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RECOMMENDED BY: THE MAYOR and THE COMMITTEE OF THE WHOLE

SUBMITTED BY: THE CITY ATTORNEY

ORDINANCE NO. 19-91

AN ORDINANCE TO AMEND THE GENERAL CODE OF THE CITY OF BIRMINGHAM, TITLE 7, “BUILDING AND LAND USE CONTROLS”, CHAPTER 1, “BUILDING AND HOUSING CODE ENFORCEMENT”, ARTICLE C., “DESIGN STANDARDS FOR PROPERTIES IN COMMERCIAL REVITALIZATION PROJECT AREAS,” SEC. 7-1-390, “REVIEW PROCEDURE” AND ARTICLE D., “HISTORIC PRESERVATION”, SEC. 7-1-415, “CERTIFICATES OF APPROPRIATENESS AND ECONOMIC HARDSHIP”, TO CREATE AN APPLICATION FEE FOR REVIEW OF PLANS.

SECTION 1.

BE IT ORDAINED by the Council of the City of Birmingham that Title 7, “Building and Land Use Controls”, Chapter 1, “Building and Housing Code Enforcement”, Article C., “Design Standards for Properties in Commercial Revitalization Project Areas,” Sec. 7-1-390, “Review Procedure” be and hereby is amended to create an application fee and to read as follows:

“Sec. 7-1-390. - Review procedure.

“(a) All plans for the rehabilitation of existing structures and property submitted to the design review committee shall be sufficient for the committee's members to understand the details of the proposed work and its affect upon the appearance of the structures and property in question. Such plans may include drawings, specifications, color and material samples, and sketches.

“(b) Plans submitted to the design review committee for new structures and site improvements or additions to existing structures and properties shall include plot plans as may be required detailing all landscaping, parking layouts, utilities, street furniture, signage, lighting, trash containers, and any other details covered by this article.

“(c) Developers of new structures and site improvements or additions to existing structures and properties shall submit:

“(1) A statement of the intended use of the property;

“(2) A written commitment to conform with development plans approved by the design review committee; and

“(3) A written commitment that the use of the completed structures and property will be as submitted in the statement of intended use.

“(d) Plans submitted to the design review committee shall be reviewed within 21 days from the date such plans and all necessary information required for review are submitted. In any case, plans shall be approved, disapproved, or approved with modifications, within 180 days of receipt of the original submission unless the applicant requests an extension of the review period.

“(e) All plans submitted for review shall be accompanied by a review fee as provided in Section 7-1-7 of the General Code of the City of Birmingham.”

SECTION 2.

BE IT FURTHER ORDAINED by the Council of the City of Birmingham that Title 7, “Building and Land Use Controls”, Chapter 1, “Building and Housing Code Enforcement”, Article D., “Historic Preservation”, Sec. 7-1-415, “Certificates of Appropriateness and Economic Hardship”, be and hereby is amended to create an application fee and to read as follows:

“Sec. 7-1-415. - Certificates of appropriateness and economic hardship.

“(a) *COA required; design review.*

“(1) From and after the designation by the city council of a historic property or district, no exterior portion of any building or other structure, nor any type of signage shall be erected, altered, restored, moved or demolished, nor shall any originally unpainted surfaces be painted within the district or on said property until after a waiver has been issued by the department of planning, engineering and permits or an application for a certificate of appropriateness (COA) has been submitted to and approved by the design review committee (DRC). A COA or waiver therefrom shall be issued prior to the issuance of a building permit for the purpose of constructing, altering, moving or demolishing structures. Each applicant for a COA or waiver must submit whatever documentation has been specified by the DRC and adopted for the designated area in which the property is located. The requirement of a COA or waiver thereof shall apply to both a public and private property which has been designated as a local historic property or which is contained in a local historic district, and shall also apply to all actions by public authorities which involve local historic properties and properties within historic districts.

“(2) The city hereby appoints the DRC, as established in section 7-1-385, to perform the duties and responsibilities of the BHC in accepting, considering, and approving, approving as amended, or rejecting applications for COAs; to establish detailed design guidelines for

each district; to specify the definition, rights and obligations of routine maintenance for each designated district; and to determine whether these guidelines may be waived due to reasons of economic hardship.

“(3) In its review of applications for COAs, the DRC shall not consider interior changes or use having no effect on the exterior of a building or structure. The DRC's design review guidelines, as established in the historic preservation plan for that area, shall apply in considering the granting and denial of certificates of appropriateness.

“(4) The department of planning, engineering and permits shall keep a record of all requests for approval of routine maintenance. The DRC shall keep a record of all applications for certificates of appropriateness and of all of its proceedings.

“(b) *Application procedures; waiver approval; denial and appeal.*

“(1) *Application required.* Each applicant for a COA or waiver therefrom must initially submit proposed drawings, photographs and plans, as set forth in the historic preservation plan, for the subject property to the urban planning department staff, who will determine whether a waiver or COA is necessitated. All applications submitted for review shall be accompanied by a review fee as provided in Section 7-1-7 of the General Code of the City of Birmingham.”

“(2) *Waiver.* Where the provisions, rights, and obligations for routine maintenance apply, the department of planning, engineering and permits staff will prepare a written waiver and present it to the owner which will specify those minimum repairs which were approved under DRC guidelines and the allowable method by which such repairs can be accomplished. If the owner is found to be in violation of the terms of the waiver, he or she will be given 30 days to bring the property into compliance, or to appear before the DRC to request a change in the terms specified in the waiver. After reviewing the original waiver or any request for amendment thereto, the DRC shall specify in writing the terms of the waiver and the time for compliance. Failure to comply with the terms of such waiver shall be deemed a violation of this article.

“(3) *DRC meetings.* Applications for a COA shall be considered by the DRC at its regularly scheduled meetings. The applicant shall be informed in writing of the time and place of the hearing.

“(4) *DRC considerations.* Upon acceptance by the DRC of an application for a COA, or COA with revisions, the DRC shall consider whether it finds that the proposed change, erection or demolition conforms to the design standards established, is compatible with the character of the historic property and historic district and does not detract from their historic value. Upon written request by an applicant, the DRC shall consider whether conformance with the design

standards established will result in economic hardship. In making this determination, the DRC shall consider, in addition to any other pertinent factors, the historical and architectural features of the structure involved and the proposed change thereto, and the effect of the change to the exterior architectural style and pertinent features of other structures in the immediate neighborhood.

“(5) *Approval*. If the application is approved, the DRC, within seven working days of its action, shall transmit a COA to the owner and the department of buildings and inspections, in letter form, clearly stating the work approved.

“(6) *Denial*. In the event the DRC rejects an application, it shall within seven working days of its action state its reasons for doing so in writing and shall transmit such decision to the applicant and director of buildings and inspections. This action shall be binding upon the director of buildings and inspections or other administrative officer charged with issuing building permits; and, in such case, no building permit shall be issued.

“(7) *Appeal or reapplication*. Any person having a request for a COA or COA with revisions denied by the DRC may:

“a. Request a determination of economic hardship from the DRC;

“b. Make modifications to such person's plans and resubmit the application for reconsideration at any time after doing so; and/or

“c. Make written appeal of such denial or denial of a finding of economic hardship first to the Birmingham Historical Commission within 15 days of the denial. The BHC shall hear the appeal within 30 days and shall render its opinion in writing within five working days after its decision and shall transmit such decision to the applicant and the director of buildings and inspections. In the event that the grievance remains unsatisfied, a final appeal may be filed with the Circuit Court of Jefferson County.

“(8) *BHC action*. The BHC or the city may institute any appropriate action or proceeding in a court of competent jurisdiction:

“a. To prevent any unapproved change in the exterior of a building or structure which is a historic property or contained in a historic district;

“b. To prevent any illegal act or conduct with respect to such historic property or historic district; or

“c. To recover any damages which may have been caused by the violation of this article.

“(c) *Expiration of certificate of appropriateness*. After the owner receives a building permit, construction must begin within six months and be completed within 18 months after the COA has

been issued. Extensions of this time may be obtained after good cause having been shown. If the owner does not comply with the above construction time requirements, the COA shall expire and become void.

“(d) *Neighborhood participation.* Neighborhood participation is recognized as being essential to the administration of local historic districts pursuant to this article. To facilitate this process, the following procedures shall apply:

“(1) Local historic districts shall have the right to designate local historic advisory committees (committees) to be appointed by the citizens participation neighborhood association (neighborhood association) in which all or a majority of the local historic district is located. Such committees shall have not more than seven nor less than three members. Whenever practicable, at least one member of these said committees shall be a representative of the following professional groups; architects, building trades, civil engineers or real estate brokers or developers.

“(2) Within 60 days following the adoption of the amended ordinance from which this article is derived, the department of planning, engineering and permits (PEP) will develop an orientation program for members of committees. Members of each committee will be afforded a reasonable opportunity to receive the orientation developed by PEP. In order for a committee to be designated as an advisory committee and to maintain such designation, a majority of its members shall have received said orientation and also shall have attended at least four meetings of the DRC. New members appointed to advisory committees will be afforded a reasonable opportunity to receive the PEP orientation and to attend meetings of the DRC. PEP will forward to advisory committees in locally designated historic districts cases arising in such district for the advisory committees to hear and make recommendations to the DRC; provided, however, all requests for waivers and consideration of economic hardship shall be considered by the DRC. The advisory committee shall follow and be bound by the same procedures and considerations as the DRC as set out in this article for consideration of a COA. The recommendation of such an advisory committee shall be delivered to the DRC within 30 days of receiving such case. In order for the DRC to reverse, wholly or partly, or modify the recommendation submitted by the advisory committee a vote of two-thirds majority of the DRC members present at the meeting which considers the matter is required.

“(3) In all other cases, where there is no advisory committee serving the locally designated historic district, notices shall be sent to the neighborhood association in which all or the majority of such locally designated historic district is located through its officers, of all cases on the agenda of the DRC involving properties within such locally designated district. The DRC will not hear a case in such district without providing such notice to allow the neighborhood association a reasonable opportunity to consider the case and make its

recommendations to the DRC, provided, however, if such recommendation is not received by the DRC within 30 days of such notice, the DRC may proceed to act without such recommendation, and provided further that if the DRC, by a two-thirds majority vote of the DRC members present, determines that extraordinary circumstances exist which mitigate against the delay necessitated by giving the neighborhood association a chance to consider the matter, the case may be heard by the DRC without such notice being given, provided, however, if the DRC takes such action, the neighborhood will be notified within 30 days of the action taken. The neighborhood may make recommendations to the DRC which shall have sole authority to make the decision.”

SECTION 3. SEVERABILITY. The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective July 1, 2019 or when published as required by law, whichever date is later.

