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Town Planner's Review
Wednesday, January 22, 2020

- X. **Historic District Amendments.** Review of draft amendments to Article XVII. Durham Historic Overlay District of the Zoning Ordinance pertaining to purview and procedures of the HDC. Proposed by the Historic District Commission.
- I recommend the board discuss the proposed amendments and schedule a public hearing if and when appropriate.

Please note the following:

- 1) The Historic District Commission has prepared several amendments to Article XVII. Durham Historic Overlay District of the Zoning Ordinance pertaining to purview and procedures of the HDC. The proposal is enclosed.
- 2) **Process.** Town boards which wish to propose zoning amendments can present them to either the Planning Board or Town Council for possible initiation. Generally, I recommend they be presented to the Planning Board since the board is involved in land use issues on a regular basis. Ultimately, the board could vote to formally initiate an amendment (as proposed or modified) following a public hearing. The amendments would then be sent to the Town Council for possible adoption. The board may deal with the proposed amendments as it sees fit, including scheduling a public hearing right away, making changes now and then scheduling a public hearing, requesting more information or other changes from the Historic District Commission, or rejecting the amendments. The Historic District Commission as a body, the chair, or individual members of the commission may offer comments to the Planning Board (like any residents) as they wish, as the board navigates the proposed amendments.
- 3) **Key changes.** Beyond several minor changes, there are three main issues that are addressed:
 - a) *Where only part of a structure is included within the Historic District* the question arose whether the portion located beyond the district line should be subject to review. The commission thought that it should be and this is reflected in the proposal.
 - b) State law requires that an HDC take action on an application within 45 days of submission and if it fails to do so then the application is automatically approved. In the past, this provision was interpreted to apply the *45 day timeframe* from the date at which the HDC accepted the application as complete (comparable to the Planning Board's procedure for acceptance). The Town Attorney advised the HDC that the 45 days commences from the date that the application is actually submitted. This change is reflected in the proposal. In most cases the HDC takes action at the first or second meeting which is almost always within the 45 day timeframe. Where additional time is

needed the HDC would request an extension from the applicant. I have known of an applicant to refuse to okay an extension since the HDC would need to deny an application if it were not ready for final action and the applicant refused to grant an extension.

- c) The proposal includes language providing for a *preliminary review* of applications. I believe that the HDC can do this anyway and has on occasion in the past but members thought it useful to specify a procedure.
- 4) **Structures.** Regarding the proposed change for portions of structures that extend beyond the Historic District, Paul Rasmussen pointed out some concerns to me. The proposed language refers to “structures” and structures include various elements in addition to buildings such as fences, walls, and arguably driveways and parking lots. These elements could extend far beyond the historic district line. This issue should be clarified. One approach would be to change “structure” here to “building (but not including other structures).” The HDC or HDC members may have some thoughts about this. Here are the definitions of “structure” in the ordinance for both the Historic District (See the second definition) and in general:

STRUCTURE (See additional definitions immediately below.) – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. Structure includes but is not limited to a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. Structure does not include a minor installation such as a fence six (6) feet high or less in height, a mailbox, a flagpole, or an accessory shed.

STRUCTURE – (For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.

- 5) **Changes in lot lines.** In my discussion with Paul Rasmussen the related issue of lots that are combined or subdivided also came up. The intent of the present language is that the Historic District line **not** be changed when lots are combined or subdivided (as stated by “as delineated herein”) but the language is confusing. This provision should be revised to state more clearly that the line does not change with a lot combination or subdivision.

Section 175-93. Identification of the Historic Overlay District.

B. Delineation of the District. The HOD is defined as that area made up of the lots listed below, including those that are Town-owned lots, as delineated on the Durham Tax Maps, excluding road rights of way. However, any buildings or portions of buildings or stone walls or portions of stone walls that are located in any road right of way within the boundaries of the HOD shall be subject to review by the HDC. *Unless otherwise noted, all of the land composing each lot shall be considered to lie within the District. Should any of the lots listed below be subdivided or combined with other lots in the future, the new lots, or applicable portions of those new lots, that are located within the overlay district as delineated herein, shall be included in the HOD.*