

ORDINANCE NO. 106, SERIES 2014

AN ORDINANCE AMENDING SECTIONS 32.251, 32.253, 32.256 AND 32.257 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES TO ENABLE ACCESSORY STRUCTURES TO BE APPROVED BY STAFF, TO PROVIDE A METHOD TO PROMOTE QUORUMS TO BE AVAILABLE FOR ARCHITECTURAL REVIEW COMMITTEE MEETINGS AND TO ADD AN APPEAL RIGHT OF STAFF DECISIONS.

SPONSORED BY: COUNCILWOMAN TINA WARD-PUGH
COUNCILMAN TOM OWEN
COUNCILMAN RICK BLACKWELL

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/ JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I. SECTIONS § 32.251, 32.253, 32.256 and 32.257 of the Louisville/Jefferson County Metro Code of Ordinances are amended as follows:

§ 32.251 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure that is customarily incidental and subordinate to the principal building on the property for non-habitable purposes and is physically detached from the principal building. Accessory structures must be on the same property as the building or use to which they are accessory. Examples of accessory structures include garages, workshops, garden sheds, gazebos and carports.

APPLICATION. The written request submitted by a property owner in a form determined by the Commission which requests approval pursuant to this subchapter of a proposed exterior alteration to a structure or property.

CERTIFICATE OF APPROPRIATENESS or CERTIFICATE. That written document issued by the staff or committee certifying that the proposed exterior alteration to a structure or property complies with the guidelines.

COMMISSION. The Historic Landmarks and Preservation Districts Commission established pursuant to § 32.254 of this subchapter.

COMMITTEE. Any Architectural Review Committee established by the Commission pursuant to this subchapter.

CONSTRUCTION. The erection, fabrication, assembly or manufacture of the whole or any part of a structure.

CONTRIBUTING STRUCTURE OR PROPERTY. A structure or property that reinforces the visual or physical integrity, historic interpretation, or historic character of a district or local landmark, and which is identified as such by the findings of the Commission at the time of its designation or by findings adopted by a Committee or the Commission based upon a subsequent survey and assessment of the structure(s) or properties(s) in a district or local landmark site, using the criteria for evaluation in § 32.260(E)(1).

COUNCIL. The Legislative Council of the Louisville/Jefferson County Metro Government, a consolidated local government pursuant to KRS Chapter 67C.

DEMOLITION. The destruction of the whole or any part of a structure or the moving of any structure or portion thereof.

DISTRICT. A defined area of the Metro Government designated as an Historic Preservation District by the Commission and the Metro Council pursuant to this subchapter or by action prior to the effective date of this subchapter.

EXTERIOR ALTERATION. Any change to the exterior of a structure or to a property, including demolition and new construction, except those alterations set out in § 32.256(A) and accessory structures set out in § 32.251 of this subchapter.

GUIDELINES. The distinctive characteristics and the statement of specific principles and standards governing exterior alterations to structures or properties applicable to each district and to local landmarks which are adopted by the Metro Council pursuant to this subchapter.

INCOME PRODUCING PROPERTY. A structure or property which is used primarily for the purpose of generating revenue whether through lease, rental, or the operation of a commercial enterprise.

LANDSCAPING. Planting shrubs, flowers, ground covers and other vegetation, decorative edging for walks and planting beds, freestanding sculpture and bird baths, in any yard of a structure or property except designated cultural or natural landscapes; and ground-level patios and fountains in a rear yard, fencing not visible from a primary street, and tree removal in a rear yard; but does not include fences visible from a primary street, retaining walls or significant changes in grading or topography in a front yard.

LOCAL LANDMARK. A structure or property, including prehistoric and historic archaeological sites, designated as a local historic landmark by the Commission as provided in this subchapter or by action prior to the effective date of this subchapter.

NEW CONSTRUCTION. The erection of a structure upon a property or the erection of an additional structure adjacent to an existing structure whether attached to or detached from such existing District structure.

ORDINARY REPAIRS. Non-structural reconstruction or renewal of any part of a structure for the purpose of its maintenance.

PROPERTY. Any tract of real property on which no structure is located, including public rights-of-way and designated cultural or natural landscapes.

REASONABLE BENEFICIAL USE. The suitability of a structure for its traditional use or any viable alternative use of the structure.

STAFF. Such person or persons employed by the Metro Government and to whom the responsibilities and powers with respect to districts and local landmarks pursuant to this subchapter have been delegated.

STRUCTURE. Any man-made object having an attachment to, or location upon, the ground or water.

§ 32.253 ARCHITECTURAL REVIEW COMMITTEE.

(A) There is established for each District an Architectural Review Committee which shall have the powers and functions within such District as provided herein.

(B) There is established for the structures or properties designated as local landmarks an Architectural Review Committee which shall have the powers and functions with respect to local landmarks as provided herein.

(C) Each Committee shall consist of seven members, one of whom shall be the Director of the Department of Codes and Regulations or his or her designee, two members shall be members of the Commission appointed by the Commission Chairperson and four members who shall be appointed by the Commission and approved by the Metro Council. These four members shall serve for three year terms except they shall initially serve for one, two or three year terms as set by the Commission and shall serve until his or her successor is appointed and approved unless removed as provided herein or in the by-laws of the Committees and may be reappointed and reapproved for successive terms. These four members shall commence service at the next meeting of the Committee following the member's approval by the Metro Council. The terms of any of these four members now serving on a Committee on the effective date of this amendment shall be set by the Commission. In the case of a Committee established for a district, no fewer than two members shall be owner-residents or tenants within such district, one member shall be a real estate professional and one member shall be an architect and one member shall be the owner of income producing property located within the district. All members shall have a known interest in local landmarks districts preservation.

(D) Four members shall constitute a quorum of a Committee and the affirmative vote of three members or a majority of the members present, whichever is greater shall be required for any official action to be taken by the Committee.

(E) In the event a Committee is unable to obtain a quorum due to conflict of interest involving its members or for other reasons, ~~or, in the case of the Director of the Department of Codes and Regulations or his or her designee, a personal conflict of interest~~, the member(s) who are unable to participate ~~due to the conflict of interest~~ shall be replaced by members from other Committees to serve as members of the Committee ~~for the case(s) giving rise to the conflict of interest in accordance with the qualifications and process set forth in division (C) above~~ but no more than two of the members shall be from other Committees.

§ 32.256 EXTERIOR ALTERATION.

(A) The following activities with respect to a local landmark or to any property or structure located within a district shall not constitute an exterior alteration and shall not require the obtaining of a certificate of appropriateness as provided in this subchapter.

(1) Ordinary repairs to the exterior of a structure when such work exactly reproduces the existing design and is executed in the existing material;

(2) Installing house numbers, mail boxes, small porch lights, kick plates or door knockers;

(3) Interior alterations which do not cause any exterior alteration;

(4) Painting any material other than masonry and painting any previously painted masonry the same as the existing color or an historically appropriate color in accordance with the guidelines;

(5) Landscaping, tree planting, tree trimming or pruning;

(6) Rear yard improvements not visible from the street at ground level which do not involve alterations to any structure;

(7) Removal of signage without replacement;

(8) Temporary signage or structures where such signage or structure shall be permanently removed within six months;

(9) Emergency repairs ordered by a Building Code enforcement officer in order to protect health and safety.

(B) Any exterior alteration to any local landmark or to any property or structure in a district shall not be commenced by any person without obtaining a certificate of appropriateness as provided in this subchapter. Applications for certificates of appropriateness for exterior alterations other

than those specified in subsection (C) of this section shall be reviewed by the staff as provided in § 32.257 of this subchapter.

(C) Applications for certificates of appropriateness for the following exterior alterations shall be reviewed by the Committee having jurisdiction as provided in § 32.257 of this subchapter:

(1) New construction (except for accessory structures defined in § 32.251 of this subchapter which may be approved by staff);

(2) Demolition;

(3) Any exterior alteration, the cost of which shall be greater than 25 % of the assessed value of the structure or property; or

(4) Any other application which is determined by the staff to be inappropriate for staff review.

§ 32.257 APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.

(A) No department or agency of the Metro Government shall issue any building permit, certificate of occupancy or other permit, license or approval for any exterior alteration to a local landmark or to any property or structure in a district unless a certificate of appropriateness for such exterior alteration has been obtained pursuant to this subchapter.

(B) An application for a certificate of appropriateness shall be submitted to the Department of Codes and Regulations. The application shall include at least the following information, unless waived pursuant to subsection (C) of this section:

(1) A site plan, drawn to an appropriate scale, photographs or other presentation media showing the proposed exterior alteration in the context of property lines, adjacent structures, streets, sidewalks, and the like.

(2) Plans, elevations and other drawings, drawn to appropriate scale, and a complete description of the materials to be used, as may be necessary to fully explain the exterior alteration.

In addition to the above information, an application for demolition or new construction shall contain information establishing that the property cannot be put to a reasonable beneficial use without the approval of the proposed work or if income-producing property, information establishing that the applicant cannot obtain a reasonable return from the property without the approval of the proposed work.

(C) Applicants may seek review of a proposal prior to making formal application pursuant to subsection (B) of this section at a pre-application conference. At the conference, the staff may discuss with the applicant the proposed exterior alteration and applicable guidelines, and provide information about the district, its goals and objectives, and the review process. The

staff, at the request of an applicant, may call a meeting of a subcommittee of the Commission and representatives of appropriate Committee or permitting agencies. At this meeting the applicant can discuss with the subcommittee members his proposed exterior alteration, his concepts, and receive information necessary to submit the application. The staff may agree to waive certain of the requirements set out in subsection (B) of this section if it is determined that such requirements are not necessary for review of the application pursuant to this subchapter.

(D) Within two working days of receipt of an application determined by staff to be complete, the staff shall classify the application as requiring either staff review or Committee review.

(E) An application classified as requiring staff review shall be reviewed by the staff who shall prepare a written decision supported by a finding of fact based upon the guidelines which shall approve the application, approve the application with conditions, or deny the application. If the application is approved or approved with conditions, the applicant shall be issued a certificate of appropriateness.

(F) An application classified as requiring committee review shall be reviewed by the committee having jurisdiction. The application shall first be reviewed by the staff to determine if the proposed exterior alterations are in compliance with the guidelines and the application shall then be forwarded to the committee with the staff's written recommendation to either approve the application, approve the application with conditions or to deny the application.

(G) The applicant and the owners of the real property abutting the property or structure which is the subject of the application shall be sent by first class mail, written notice of the date, time and location of the meeting of the committee at which the application shall be considered. The notice shall be sent no later than seven days prior to the date of the meeting. A notice of the pending application shall be placed on the property or on or near the structure which is the subject of the application by the staff at least seven days prior to the date of the meeting.

(H) The meeting of the committee scheduled to review an application shall constitute a public hearing on such application. The staff shall present a written recommendation prepared in accordance with subsection (F) of this section. The applicant shall present to the Committee such information as is relevant to review of the application. Interested parties shall have the right to testify either orally or in writing, subject to the right of the Chairman to limit repetitious testimony and to exclude irrelevant testimony.

(I) The Committee shall make a decision based upon a written finding of fact, which shall approve the application, approve the application with conditions, deny the application, or defer consideration of the application until a later meeting of the Committee. If the application is approved or approved with conditions, the applicant shall be issued a certificate of

appropriateness. Any application which fails to obtain at least three votes or the votes of a majority of the members present, whichever is greater, for approval or conditional approval shall be deemed to be denied.

(J) The staff and the Committee shall, in their decision making capacities, each make a written finding of fact based upon the information presented which supports a written conclusion that the application demonstrates or fails to demonstrate that the proposed exterior alteration is in compliance with the guidelines.

(K) Any applicant, whose application is denied by the staff or a committee, and any person or entity claiming to be injured or aggrieved by any decision made by the staff or a Committee, may appeal the decision to the Commission. The appeal shall be in writing and shall fully state the reasons why the appeal is sought. An appeal shall be filed within 30 days of the date of the decision. Upon the receipt by the staff of a timely appeal, the staff shall schedule a meeting of the Commission to consider the appeal. Notice of the meeting shall be mailed to the applicant, the property owner, the appellant, and other parties of record, by first class mail, at least seven days prior to the date of the meeting. At the meeting to consider the appeal, the Commission shall review the application and the record of the prior proceedings and, at the discretion of the Chairman, may take additional testimony from the applicant, the property owner, appellant, or other interested parties for the purpose of supplementing the existing record or for the introduction of new information. Upon review of the record and any supplemental or new information presented at the meeting, the Commission shall make a written determination that the decision shall be upheld or overturned. A decision of the staff or the Committee shall be overturned by the Commission only upon the written finding that the staff or Committee was clearly erroneous as to a material finding of fact related to whether the proposed exterior alteration complied with the guidelines. When the Commission overturns a denial of an application, it shall approve the application, or approve the application with conditions. Any member of the Commission who voted on the application when it was considered by the Committee shall not vote on the question of whether the decision of the Committee shall be upheld or overturned.

(L) An applicant whose application for demolition or new construction has been denied by the Committee, may request an economic hardship exemption from compliance with one or more of the guidelines which constituted the basis of the denial of the application pursuant to this paragraph. The request for the exemption shall be in writing and shall be filed with the Commission within ten days of the decision of the Committee. The Commission shall review the documentation and evidence presented before the Committee relevant to determining whether

the applicant qualifies for an economic hardship exemption and such relevant evidence presented to it by the applicant or other interested parties. The Commission shall conduct a public hearing on the proposed hardship exemption. Notice of the hearing shall be sent to the applicant and other parties of record, by first class mail, at least seven days prior to the date of the hearing. At the hearing, the Commission shall receive information to supplement the record concerning whether the applicant qualifies for an economic hardship exemption from one or more of the guidelines applicable to the application. The Commission may require the applicant to submit findings from one or more persons determined by the Commission to have expertise in real estate and development who are knowledgeable in real estate economics in general and, more specifically in the economics of renovation, redevelopment and rehabilitation, to review the documentation submitted in accordance with § 32.257(B)(2) and this section. Within 60 days of the first regular Commission meeting after the applicant's request is filed, the Commission shall render a decision either granting or denying the applicant's request for an economic hardship exemption from compliance with one or more of the guidelines. The decision shall be based upon a written findings of fact. The applicant shall have the burden of showing that the application qualifies for an economic hardship exemption. The Commission shall grant an economic hardship exemption only if it finds that the applicant has demonstrated through a preponderance of the evidence that:


(1) With respect to an application involving a non-income producing structure or property, the property or structure cannot be put to any reasonable beneficial use according to the guidelines adopted by the Commission for economic hardship without the approval of the application.


(2) With respect to an application involving an income-producing structure or property, the applicant cannot obtain any reasonable return from the property or structure without the approval of the application.

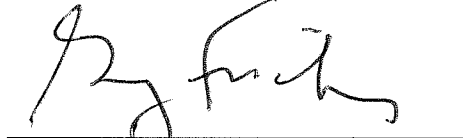
(M) The Commission shall send a copy of the decision and the findings of fact to the applicant. If the Commission denies the request for the economic hardship exemption, the denial of the application shall be final. If the Commission grants the request for the economic hardship exemption, the Commission, within 30 days of the decision, shall approve the application or approve the application with conditions and issue a certificate of appropriateness for the proposed exterior alteration. Notwithstanding the hardship exemption, an applicant shall be required to comply with all guidelines applicable to the proposed exterior alteration other than the guidelines to which the hardship exemption applies.

(N) If, after an applicant has obtained a certificate of appropriateness, the proposed work is amended, the applicant shall submit an amended application to the staff who shall make a determination that the amendment has no significant affect or that the application as amended requires additional review. Review of an amended application shall follow the same procedure as provided herein for an original application. Upon a determination by the staff that the amended application requires review, the previously issued certificate of appropriateness may be suspended, at the discretion of the staff, pending the review of the amended application.

SECTION II. This Ordinance shall take effect upon passage and approval.


H. Stephen Ott
Metro Council Clerk


Jim King
President of the Council


Greg Fischer
Mayor

Approved: 7-30-14
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: 