the AHPC shall encourage the City to replace the member. Likewise, any member of the AHPC who has an interest in the property in question or in property within three hundred feet of such a property, or who is employed with a firm that has been hired to aid the applicant in any matter whatsoever, or who has any proprietary, tenancy, or personal interest in a matter to be considered by the AHPC, shall be disqualified from participating in the consideration of any request for a Certificate of Appropriateness involving such a property. In such cases, a qualified substitute shall be appointed as provided above.

SECTION 2: Any Ordinance, Resolution, Motion or parts thereof in conflict herewith are hereby repealed and superseded. If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction, such holding will not affect any other portion of this Ordinance.

SECTION 3: BE IT FURTHER ORDAINED, that this Ordinance shall take effect as provided by law. As required by TENNESSEE CODE ANNOTATED, Section 13-7-203, Public Hearing on fifteen day's notice and the requirements of TENNESSEE CODE ANNOTATED, Section 13-7-20 1 through 13-7-2 10 have all been complied with, including the approval of all necessary agencies.

PASSED ON THE FIRST READING: _____ November 15,

2005 PASSED ON THE SECOND READING: _____

JOHN M. PROFFITT, Mayor

MITCHELL B. MOORE, City Manager

APPROVED AS TO FORM:

H. CHRIS TREW, City Attorney

Appendix B

Conservation Zoning Overlay Tree: A Holiday Hypocrisy

Behold the festive hypocrisy of the conservation zoning overlay tree, approved by a majority of neighbors and topped by a councilman with a bough of pine up his skirt. A CZO tree may be adorned only with architectural elements consistent with the approved time period—nothing after 1945. All mangers, churches, snow-covered cabins and Santa's workshops must meet standards set by the Metro Historic Zoning Commission, with faux-Tudor quaintness preferred.

If your tree predates World War II, you may not change it. Sorry that it is ugly and too small, but all neighborhood elves know that nothing better ever came along after Japan surrendered. You must stick with the pine you've got. No sprucing up. You will be fined otherwise.

Your neighbors, who recently lopped off the top of their bungalow tree and added more boughs to create a lovely foursquare, do not trust you to do the same. Nor may you enclose your porch, as your other neighbors recently did—right before they voted, "Yes, overlay."

Traditional glass balls are allowed—but red only. Bells, so long as they meet the dictates of good taste as defined by your neighbors, may hang on every third limb. No cartoon character conceived after VE Day may appear on the CZO tree. If your child attended kindergarten after 1945, his handmade ornaments are, sadly, verboten. As for popcorn, sorry, the neighbors think it's tacky. Cranberries? No. They are pretentious.

Twinkle lights, so long as they do not outshine the twinkle lights of your neighbors, may festoon the tree. But, for the love of all that is aesthetically uniform, they may not blink! The overlay committee unanimously agrees that blinking is not consistent with the look of the neighborhood. This is, after all, an effort to protect you from things that don't belong. Like flocked trees. And property rights.

The CZO tree committee and the MHZC reserve the right to review all angles of the tree visible from the road. Anything outside public sight lines is left to the homeowner's discretion. Feel free to hang all the silver icicles, SpongeBobs and blinking pink flamingo lights you want. Just don't expect to be invited on the home tour.

—Carrington Fox
http://www.nashvillescene.com/Stories/Special_Issues/Holiday_Guide/2005/11/17/The_em_Scene_em_s_Trees_of_Ch/index.shtml

Appendix C

Ap
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APPLICATION FOR CERTIFICATION OF APPROPRIATENESS

Cookeville Historic Zoning Commission
Cookeville Regional Planning Commission

Certificate (File) No. _____ Date Filed: _____

1. NAME OF APPLICANT: _____

Address: _____

Telephone (Day): _____

Relationship to Owner: ___ Lessee ___ Contractor ___ Architect ___ Other:
(explain) _____

2. NAME OF OWNER: _____

Address: _____ Telephone: _____

3. LOCATION OF PROPERTY (Address, Lot and Parcel No.): _____

4. TYPE OF WORK:

A. _____ Exterior alteration or repairs.

B. _____ New Construction: 1) ___ Primary Structure; 2) ___ Garage;
3) ___ New Addition; 4) ___ Other

C. _____ Demolition: 1) ___ Whole Structure; 2) ___ Part of Structure.

D. _____ Relocation of Structure

5. DESCRIPTION OF WORK: (See page 2 of this application for additional information to be submitted with the application. A copy of all information which is submitted with an application must be retained by the Cookeville Historic Zoning Commission.)

6. SIGNATURE OF APPLICANT: _____

Date: _____

7. Return application to: Cookeville Historic Zoning Commission
P.O. Box 998
45 East Broad Street
Cookeville, TN 38503-0998

FOR STAFF USE ONLY

Date Received _____

Approved _____ Disapproved _____ Approved as Modified _____

Date Acted On _____

Page 2 – INFORMATION TO BE SUBMITTED WITH YOUR APPLICATION.
 (Attach the following information for each category of work proposed).

1. EXTERIOR ALTERATION OR REPAIR

A. Check each work item for which approval is requested.

- | | | |
|--|---|--|
| <input type="checkbox"/> Architectural feature
(decorative ornamentation) | <input type="checkbox"/> Parking lot (paving,
entrance drive, landscaping) | <input type="checkbox"/> Satellite dish |
| <input type="checkbox"/> Awning or canopy | <input type="checkbox"/> Porch (columns, cornice, trim
railings, flooring, trelliswork,
steps, ornamentation) | <input type="checkbox"/> Security grilles on
windows or doors |
| <input type="checkbox"/> Curb Cut | <input type="checkbox"/> Material changes (wood, brick,
metal, etc.) | <input type="checkbox"/> Shutters |
| <input type="checkbox"/> Deck | <input type="checkbox"/> Mechanical system unit | <input type="checkbox"/> Sidewalks |
| <input type="checkbox"/> Door | <input type="checkbox"/> Retaining wall | <input type="checkbox"/> Siding |
| <input type="checkbox"/> Fence | <input type="checkbox"/> Roof (change in shape, features,
or materials) | <input type="checkbox"/> Signs |
| <input type="checkbox"/> Guttering | | <input type="checkbox"/> Solar collectors |
| <input type="checkbox"/> Light Fixture | | <input type="checkbox"/> Storm window/doors |
| <input type="checkbox"/> Masonry cleaning,
tuckpointing, or painting | | <input type="checkbox"/> Windows, skylights |
| | | <input type="checkbox"/> Other |

B. List and describe in detail all work to be done for each item checked. Include the following materials when appropriate:

- 1) Sketches, photographs, specifications, manufacturer's illustrations or other description of proposed changes to the building's exterior. Detailed drawings are required for major changes in architectural features.
- 2) If application is for a fence, include a site plan in addition to the information in item 1.
- 3) If material changes are proposed, please provide a description of them. The architect's specifications or brochures should suffice; however, the Commission may request samples of new materials.

2. NEW CONSTRUCTION: Describe the nature of the proposed project. Include the following materials when appropriate:

- 1) Site plan with measured distances.
- 2) Elevation drawings of each façade and specifications which clearly show the exterior appearance of the project.
- 3) Samples or other description of materials to be used.
- 4) Drawings or other description of site improvements such as fences, sidewalks, lighting, pavement, decks, etc.

3. DEMOLITION OF STRUCTURE

- A. Describe the structure's condition and reason for demolition.
- B. Describe the proposed reuse of the site, including drawings of any proposed new structure or landscaping.

4. RELOCATION OF STRUCTURE

- A. Explain what will be moved, why, and proposed changes.
- B. If a building will be moved into a district from outside, include photographs.
- C. Include a site plan of the proposed location in the district and describe any site features which will be altered or may be disturbed, including foundations, walls, vegetation, etc.

Footnotes

1. <http://www.fairlington.org/postarticlehomevalue.htm>
2. <file:///E:/THCgrants.php.htm>
3. <http://www.cookeville-tn.org/pc/pdf/Zoning%20Code/232%20HS%20HISTORIC.pdf>
4. <http://www.columbiatn.com/zo-ar10ch2.pdf>
5. <http://epaper.ardemgaz.com/WebChannel/ShowStory.asp?Path=ChatTFPress/2005/11/30&ID=Ar01101>
6. <http://www.hwen.org/cz/BlockCaptainHandbook.pdf>
7. http://www.nolensville-tn.com/TownHall/Planning%20minutes_031104.pdf 9.5.5
8. <http://www.cityofjackson.net/departments/planning/GConsv.PDF>
9. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf>
10. <http://www.knoxmpc.org/historic/comm/minutes/19aug04.pdf>
11. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf> p27
12. <http://www.murfreesborotn.gov/government/historic/guidelines.htm>
13. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf>
14. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf>
15. <http://www.murfreesborotn.gov/government/historic/guidelines.htm>
16. http://www.nolensville-tn.com/TownHall/Historic%20Design%20Standards_042604.pdf

17. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf> p29
18. <http://www.murfreesborotn.gov/government/historic/guidelines.htm>
19. <http://www.ci.maryville.tn.us/epc/PDF/HPG.pdf> p27
20. <http://www.harpethcommunications.com/DNA-Newsletter-10-04.pdf>
21. <http://www.bizjournals.com/nashville/stories/1999/06/07/editorial1.html>
22. <http://www.murfreesborotn.gov/government/historic/guidelines.htm>