

Town of Cape Charles

Article IX

Historic Harbor Area Overlay District

Section 9.1 Statement of Intent

The Cape Charles Harbor is a vital part Cape Charles' history, and will continue to play an important role in the Town's future. Water transportation provides one of the Town's primary means of access, along with roadway transportation. The intent of the Historic Harbor Area Overlay District is to encourage development and redevelopment that is architecturally compatible with existing and previously existing development in the Cape Charles Harbor area, as well as in the neighboring area within the adjacent Historic District Overlay. Much of the Cape Charles Harbor Area's historic significance is derived from the harbor's role in the Town's formation. In addition to ensuring architectural styles are compatible with the area's heritage, the Historic Harbor Area Overlay District is intended to preserve the harbor area's historic sense of place. This overlay district is also intended to implement the general concepts found in the Cape Charles Harbor Area Conceptual Master Plan and Design Guidelines, which support development and redevelopment that is visually compatible with the heritage of the Cape Charles Harbor Area.

Section 9.2 Specific Purpose of the District

The purpose of this district is to provide for protection against destruction or encroachment upon historic areas, buildings, monuments, or other features, or buildings and structures of recognized architectural significance which contribute or will contribute to the cultural, social, economic, political, artistic, or architectural heritage of the Town of Cape Charles and the Commonwealth of Virginia. It is the purpose of the district to preserve the designated historic areas and historic landmarks and other historic or architectural features, and their surroundings within a reasonable distance, from destruction, damage, defacement, and obvious incongruous development or uses of land and to ensure that buildings, structures, streets, walkways, or signs shall be erected, reconstructed, altered, or restored so as to be kept architecturally compatible with the character of the general area in which they are located and with the historic buildings or structures within the district.

Section 9.3 Criteria for Establishing Historic Districts--General Character

The boundaries of the Historic Harbor Area Overlay District shall in general be drawn to include areas near the Cape Charles Harbor containing buildings or places in which

historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character, and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone.

Section 9.4. Application of the District; Relation to Other Zoning Districts

To enable the district to operate in harmony with the plan for land use and population density embodied in these regulations, the Historic Harbor Area Overlay District is created as a special district to be superimposed on other districts contained in these regulations and is to be so designated by a special symbol for its boundaries on the Zoning District Map. The uses, housing types, minimum lot requirements, minimum yard requirements, maximum height, and accessory uses and accessory signs shall be determined by the regulations applicable to the other districts over which the Historic Harbor Area Overlay District is superimposed except as these other district regulations may be modified by application of the regulations in the Historic Harbor Area Overlay District.

Section 9.5 Permitted Uses

A building or land shall be used only for the following purposes

1. Any use or accessory use permitted in the zoning district in which the premises are located.
2. Any use for which a conditional use permit has been issued, subject in all cases to review and report by the Harbor Area Review Board.
3. Any variance or special exception authorized by the Board of Zoning Appeals, subject in all cases to review and report by the Harbor Area Review Board.

Section 9. Harbor Area Review Board; Creation

For the general purposes of this Article as herein stated and specifically to preserve and protect historic places and areas in the Town through the control of demolition of such places and through the regulation of architectural design and uses of structures in such areas, there is created a board known as the Harbor Area Review Board.

Section 9.7 Harbor Area Review Board; Membership

The members of said Harbor Area Review Board will be appointed by the Town Council. The Membership shall consist of seven citizens. One member shall also be a member of

the Town Council, two members shall also be members of the Planning Commission, and one member shall also be a member of the Historic District Review Board.

All former members of the Harbor Area Review Board are eligible to be alternates to present Harbor Area Review Board Members. An alternate, upon written request of a Harbor Area Review Board member, may serve as a member of the Harbor Area Review Board for the meeting(s) for which the alternate has been requested to serve. Alternates shall have all rights, responsibilities, and duties as a present Harbor Area Review Board member during the meeting(s) during which the alternate(s) shall serve.

Section 9.8 Harbor Area Review Board; Terms

Except for members who also serve on the Town Council, Planning Commission, or Historic District Review Board, members shall be appointed for a term of five years except that original appointments shall be made for such terms that the term of at least one member shall expire each year. Appointees who also serve on the Town Council, Planning Commission, or Historic District Review Board shall be appointed to a term coinciding with their term on the Town Council, Planning Commission, or Historic District Review Board, as appropriate. Appointments to fill vacancies shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until a successor is appointed and qualifies.

Section 9.9 Harbor Area Review Board; Qualifications

Members of the Harbor Area Review Board shall have demonstrated interest and knowledge in the historical and architectural development of the Town and when possible be a licensed architect or engineer, planning commission member, or licensed building contractor.

Section 9.10 Harbor Area Review Board; Organization

The Harbor Area Review Board shall elect from its own membership a chairman and vice chairman who shall serve annual terms and may succeed themselves. The chairman shall preside over all meetings in addition to having the duties and responsibilities of other members of the Board. The vice chairman shall preside over meetings of the Board in the absence of the chairman. The Harbor Area Review Board may appoint a secretary and keep written minutes of its meetings.

Section 9.11 Harbor Area Review Board; Rules

The Board shall meet in regular session at least once a month whenever an application has been filed requiring their consideration. Special meetings of the Board may be called by the chairman or a majority of the members after twenty-four hours' written notice to each member served personally or left at his usual place of business or residence. Such notice shall be publicly posted and will state the time and place of a meeting and the purpose thereof.

Section 9.12 Harbor Area Review Board; Meetings; Hearings

Written notice of a special meeting is not required if the time of special meeting has been fixed at a regular meeting or if all members are present at a special meeting or file a written waiver of notice. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all voting members of the Board. The Board may make, alter, or rescind rules and forms for its procedures, consistent with the ordinances of the Town and the general laws of the Commonwealth of Virginia.

Section 9.13 Harbor Area Review Board; Procedures

The Board shall establish procedures for all matters coming before it for review and all meetings shall be open to the public.

Section 9.14 Harbor Area Review Board; Powers and Duties

The Harbor Area Review Board shall have the power and authority for issuing or denying Certificates of Appropriateness for construction, reconstruction, substantial exterior alteration, razing, or relocation within the Historic Harbor Area Overlay District. In addition, the Board shall have the following duties:

1. To assist and advise the Town Council, the Planning Commission, and other Town departments, agencies, and property owners in matters involving historically significant sites at buildings or other properties in historic districts such as, but not limited to, appropriate land usage, parking facilities, fencing, and signs.
2. To continuously evaluate conditions and advise owners of historic landmarks or contributing structures or other properties in historic districts on problems of preservation.
3. To conduct studies deemed necessary by the Town Council or Planning Commission concerning location of historic districts and means of preservation, utilization, improvement, and maintenance of historic assets in the Town.
4. To propose additional historic districts or additions or deletions to districts.
5. To adopt standards for review to supplement the standards set forth in this Ordinance.
6. To formulate recommendations to the Town Council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

7. To cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties both public and private in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites, or areas within the Town.

Section 9.15 Summary of Administration Review Procedures

In general it is the purpose of this ordinance to establish review procedures for actions affecting properties in the Historic Harbor Area Overlay District which will be relatively simple with minimum delay for those actions which will have little if any permanent effect on the character of the district or on a significant structure. A more thorough review for actions which may have a substantial effect on the character of the district or on a significant structure is required. To this end, some actions are exempted from special historic and architectural review altogether, except as normal review may be necessary for issuance of a building permit. Other actions, depending on the possible consequences thereof, may be reviewed by the Zoning Administrator or by the Harbor Area Review Board acting with original jurisdiction, or, in the most serious cases, action by the Town Council following action by the Harbor Area Review Board. In all cases the decisions of the Zoning Administrator may be appealed to the Harbor Area Review Board, the decisions of the Harbor Area Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County.

Section 9.16 Certain Minor Actions Exempted from Review by the Harbor Area Review Board

Within the Historic Harbor Area Overlay District certain minor actions which are deemed not to have permanent effects upon the character of the district are exempted from review for architectural compatibility by the Harbor Area Review Board. Such actions shall include the following and any similar actions which in the opinion of the Zoning Administrator will have no more effect on the character of the district than those listed:

1. Repainting the structure in the same color or a very similar color or painting the structure with those colors specified in the design guidelines. (Original painting of masonry surfaces is not exempted from review.)
2. Replacement of missing or broken window panes, roofing slates, tiles, porch floor, posts, rails, shingles, window frames, or shutters where no substantial change in design or material is proposed.
3. Addition or deletion of storm doors or storm windows, window gardens, or similar appurtenances and portable air conditioners located in existing windows, doors, or other existing wall openings (if no building permit is required for such addition or deletion).
4. Addition or deletion of television and radio antennas or skylights and solar collectors in locations not visible from a public street or a waterway.

5. Landscaping involving minor grading, walks, low retaining walls, temporary fencing, small fountains, ponds and the like, which will not substantially affect the character of the property and its surroundings.
6. If consistent with the design guidelines, erection of any sign permitted in a residential district and any permitted non-illuminated flat or wall sign not exceeding three inches from a wall and not exceeding four square feet in area in a commercial or industrial district.
7. Construction of off-street loading areas and off-street parking areas containing five spaces or less in a commercial or industrial district.
8. Creation of outside storage having a structure footprint of less than forty-one (41) square feet in a commercial or industrial district which does not require structural changes or major grading and is not visible from a public street or waterway.

Section 9.17 Certain Actions Recommended in Design Guidelines Exempted from Review by the Harbor Area Review Board; Delegation of Authority

- A. The Harbor Area Review Board and the Zoning Administrator shall have authority to order that work be stopped and that an appropriate application be filed for review by the Harbor Area Review Board in any case where the action may have an adverse effect on the Historic Harbor Area Overlay District or may produce arresting and spectacular effects, violent contrasts of materials or colors, and intense and lurid colors or patterns, or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the district.
- B. The authority to perform any action under this section not granted to the Zoning Administrator shall remain with the Harbor Area Review Board.

Section 9.18 Approval of Harbor Area Review Board Required

- A. Except as herein otherwise provided in this article, no building or structure, including signs, shall be erected, reconstructed, restored, or substantially altered in exterior appearance and no buildings or structures shall be razed or demolished within a historic district and no permit authorizing same shall be granted unless and until the same is approved by the Harbor Area Review Board and a Certificate of Appropriateness has been issued by that body, with right of direct appeal to the Town Council as hereinafter provided, as being architecturally compatible with the historical, cultural, and/or architectural aspects of the structure and its surroundings.

1. Exemptions

- a. Railroad activities in this district are subject to federal preemption to the extent that the activities are an integral part of the railroad's interstate operations. 49 U.S.C. 10501 (b). Therefore, "state and local permitting or pre-clearance requirements [such as building permits, zoning clearances, and site plan requirements] which, by their nature, interfere with interstate commerce by giving the [Town of Cape Charles] the ability to delay or deny the [railroad's] right to construct facilities or conduct operations are preempted." *Borough of Riverdale v. New York Susquehanna & Western Railway Corporation*, Surface Transportation Board, Docket No. FD _ 33466 _ 0, September 9, 1999.

However, environmental and other public health and safety issues and "activities and facilities not integrally related to the provision of rail service are not subject to [Surface Transportation Board] jurisdiction or subject to federal preemption." *Id.* Also, "interstate railroads ... are not exempt from certain local fire, health, safety and construction regulations and inspections." *Id.*

- b. Activities requiring a Harbor Development Certificate, as described in Section 3.9, are exempt from requiring a Certificate of Appropriateness.

B. "Substantial alterations" shall be defined as any and all work done on buildings, structures, or sites other than those specifically exempted herein:

1. General examples of "non-substantial" alterations:

- a. Work done to prevent deterioration or to replace parts of a structure with similar materials in order to correct any deterioration, decay of, or damage to any structure or on any part thereof, or
- b. To restore same as nearly as practical to its condition prior to such deterioration, decay, or damage.

2. Examples of work not constituting "substantial alteration" include those minor actions exempted from review by §9.16 of this article.

3. General examples of work constituting "substantial alterations" include:

- a. Construction of a new building at any location or a new accessory building on a landmark or contributing property or on a site within the Historic Harbor Area Overlay District

- b. Any addition to or alteration of a building which increases the square footage of the building or otherwise alters substantially its size, height, contour, or outline.
 - c. Any change or alteration of the exterior architectural style of a structure, including removal or rebuilding of porches, openings, dormers, window sashes, chimneys, columns, structural elements, stairways, terraces, and the like.
 - d. Any change or alteration of the exterior color scheme of the structure or any of its significant elements, including porches, openings, dormers, window sashes, awnings, canopies, chimneys, columns, stairways, terraces, or any other structural elements. This also applies to all structures on the site.
 - e. Addition to or removal of one or more stories or alteration of a roof line.
 - f. Landscaping which involves major changes of grade or walls and fences more than three-and-one-half feet in height.
 - g. Any other major actions not specifically covered by the terms of this section but which would have a substantial effect on the character of the historic district.
- C. In any case in which there might be some question as to whether a project may be exempted from review may constitute a minor action or may constitute "substantial alteration," the Zoning Administrator shall be contacted for an interpretation prior to commencement of work.

Section 9.19. Harbor Development Certificate

Evidence of the approval required under the terms of the Historic Harbor Area Overlay District shall be a certificate of appropriateness issued by the Harbor Area Review Board, or the Zoning Administrator as the case may require, stating that the demolition, moving, or changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration, or restoration for which application has been made are approved by the Harbor Area Review Board or the Administrator as the case may require. The Harbor Area Review Board, or the Administrator in a case within his authority, may permit modifications of original proposals if such modifications are formally acknowledged, clearly described, and recorded in the records of the case. A certificate of appropriateness shall be in addition to any other permits required. Any action by applicants following issuance of a permit-requiring certificate of appropriateness shall be in accord with the application and material approved and any conditions appended thereto.

Section 9.20 Design Guidelines; Standards for Review

- A. In order to achieve the purposes of the Historic Harbor Area Overlay District, the Harbor Area Review Board shall be guided in its decisions by the design guidelines as authorized in subsection B of this section
- B. It shall be the duty of the Harbor Area Review Board to prepare and recommend to Planning Commission, specific design guidelines for adoption by Town Council, illustrated as necessary, for buildings, structures, and sites in the historic district
- C. The Town Council shall adopt an initial set of design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to Section 15.2204 Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to Section 15.2204 Code of Virginia.
- D. The Town Council may amend adopted design guidelines after receiving a recommendation from the Planning Commission and after conducting at least one public hearing pursuant to Section 15.2204 Code of Virginia. Prior to issuing a recommendation, the Planning Commission shall conduct at least one public hearing pursuant to Section 15.2204 Code of Virginia.

Section 9.21 Demolition; Alternate Procedure: Offer to Sell

- A. Prior to approval of any application for demolition, modification, moving, or removal of a contributing structure within the Cape Charles Historic Harbor Area Overlay District; the Zoning Administrator, the Harbor Area Review Board, or the Town Council, as applicable, shall review the application for its compatibility with each of the following guidelines.
 - 1. Whether or not the contributing structure is of such architectural or historic interest that its removal would be to the detriment of the character and integrity of the Historic Harbor Area Overlay District.
 - 2. Whether or not the contributing structure is of such interest or significance that it would qualify as a National, State, or local historic landmark.
 - 3. Whether or not retention of the contributing structure would help to preserve and protect a historic place or area of historic interest in the Town.
 - 4. Whether or not plans for future use of the site after demolition are appropriate, compatible, sympathetic, and complimentary to the character and integrity of the Historic Harbor Area Overlay District.

No subsequent application under Section 9.21 A. regarding the contributing structure may be made until more than one year after a final denial by the Town Council.

- B. In addition to the right of appeal herein elsewhere set forth, the owner of a contributing structure in the Cape Charles Historic Harbor Area Overlay District shall as a matter of right be entitled to move, remove, modify, raze or demolish all or part of such contributing structure provided that:
1. The owner has applied to the Town Council for such right.
 2. The owner has for the applicable period of time set forth in the time schedule in Section 9.21 B. 4., and at a price reasonably related to the fair market value of the contributing structure and the land, other improvements and appurtenances pertaining thereto (assuming the buyer will be required to preserve and restore the contributing structure in place on the property) as determined by the average of two (2) real estate appraisals from two (2) different appraisers, made a bona fide, public offer (pursuant to the requirements of this Section 9.21 B.) to sell such contributing structure, and the land, other improvements and appurtenances pertaining thereto (collectively, the "Property"), to the Town and any other person, firm, corporation, government or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the contributing structure in place. If the two (2) required real estate appraisals submitted by the Owner differ by more than ten percent (10%), the owner must have the Property appraised a third time at his own expense by a third real estate appraiser selected by the Town. The bona fide offer to sell must be at a price not more than the average of the two such appraisals that are closest to one another.
 3. No bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such Property thereto, prior to the expiration of the applicable time period set forth in the time schedule in Section 9.21 B. 4. Any appeal which may be taken to the court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above.
 4. The time schedule for offers to sell shall be as follows:
 - a. Three (3) consecutive months when the offering price is less than twenty-five thousand dollars.
 - b. Four (4) consecutive months when the offering price is twenty-five thousand or more but less than forty thousand dollars.

- c. Five (5) consecutive months when the offering price is forty thousand or more but less than fifty-five thousand dollars.
 - d. Six (6) consecutive months when the offering price is fifty-five thousand dollars or more but less than seventy-five thousand dollars.
 - e. Seven (7) consecutive months when the offering price is seventy-five thousand dollars or more but less than ninety thousand dollars.
 - f. Twelve (12) consecutive months when the offering price is ninety thousand dollars or more.
5. Before making a bona fide offer to sell, the owner shall first file a statement with the Zoning Administrator along with the appraisals required by Section 9.21 B. 2. The statement shall identify the Property, state the offering price, the date the offer of sale is to begin, the names and addresses of adjacent property owners, and the names and addresses of listing real estate agents, if any. The owner shall be required to maintain the Property in at least its current condition during the term of the public offer. No time period set forth in the time schedule contained in Section 9.21 B. 4 shall begin to run until the statement has been filed. Within five (5) days after receipt of a statement, copies of the statement shall be delivered by the Zoning Administrator to the Town Manager, the Town Council, and the Harbor Area Review Board. Within thirty (30) days after the receipt of a statement, the Zoning Administrator: (a) shall place notice of the statement once a week for two successive weeks in a newspaper having general circulation in the Town, (b) post a notice of the statement prominently on the Property, and (c) send notice of the offer, accompanied by the statement, to the adjacent property owners by certified or registered mail.
6. During the time period for the offer to sell, the Town may take steps as it deems necessary to preserve the contributing structure in accordance with the purposes of this article. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of the Property by public or private bodies or agencies, and exploration of the possibility of moving structures or other features on the Property.
7. The fact that an offer to sell a Property is made at a price reasonably related to fair market value as described previously may be questioned by any party who files with the Zoning Administrator, on or before sixty (60) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within Cape Charles, questioning such valuation. Upon receipt of such a petition, one (1) disinterested real estate appraiser shall be appointed by the petitioners, and the cost of the appraisal shall be borne by the petitioners. Said

appraiser shall forthwith make an appraisal of the Property on the same basis as described in B.2. above, and the Town shall use the average of the lower two appraisals to establish fair market value under Section 9.21 B. In the event such valuation indicates that the price at which the applicant offered to sell the Property was at a price that is higher than the Property's fair market value, the offer to sell shall be void and of no force and effect for purposes of satisfying the requirements set forth in this Section 9.21 B.

Section 9.22 Hazardous Buildings or Structures

Nothing in this Article shall prevent the razing or demolition of any building or structure without consideration of the Harbor Area Review Board which is in such an unsafe condition that it would endanger life or property, and protection from such condition is provided for in the Building Code and/or other applicable Town ordinances. However, such razing or demolition shall not be commenced without written approval of the Town Administrator verifying the conditions necessitating such action.

Section 9.23 Maintenance and Repair Required

- A. The purpose of this section is solely to stop demolition by neglect, whereby owners of property in the Historic Harbor Area Overlay District jeopardize the future prosperity and well-being of the town by allowing historic assets to decay so as to allow the structure, or historic attributes of the structure, to become a hazardous building or structure.
- B. All buildings and structures in the Historic Harbor Area Overlay District shall be preserved against decay and deterioration and maintained free from structural defects to the extent that such decay, deterioration, or defects may, in the opinion of the Harbor Area Review Board and Town Council, result in the irreparable deterioration of any exterior appurtenance or architectural feature or produce a detrimental effect upon the character of the district as a whole or upon the life and character of the structure itself, including but not limited to:
 - 1. The deterioration of exterior walls or other vertical supports, including broken doors and window panes;
 - 2. The deterioration of roofs or horizontal members;
 - 3. The deterioration of exterior chimneys;
 - 4. The deterioration or crumbling of exterior plaster, wood, or mortar;
 - 5. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.
- C. After notice by the Harbor Area Review Board by certified mail of specific instances of failure to maintain or repair and of an opportunity to appear before

the Harbor Area Review Board, the owner or person in charge of said structure shall have 90 days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in this ordinance. In the alternative, if the owner fails to act, the Harbor Area Review Board may recommend to the Town Council that the Town Administrator, after due notice to the owner, enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure and the reasonable costs thereof shall be placed as a lien against the property or, in a proper hardship case as determined by the Town Council, paid by the Town from a fund established for such purposes.

Section 9.24 File of Actions to be Maintained

In order to provide guidance for application of standards and guidelines, for the improvement of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design, the Administrator and the Harbor Area Review Board shall maintain a file containing a record of all applications brought before them, including drawings and photographs pertaining thereto and the decision of the Administrator or the Harbor Area Review Board in each case. The file documents shall remain the property of the Town but shall be held available for public review.

Section 9.25 Administration; Zoning Administrator

Except as authorized herein the Zoning Administrator shall not authorize a permit for any erection, reconstruction, integral exterior facade change, demolition, or razing of a building or structure in the Historic Harbor Area Overlay District until the same has been approved by the Harbor Area Review Board as set forth in the following procedures.

Section 9.26 Receipt of Application

Upon receipt of an application by the Zoning Administrator for each permit in the district, the Zoning Administrator shall:

1. Forthwith forward to the Harbor Area Review Board a copy of the application, together with a copy of the site plan and the building plans and specifications filed by the applicant if such application requires the Harbor Area Review Board to meet and render a decision;
2. Maintain in his office a record of all such applications and of his handling and final disposition of the same;
3. Require applicants to submit three (3) copies of material required to permit compliance with the foregoing.

Section 9.27 Material to be Submitted for Review

By general rule, or by specific request in a particular case, the Harbor Area Review Board may require submission of any or all of the following in connection with the application: architectural plans, site plans, landscaping plans, construction methods, proposed signs with appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view (with indications as to visual construction materials, design of doors and windows, colors, and relationships to adjoining structures), and such other exhibits and reports as are necessary for its determinations. Requests for approval of activities proposed in the Historic Harbor Area Overlay District shall be accepted only from the record owner of the land involved in such proposal, or his agent.

Section 9.28 Other Approvals Required

In any case in which an applicant's proposal also requires the approval of the Board of Zoning Appeals, final action by the Board of Zoning Appeals shall precede final action by the Harbor Area Review Board. The Board of Zoning Appeals may, however, table a proposal in order to request the comments of the Harbor Area Review Board. Other development applications may be submitted concurrently with an application for a Certificate of Appropriateness. Final action by the Harbor Area Review Board shall be taken prior to consideration of proposals requiring site plan approval.

Section 9.29 Action by the Harbor Area Review Board; Issuance of Certificates of Appropriateness

The Harbor Area Review Board shall render a decision upon any request or application for a Certificate of Appropriateness within 60 days after the filing of an application accepted as complete. Failure of the Harbor Area Review Board to render such a decision within said 60-day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the Harbor Area Review Board had granted the Certificate of Appropriateness applied for prior to denying the Certificate of Appropriateness. The Harbor Area Review Board, on the basis of the review of information received, shall, upon request, indicate to the applicant the changes in plans and specifications, if any, which in the opinion of the Harbor Area Review Board, would protect and/or preserve the historical aspects of the landmark, building, structure, or district. If the applicant determines that he will make the suggested changes and does so in writing, the Harbor Area Review Board may issue the Certificate of Appropriateness.

Section 9.30 Expiration of Certificates of Appropriateness and Permits to Raze

Any certificate issued pursuant to this article and any permit to raze a building issued pursuant to this article shall expire of its own limitation twelve months from the date of issuance if the work authorized thereby is not commenced by the end of such twelve-month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of twelve

months after being commenced. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this article shall be excluded from the computation of the twelve months.

Section 9.31 Inspection by Administrator After Approval

When a Certificate of Appropriateness has been issued, the Administrator or Town Building Official shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or violating any ordinances of the Town. The Administrator or Town Building Official may revoke the certificate or the building permit if violations are not corrected by the applicant in a timely manner.

Section 9.32 Delay of Approval

In the case of a proposal other than for demolition or moving but involving a designated landmark where the Harbor Area Review Board or, on appeal, the Town Council cannot reach a satisfactory agreement with the owner and where the Harbor Area Review Board or, on appeal, the Town Council decides such action to be in the public interest and not in conflict with any provision of law, it may delay the effective date of an approval for a period of three months from the date of application or appeal to enable negotiations to be undertaken and completed for acquisition of the property for preservation or public use. Failure of negotiations within this period shall be the equivalent of a denial of the application by the Harbor Area Review Board or, on appeal, by the Town Council.

Section 9.33 Conditions Imposed by the Harbor Area Review Board

In approval of any proposal under this section, the Harbor Area Review Board or, on appeal, the Town Council may limit such approval by such reasonable conditions as the case may require, including but not limited to, the specifications enumerated for conditional uses and for the Town Council.

Section 9.34 Appeals; Decisions of the Harbor Area Review Board

An appeal from a decision of the Harbor Area Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Town Council all the papers constituting the record upon which the action appealed from was taken. The Town Council shall fix a reasonable time for the hearing, give public notice thereof and decide the same within 60 days. At the hearing the appealing party may appear in person or by agent. In exercising its powers, the Town Council may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Harbor Area Review Board.

Section 9.35 Appeals; Decisions of the Zoning Administrator

An appeal from a decision of the Zoning Administrator may be taken to the Harbor Area Review Board by the owner of the property in question or by any party aggrieved by said decision, which shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Harbor Area Review Board all the papers constituting the record upon which the action appealed from was taken. The Harbor Area Review Board shall fix a reasonable time for the meeting, give public notice thereof as required pursuant to §15.2-2204, Code of Virginia, and decide the same within 60 days. At the meeting the party may appear in person or by agent. In exercising its powers, the Harbor Area Review Board may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made.

Section 9.36 Appeal to the Circuit Court from a Decision of the Town Council

An appeal from a final decision of the Town Council may be filed with the Circuit Court within 30 days after said decision in the manner prescribed by law by the owner of the property in question or by the Harbor Area Review Board or by any party aggrieved by said decision or by any party who recorded an appearance at the hearing before the Town Council. The filing of an appeal shall stay the decision of the Town Council pending the outcome of the appeal to the court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish a designated landmark, building, or structure. The court may reverse or modify the decision of the Town Council, in whole or part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the Town Council.

Section 9.37 Violations and Penalties

Any violation of this Article and the penalties for all such violations shall be as set forth in §2.43 of the Zoning Ordinance.

Section 9.38 Definitions

For the purpose of this article, certain terms and words pertaining to the Historic Harbor Area Overlay District are hereby defined. The general rules of construction contained in Article II of this Ordinance are applicable to these definitions.

ALTERATION is any change, modification, or addition to a part or all of the exterior of any building or structure.

BUILDING is any enclosed or open structure which is a combination of materials to form a construction for occupancy or use.

ADMINISTRATOR, THE ZONING ADMINISTRATOR, is that person appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator or the Harbor Area Review Board as the case may require of plans for construction alteration, reconstruction, repair, restoration, relocation, demolition, or razing of a building or structure or part thereof in a historic district.

CONTRIBUTING PROPERTIES are those properties constructed fifty (50) years or more ago.

DEMOLITION is the dismantling or tearing down of all or part of any building and all operations incidental thereto.

DESIGN GUIDELINES are those set of guidelines, standards, and regulations adopted pursuant to §9.20 of this Code.

HISTORIC DISTRICT means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission-

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials.