

# VILLAGE REVIEW OVERLAY ZONE ORDINANCE CHANGE RECOMMENDATIONS

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## ECONOMIC HARDSHIP

The economic hardship statement in the ordinance needs to be strengthened as follows:

“The board of appeals shall approve an application for economic hardship only upon a determination that the denial will result in the loss of all reasonable use zoning of the structure as required by the following sections:

- A. The board of appeals shall not grant approval of an application involving demolition, unless the board determines, upon clear and convincing evidence, that one (1) or more of the following circumstances apply:
  1. The structure is not subject to this article.
  2. Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his predecessors in title occurring in whole or in part after August 1, 1988.
- B. Determination of no reasonable use.
  1. If the determination of the board of appeals is that the denial of the Appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of new construction, then the Certificate of Economic Hardship shall be issued by the Staff ninety (90) days following the determination unless during that time the council approves an incentive plan pursuant to the section below.
  2. A copy of the determination of the board of appeals, together with the findings of fact, shall be mailed to the applicant and filed with the city clerk, the planning board and the Village Review Board within five (5) business days following the determination of Economic Hardship.
- C. Incentive plan.
  1. The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the Village Review Board and the owner, may prepare a report and recommend to the board of appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the Town of Brunswick or other public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, including a transfer of development rights, or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.”

The language (above) sets the bar high to claim economic hardship and gets the VRB and staff out of the challenge of weighing competing professionals, consultants, and others from arguing the merits and returns on investment. It becomes almost a yes or no question of whether the property can be used for any use.

The notion of economic hardship and classification of the properties go hand-in-hand. Currently there is not an appeal process in the Brunswick Ordinance to allow a property owner to question the classification of their property. The process of classifying a property for a large area of the VROZ was performed in 2014 by a third party for the Town of Brunswick. The architectural survey would not, for instance include information on structural condition or mitigating factors of integrity.

By allowing the classification to be appealed, an owner can have their property re-evaluated. By allowing an applicant the opportunity to apply for re-classification it gives an Owner an alternative course of action to an appeal. If the property is determined to be non-conforming, then the Owner can proceed, with staff review, with demolition.

To initiate re-evaluation, the Owner needs to follow the same criteria for designation as outlined in the Methodology 2.0 report from \_\_\_\_Date by TTL.

## CLASSIFICATION OF PROPERTIES FOR DEMOLITION REVIEW

All properties within the Village Review Overlay Zone are classified as either:

- Contributing
- Non-contributing
- Top 100 Properties not on the National Register

Contributing, Landmarks, and Top 100 Properties not on NR are subject to demolition review and cannot be demolished unless the Owner meets the burden of Economic Hardship.

Minor Activities to Non-contributing properties are reviewed by Staff, are not subject to demolition review and can be demolished once a Certificate of Demolition is issued by Staff.

See the chart that follows with specifics for review.

## SALVAGE

- If a Demolition Permit is issued, the applicant shall work on their own, with a contractor, and/or with a salvage company to carefully remove the character-defining elements for reuse/resale by others.
- All efforts shall be made to divert these elements from the landfill and find suitable situations for their reuse. Restoring the site to clean condition for the period of that the property remains dormant.

## DEMOLITION WITHOUT A PERMIT

- The Owner will clean the site of debris, and restore the grade to its natural level, consistent with the buildings on either side, and in a manner that allows the site to be properly maintained.
- This may entail bringing in topsoil, and planting low-maintenance, native grasses or plantings.
- The Owner will continue to maintain the property within the neighborhood standards, that is, by mowing the property at intervals that assure that its vacancy will not affect neighboring property values.
- The Owner will pay a reasonable fine that will create an escrow to cover the cost of maintenance over the period that the property remains dormant.
- If at any time the Owner does not meet their obligations for maintenance, the Town can use the escrowed funds to perform the maintenance. The period it remains sanitized would be determined by Corporate Counsel based on the degree of violation.
- The vacant site will not be used for any type of income production, nor will it be turned into parking, paved or otherwise. It will remain dormant in terms of development.
- The Owner will continue to pay taxes on the property at the reassessed rate.

## PROPOSED CHANGES TO CURRENT ORDINANCE LANGUAGE

### 5.2.8.C.(4) Demolition and Relocation

- a. Demolition or partial demolition or relocation of a contributing resource or, if visible from a public right-of-way, ~~a noncontributing resource, excluding including~~ incidental or noncontributing accessory buildings and structures ~~not~~ visible from the public right-of-way, located on the same property, shall be prohibited unless: ~~the proposed replacement structure or reuse of the property is deemed to be as appropriate and compatible with the existing streetscape and surrounding contributing resources and the application satisfies at least one (1) of the following criteria:~~
  - i. The structure poses an imminent threat to public health or safety, such as post fire or a natural disaster. An application must be accompanied by a joint report from a qualified structural engineer and 36CFR61 Architect for review by the Codes Enforcement Officer and photographs depicting the current condition of the building.
  - ii. The condition of the structure is such that it cannot be adapted for any other permitted use, whether by the current owner or by a purchaser, ~~resulting in a reasonable economic return~~, regardless of whether that return represents the most profitable return possible, provided that the applicant can document he/she has not contributed significantly to the deterioration of the structure. ~~An opinion shall be provided from an architect, licensed engineer, developer, real estate consultant or appraiser or from a professional experienced in historic rehabilitation, as to the economic feasibility for restoration, renovation, or rehabilitation of the contributing resource versus demolition or relocation of same.~~
- b. Demolition, partial demolition or relocation of a noncontributing resource visible from a public right-of-way, shall be approved by the Village Review Board if it is determined that the proposed replacement structure or reuse of the property is deemed more appropriate and compatible with the surrounding contributing resources than the resource proposed for demolition.

### 5.2.8.B.(6) Additional Processing Requirements for Relocation or Demolition Activities

In addition to the provisions of Subsections 5.2.8.B(1) through (5) above, additional processing requirements for Major Activity applications for demolition or relocation of contributing resources, as well as noncontributing resources visible from public right-of-way, are listed as follows.

- a. A permit for demolition or relocation of a contributing resource, a noncontributing resource visible from a public right-of-way or portions thereof, within the Village Review Zone shall not be issued unless a Certificate of Appropriateness has been approved. No exterior demolition work and interior demolition work rendering the structure uninhabitable, or relocation of the resource may commence until the expiration of the 30-day decision appeal period or, if an appeal is taken, upon final

disposition of the appeal.

- b. Applications to demolish or relocate contributing resources individually listed on the National Register of Historic Places or deemed eligible by the Maine Historic Preservation Commission, and contributing resources located within a National-Register-listed Historic District shall adhere to a minimum of a 90-day delay period. The Village Review Board may impose a 120 ~~90~~-day delay period for contributing resources of local and regional significance. Such ~~90-day~~ delay period shall commence when the application is deemed complete by the Village Review Board; its end date shall be determined by several factors, including an approved plan for the post-demolition site and buildings.
- c. During the 90-day delay period, the applicant shall:
  - i. Consult with the Village Review Board at a Public Hearing and consult in person with Maine Preservation or Maine Historic Preservation Commission in seeking alternatives to demolition, including the reuse and/or relocation of the contributing resource.
  - ii. Consult with and notify other related organizations of intent to demolish the contributing resource, as identified during consultations with Village Review Board and Maine Preservation or Maine Historic Preservation Commission.
  - iii. Document “good faith” efforts in seeking an alternative, including relocation and/or reuse, resulting in the preservation of the contributing resource. Such efforts shall include posting a visible sign on the property, listing the property for sale and/or relocation, and publishing a notice of availability in a general circulation local newspaper. The notice of the proposed demolition shall be forwarded to the Village Review Board, Pejepscot Historical Society, Town Council, and Review Authority.
  - iv. Thoroughly photo or video document the contributing resource and provide photo/video and written documentation to the Town and Pejepscot Historical Society. Any significant architectural features shall be salvaged, reused and/or preserved as appropriate.
  - v. Provide post-demolition plans, including a site plan for the property specifying site improvements and a timetable for completion.
- d. If at the end of the 90-day period, no satisfactory alternative has been found, the Village Review Board shall conduct a Public Hearing to review the post-demolition site plan and plans and either grant or deny the application for the post-demolition project and either grant or deny a Certificate of Demolition Appropriateness to demolish or relocate the resource, applying the criteria set forth in Subsection 5.2.8.C(4). An approval for the post-demolition project is a pre-requisite to an approval to demolish any structure.

## CERTIFICATE OF APPROPRIATENESS REQUIRED

A Certificate of Appropriateness shall be required before the following actions affecting any landmark, contributing or noncontributing structures, objects, sites or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work. Minor changes to non-contributing properties are reviewed by staff. See the chart in the pages that follow for a list of these review activities and the recommended for whether the review should be performed by Staff or by the Village Review Board.

1. Any exterior alteration or new construction **requiring a building permit** from the Town of Brunswick, including, but not limited to the following:
  - a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings and cornices;
  - b. Moving of structures or objects on the same site or to another site;
  - c. Construction of rooftop additions or decks;
  - d. Alteration of accessory structures such as garages;
  - e. Porch replacement or new construction of porches;
  - f. Installation of exterior access stairs;
  - g. Window or door replacement requiring enlargement of openings;
  - h. Installation of solar collectors, recommended as non-primary facades and yards as full roof covering and reversible in their method of attachment.
2. Any exterior alteration that **does not require a building permit**, but which involves any one (1) of the following activities:
  - a. Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built-in gutter systems and the installation or replacement of siding;
  - b. Window and door replacement whether or not it requires enlargement of openings;
  - c. Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning, mortar mix, change in materials, etcetera;
  - d. Site features other than vegetation including, without limitation, fencing, walls, paving and grading.
  - e. Exterior lighting where proposed in conjunction with commercial and institutional signage or awnings, where placed on street-fronting facades of designated structures;
  - f. Exterior utilities including mechanical, plumbing and electrical, where placed on street-fronting facades;

- g. Installation of antennas and satellite receiving dishes greater than 12" in diameter.
3. Installation or alteration of any exterior sign.
4. Any relocation of a landmark or contributing structure within a historic district or to another historic district or within the VROZ.

There shall be a rebuttable presumption that no structure within a district shall be deemed Non-Contributing unless the classification chart expressly identifies it as such. Where Staff or the Owner believes that the identification is erroneous, the VRB shall determine whether the structure is noncontributing through a process that is similar to the original designation process. (See 2.0 Methodology, September 2013 by TTL)

### Review Standards

What type of properties and projects are subject to review by the VRB?

The VRB and/or Staff **only review qualifying work that is visible from a public way**, see chart below. If there are any applications where the staff is uncomfortable with the proposed work, they shall reserve the right to send the application to the VRB for a public review.

	Staff Review	VRB review
<b>Contributing Properties</b> Major Alterations Minor Alterations Demolition		• • •
<b>Non-Contributing Properties</b> Major Alterations Minor Alterations Demolition Replacement construction after Demolition	• •	• •
<b>New Construction</b>		•
<b>Activities Requiring a Building Permit</b>	•	•
<b>Activities <u>NOT</u> Requiring a Building Permit</b>  Roofing, Integral Gutters Roofing Features Window & Door replacement Masonry Work Site Features, Minor Alterations Site Features, Major Alterations Exterior Lighting Exterior Utilities (on street front Facades) Exterior Signs	• • • • • •	• • • • •
<b>Relocation of a landmark or contributing structure within a district</b>		•
<b>Emergency Demolition</b>	•	
<b>Emergency Repairs</b>	•	

## EXCEPTIONS TO THE REQUIREMENT FOR A CERTIFICATE OF APPROPRIATENESS

A Certificate of Appropriateness is not required:

1. Where a Certificate of Non-Applicability has been issued within the previous twelve (12) months;
2. Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details;
3. Where the work consists solely of emergency repair of a temporary nature, with an intent to correctly repair the work within 12 months.
4. Where a Certificate of Economic Hardship has been issued and remains valid;
5. In the case of either alteration of a structure (other than a landmark) or of new construction within a district, a Certificate of Appropriateness shall not be required where Staff determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights, when viewed at any height between four (4) and six (6) feet from any open space or street. Where a Certificate of Appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

## CERTIFICATE OF NON-APPLICABILITY

Staff shall issue a Certificate of Non-Applicability as to property subject to this article when requested to do so when:

1. Staff determines that none of the proposed work requires a Certificate of Appropriateness;
2. Staff determines that the proposed work is ordinary maintenance, restoration, or a combination thereof;
3. In the case of the alteration of a structure other than a landmark or of new construction within a district, where Staff determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any open space or street when viewed from any height between four (4) and six (6) feet above such space or street. Where a Certificate of Appropriateness is required for such changes, a Certificate of Non-Applicability shall be issued upon request for those portions of the structure or structures not visible at such heights.

Staff shall act upon any application for a Certificate of Non-Applicability within five (5) business days of receiving a complete written description of all work to be undertaken.

## FURTHER RECOMMENDATIONS

### 1. Survey of Contributing, Landmark, and Top 100 Properties not on NR.

- a. An architectural survey exists for all reviewable properties outlining their history. This survey should be augmented to include character-defining features. This list can help the Owner and VRB evaluate the most significant aspects of the project and assist with its site-specific review. Each survey serves as a point of departure to inform the VRB and Applicant or underline the important aspects of the property.
- b. The Town should commission an architectural historian to elaborate on the architectural surveys on all properties, with descriptions of their character-defining features, etc.....

### 2. Boundary Changes, Mapping, Property Designations

- a. Provide GIS Mapping with designations of Contributing and Non-Contributing for each property within the Village Review Overlay Zone. This would be delineated as an overlay on the town website zoning maps to allow easy access of information by the public
- b. Contract with a third-party architectural historian (See the Maine Historic Preservation Commission list of those complying with 36 CFR 61) to classify all outbuildings throughout all districts as Contributing or Non-Contributing.
- c. Contract with a third party architectural historian (36 CFR 61) to evaluate adjacent neighborhoods to those already listed to evaluate buildings over 50 years old for architectural and historic merit and future inclusion in the Village Review Overlay Zone.
  - Work with the Comprehensive Plan Committee to update the Comprehensive Plan to reflect the desire to include areas of merit demerited.
  - Once the Comprehensive Plan is revised, the Village Review Overlay Zone can be changed to align with the Comprehensive Plan.
- d. Determine a process for adding the Top 100 Properties to the National Register of Historic Places as Contributing properties, because many of them are not within a National Register Historic District. This would require Owner permission, which may not be granted in.

### 3. Minimum Maintainance

- a. Institute a minimum maintenance requirement. All landmarks, and all contributing structures located in an historic district, shall be preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof.
- b. Petition the Town to provide funding for a part-time building inspector whom is qualified and trained in the Ordinance and Village Review Board review issues to review and enforce Minimum Maintenance.

### 4. VRB Staff Position and Outside Consultants

- a. Petition the Town to provide funding for a staff person assigned specifically to meet with applicants, prepare staff reports on the applications, assist the applicant with expectations, review applications to the Village Review Board, attend VRB meetings, and prepare findings of fact.
- b. Having a staff person dedicated to accepting and vetting the applications would be ideal, even if that staff person was part-time. They could check for completeness, and write a staff report, referencing the Standards and guiding the VRB in their deliberations. The VRB's role is to then debate the application within that framework, but can add their expertise, but it cuts down on time spent during the Public Meetings wandering from the Standards.
- c. For Emergency Demolition issues contract in advance with an Historic Architect (36 CFR 61) and a Structural Engineer with at least 5 years of experience with historic properties to be on call for a set stipend when needed.

### 4. Assessors Documents - Realtor Recommendation

- a. Assessor property cards should have the property's status listed, such as within the Village Review Overlay Zone, within a National Register Historic District, Non-Contributing or Contributing.
- b. If a property is listed for sale, the purchaser, in their due diligence, shall meet with the Planning Staff to review. This could be reinforced with local Realtors to promote.

### 5. Funding

- a. Work with the Town, Maine Street Brunswick and other non-profits to increase funds to balance economic hardship by identifying incentives to put in place, such as available revolving funds, grants or volunteer help.

### 6. Research and Archive Updates

- a. Retaining photos from the 1998 survey, take updated photos for all properties in the Village Review Overlay Zone, including outbuildings visible from the public way.
- b. Obtain copies, originals, or scans of the building photographs from the Maine Historic Preservation Commission survey from the 1980's. All periods of photographs are key tools for restoration and rehabilitation and assist property owners with historical information that otherwise is difficult to obtain.

## FURTHER RECOMMENDATIONS

### 7. Demolition Delay

- a. Expand the minimum length of time for demolition delay to 120 days.
- b. Expand delay to 180 days for individually listed properties in the National Register of Historic Places and Contributing Properties in the National Register Historic Districts.

### 8. Ordinance and Design Guidelines

- a. Consider simplifying Ordinance and Guidelines by combining the Standards and Guidelines. See the example of Narragansett, Rhode Island.

### 9. Checklist

- a. Develop a checklist for the Applicant with directions that “incomplete applications will not be reviewed. Work with Staff to understand the needed photographs, drawings and specification sheets needed for each application.” This would save on a lot of unnecessary deliberation by the VRB. The materials are either there to discuss or not.

### 10. Village Review Board as Reasonable and Advisors

- a. Encourage the VRB members to maintain an empathetic, amiable and advisory tone with applicants. The VRB should see its role as advisor rather than just regulators, so the applicant gets professional advice as part of the process of review.
- b. The Narragansett Historic District Commission takes it one step further with some of their board members being part of a team called House Doctors Consultants (HDC). Brilliant! See the attached: <https://narragansettri.gov/361/HDC-House-Doctor-Consultants>

Something like this could be instituted in Brunswick by formalizing a group of volunteers, or in lieu of staff, creating a paid panel whom would work for a set stipend paid for, perhaps in part by the applicant, but mostly by grants or as part of the Municipal budget. This would increase goodwill with the public, and provide real guidance to applicants.