

**Durango Ordinance**

Land Use and Development Code

Article 5. Overlay Zones\*

Sec. 5-4.

**HISTORIC PRESERVATION**

**Sec. 5-4. Historic preservation.**

*5-4-1 Purpose.* The purpose of this section is to promote the public health, safety, and welfare through:

- (a) The protection and preservation of the city's historic and cultural heritage, as embodied in designated historic landmarks and districts, by appropriate regulations;
- (b) The enhancement of property values, and the stabilization of historic neighborhoods;
- (c) The increase of economic and financial benefits through the city's attractions to tourists and visitors; and
- (d) The provision of educational opportunities to increase public appreciation of Durango's unique heritage.

The intention of this section is to create a method to draw a reasonable balance between private property rights and the public interest in preserving Durango's unique historic character by ensuring that demolition of, moving, or alterations to properties of historic value shall be carefully considered for impact to the property's contribution to Durango's heritage.

*5-4-2 Board established.* There is hereby created and established a regulatory board to be known as the "historic preservation board" (hereinafter "board"), which shall have principal responsibility for matters of historical preservation as set forth in subsection 5-4-2(b) of this code.

(a) *Membership.* The board shall consist of seven (7) members providing a balanced, community-wide representation. Specific membership guidelines are that at least forty (40) percent of commission members shall be professionals in preservation related disciplines, such as architecture, landscape architecture, architectural history, archaeology, history, planning, American studies, American civilization, cultural geography or cultural anthropology. Recognizing that professionals may not be available in some communities, this requirement can be waived if the local government makes a good faith effort to recruit professionals and demonstrates that it is capable of carrying out commission responsibilities.

The administrator (Director of the Durango Planning and Community Development Department and/or appointed department representatives) shall serve as staff to the board.

(b) *Powers and duties.* In its actions, the board shall operate in accordance with the City of Durango Rules and Procedures for Boards and Commissions and may adopt additional operating procedures that are consistent with such rules and procedures and this Code.

The historic preservation board shall:

- (1) Adopt criteria for review of historic resources and for review of proposals to alter, demolish or move designated resources.
- (2) Review resources nominated for designation as either an historic landmark or historic district and recommend that the city council designate by ordinance those resources qualifying for such designation.

- (3) Review and make decisions on any application for alteration to a designated historic landmark or historic district.
  - (4) Review and make decisions on any application for moving or demolishing an historic landmark.
  - (5) Advise and assist owners of historic properties on physical and financial aspects of preservation, renovation, rehabilitation and reuse, including nomination to the National Register of Historic Places.
  - (6) Develop and assist in public education programs, including, but not limited to, walking tours, brochures, a marker program for historic properties, lectures and conferences.
  - (7) Conduct surveys of historic areas for the purpose of defining those of historic significance, and prioritizing the importance of identified historic areas.
  - (8) Advise the city council on matters related to preserving the historic character of the city.
  - (9) Actively pursue financial assistance for preservation-related programs.
- (Ord. No. 1995-23, § 8, 10-17-95; Ord. No. O-2002-6, § 8, 4-2-02)

*5-4-3 Designation of landmarks and historic districts.*

(a) *Designation authorized.* Pursuant to the procedures hereinafter set forth in this section, the city council may, by ordinance:

- (1) Designate as a landmark an individual structure or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value, and designate a landmark site for each landmark;
- (2) Designate as an historic district an area containing a number of structures having a special historical or architectural value.

Each such designating ordinance shall include a description of the characteristics of the landmark or historic district which justify its designation and a description of the particular features that should be preserved, and shall include a legal description of the location and boundaries of the landmark site or historic district. The designating ordinance may also indicate alterations which would have a significant impact upon, or be potentially detrimental to, the landmark site or historic district. Any such designation shall be in furtherance of and in conformance with the purposes and standards of this section.

The property included in any such designation shall be subject to the controls and standards set forth in this section, and eligible for such incentive programs as may be developed by the historic preservation board.

(b) *Procedures for designating structures and districts for preservation.* A nomination for designation may be made by the board or by any citizen by filing an application with the department of planning and community development. The department and at least one (1) member of the historic preservation board shall contact the owner or owners of such landmark or landmark district outlining the reasons and effects of designation as a landmark and, if possible, shall secure the consent of the owner or owners to such designation before the nomination is accepted as complete for review.

- (1) *Board review with owner's consent.* The board shall hold a public meeting on the proposal no more than sixty (60) days after the filing of the application.

The board shall review the application for conformance with the established criteria for designation and with the purposes of this section. Within thirty (30) days after the conclusion of the public meeting, but in no event more than sixty (60) days after the meeting date first set, unless otherwise mutually agreed by the board, the applicant, and the owner or owners other than the applicant, the board shall either approve, modify and approve, or disapprove the proposal, and if approved, shall refer the proposal with a copy of its report and recommendation to the city council. The board shall also notify the city council immediately of any decision disapproving a designation initiated by the council.

(2) *Board review without owner's consent.* If the owner of the property nominated for designation does not consent to the review, the board shall hold a public hearing on the proposal not more than sixty (60) days after the filing of the application.

Notice of time, date and place of such hearing, and a brief summary or explanation of the subject matter of the hearing, shall be given by at least one (1) publication in a newspaper of general circulation within the city not less than fifteen (15) days prior to the date of the hearing. In addition, at least fifteen (15) days prior to the hearing date, the department shall:

- a. Post the property in the application so as to indicate that a landmark or historic district designation has been applied for; and
- b. Mail written notice of the hearing to the record owners, as reflected by the records of the county assessor, of all property included in the proposed designation.

Failure to send notice by mail to any such property owner where the address of such owner is unknown and not a matter of public record shall not invalidate any proceedings in connection with the proposed designation.

The board shall review the application for conformance of the proposed designation with the established criteria for designation and the standards of this section. Within thirty (30) days after the conclusion of the public hearing, but in no event more than sixty (60) days after the hearing date first set, unless otherwise mutually agreed by the board and the applicant, the board shall either approve, modify and approve, or disapprove the proposal, and if approved, shall refer the proposal with a copy of its report and recommendation to the city council. Approval shall require the assent of at least six (6) out of seven (7) members of the board. The board shall also notify the city council immediately of any decision disapproving a designation initiated by the council. The board shall use the following criteria in addition to the nomination standards listed in section 5-4-19:

The property has overwhelming historic importance to the entire community. The term overwhelming significance shall, for purposes of this ordinance [section], encompass:

- a. Possessing such unusual or uncommon significance that the structure's potential demolition or major alteration would diminish the character and sense of place in the community of Durango.
- b. Possessing superior or outstanding examples of the architectural, social or geographic historic significance criteria outlined in the standards and criteria (see section 5-4-19). The term "superior" shall mean excellence of its kind and the term "outstanding" shall mean marked by eminence and distinction.

(Ord. No. 1991-21, §§ 1, 2, 1-7-92)

*5-4-4 Proceedings by the city council.* Within thirty (30) days after the date of any referral from the board, appeal or call-up, the city council shall hold a public hearing on the proposed designation. Notice of the time, date, place, and subject matter of the hearing shall be given by one (1) publication in a newspaper of general circulation within the city not less than fifteen (15) days prior to the date of the hearing, and the property shall be posted to indicate that a landmark or district designation is to be considered by the city council. In addition, in cases of appeal or call-up, notice shall be mailed at least fifteen (15) days prior to the hearing date to the record owners, as reflected by the records of the county assessor, of all property included in the proposed designation.

Within thirty (30) days after the conclusion of the public hearing, but in no event more than sixty (60) days after the hearing date first noticed, unless otherwise mutually agreed by the council, the applicant, and the owner or owners other than the applicant, the city council shall approve, modify and approve, or disapprove the proposed designation.

When a landmark or historic district has been designated by the city council as provided above, the department shall promptly notify the owners of the property included therein and shall cause a copy of the designating ordinance as described in subsection 5-4-3(a) to be recorded.

If the owner of the property does not consent to the review, approval shall require the assent of at least four (4) out of five members of the city council. In such cases, the city council shall use the following criteria in addition to the nomination standards listed in section 5-4-19:

The property has overwhelming historic importance to the entire community. The term overwhelming significance shall, for purposes of this ordinance [section], encompass:

- (a) Possessing such unusual or uncommon significance that the structure's potential demolition or major alteration would diminish the character and sense of place in the community of Durango.
- (b) Possessing superior or outstanding examples of the architectural, social, or geographic historic significance criteria outlined in the standards and criteria (see section 5-4-19). The term "superior" shall mean excellence of its kind and the term "outstanding" shall mean marked by eminence and distinction.

The city council may exempt a property meeting the criteria outlined in section 5-4-4(a) if the council finds that the property owner has shown the historic designation creates an undue hardship. The following criteria shall be used in assessing the potential for hardship:

(a) Economic hardship:

- (1) For investment or income-producing properties, the owner's inability to obtain a reasonable rate of return in its present condition, or if rehabilitated, under the alterations criteria.
- (2) For non-income producing properties consisting of owner occupied single-family dwelling and/or institutional properties not solely operating for profit, the owner's inability to convert the property to institutional use in its present condition, or if rehabilitated under the alterations criteria.

(b) Non-economic hardship:

- (1) Designation creates a situation substantially inadequate to meet the applicant's needs because of specific health and/or safety issues.

(Ord. No. 1991-21, § 3, 1-7-92)

*5-4-5 Revocation of designation.* If a building or special feature on a designated landmark site was lawfully removed or demolished, the owner may apply to the board for a revocation of the designation.

The board shall revoke a landmark designation if, after following the procedures prescribed by subsection 5-4-3(b), it determines that without the demolished building or feature the site as a whole no longer meets the purposes and standards of subsection 5-4-3(a) and the board's review standards for designation.

Revocation of a designation is final. Upon the board's decision to revoke a designation, the department shall cause to be prepared an ordinance including the legal description of the affected property stating notice of the revocation, and schedule the item for city council review as described in section 5-4-4. Upon adoption by the city council, the ordinance shall be recorded.

*5-4-6 Appeal of disapproved proposals.* The owners of property proposed to be designated as a landmark or all the owners of at least fifty (50) percent of the separate parcels of property proposed to be designated as an historic district may appeal to the city council a decision of the board disapproving a proposal by filing a notice of appeal with the council within seven (7) days of the board's decision.

(a) *City council call-up.* The city council may call up for review any proposal disapproved by the board by serving written notice on the board within twenty-one (21) days of the board's decision.

(b) *Council hearing.* Within sixty (60) days of the date of any decision of the board disapproving a proposed designation of a landmark or historic district that has been appealed to or called up by the city council, the council shall hold a public hearing under the procedures prescribed by section 5-4.4.

(c) *Council conclusion.* Within thirty (30) days after the hearing date prescribed by subsection 5-4-6(b) of this section, unless otherwise mutually agreed upon by the city council and the owner, the council shall adopt specific written findings and conclusions to determine whether the designation meets the standards prescribed by subsection 5-4-3(a) and the board, and shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.

*5-4-7 Limitation on resubmission and reconsideration of proposed designation.* Whenever the board or city council disapproves a proposed designation, no person shall submit an application that is the same or substantially the same for at least six (6) months from the effective date of the final action on the original proposal.

*5-4-8 Amendment of designation.* Designation of a landmark or historic district may be amended to add features or property to the site or district under the procedures prescribed by subsection 5-4-3(b) and section 5-4-4 for initial designations. Whenever a designation has been amended, the department shall promptly notify the owners of the property included therein and shall record a copy of the amending ordinance with the La Plata County Clerk and Recorder.

*5-4-9 Landmark alteration certificate required.* No person shall carry out or permit to be carried out on a designated landmark site or in a designated historic district any new construction, alteration, removal, or demolition of a building or other designated feature without first obtaining a landmark alteration certificate for the proposed work under this section as well as any other permits required by this code or other ordinances of the city.

The department of planning and community development shall maintain a current record of all designated landmark sites and historic districts and pending designations. If the building division

receives an application for a permit to carry out any new construction, alteration, removal, or demolition of a building or other designated feature on a landmark site or in an historic district or in an area for which designation proceedings are pending, the building division shall promptly forward such permit application to the planning department.

*5-4-10 Construction on proposed landmark sites or in proposed districts.* No person shall receive a permit to construct, alter, remove, or demolish any structure or other feature on a proposed landmark site or in a proposed historic district after the date an application has been filed to initiate the designation of such landmark site or district. No such permit application filed after such date will be approved while proceedings are pending on such designation.

*5-4-11 Landmark alteration certificate application and staff review.* An owner of property designated as a landmark or located in an historic district may apply for a landmark alteration certificate, including all information that the board determines is necessary to consider the application, including without limitation, plans and specifications showing the proposed exterior appearance, with texture, materials, and architectural design and detail, and the names and addresses of the abutting property owners.

(a) *Review.* The administrator and two (2) designated members of the board shall review all applications for landmark alteration certificates for alterations to buildings or special features and shall determine within seven (7) days after a complete application is filed whether or not the proposed work would have a significant impact upon or be potentially detrimental to a landmark site or historic district.

(b) *No significant impact.* If it is determined that there would be no significant impact or potential detriment, the administrator shall issue a certificate to the applicant and shall notify the board of such issuance.

(c) *Board referral.* If either the administrator or one of the board designees determines that the proposed work would create a significant impact or potential detriment, they shall refer the application to the board for a public meeting and shall promptly notify the applicant of the referral.

*5-4-12 Landmark alteration certificate meeting.* The board shall hold a public meeting on all applications for landmark alteration certificates for new construction, removal, or demolition of a designated landmark structure or a structure within an historic district within sixty (60) days after the completed application was filed.

(a) *Board review.* The board shall determine whether the application meets the standards in subsection 5-4-3(a) and the board's established review standards for alterations. Within thirty (30) days after the hearing date first set, unless otherwise mutually agreed upon by the board and applicant, the board shall adopt written findings and conclusions.

(b) *Extension of review period.* When reviewing alteration certificate applications involving moving or demolition of a resource, the board may extend the review period up to ninety (90) additional days if the board finds the original application does not meet the standards in subsection 5-4-3(a) and the board's review standards for alterations. The ninety-day extension period shall be used to encourage both the applicant and the board to explore acceptable alternative solutions to the original submittal.

*5-4-13 Appeal or call-up of disapproved proposals.* A decision of the board approving, disapproving, or suspending action on an application for a landmark alteration certificate is final unless appealed to or called up by the city council as provided in section 5-4-6, except the council will consider the landmark alteration certificate rather than landmark designation.

*5-4-14 Issuance of a landmark alteration certificate.* The department shall issue a landmark alteration certificate if an application has been approved by the board or the city council.

(a) *Time limit.* When approving an application for a landmark alteration certificate, the board or city council may impose a time limit for the applicant to apply for a building permit conforming to the certificate.

(b) *Subsequent submittals.* If the board or city council disapproves an application for a landmark alteration certificate, no person may submit a subsequent application for the same construction, alteration, removal, or demolition within six (6) months from the date of the final action upon the earlier application.

*5-4-15 Unsafe or dangerous conditions exempted.* Nothing in this section shall be construed to prevent any measures of construction, alteration, removal, or demolition necessary to correct the unsafe or dangerous condition of any structure, other feature, or parts thereof where such condition is declared unsafe or dangerous by the city building or zoning division or fire department and where the proposed measures have been declared necessary by the city manager to correct the condition, as long as only such work that is absolutely necessary to correct the condition is performed. Any temporary measures may be taken without first obtaining a landmark alteration certificate under this chapter, but a certificate is required for permanent alteration, removal, or demolition.

*5-4-16 Property maintenance required.* The city council intends to preserve from deliberate or inadvertent neglect the exterior portions of designated landmarks and all interior portions thereof whose maintenance is necessary to prevent deterioration of any exterior portion. No owner, lessee, or occupant of any landmark shall fail to prevent significant deterioration of the exterior of the structure or special feature beyond the condition of the structure on the effective date of the designating ordinance.

(a) *Compliance with city codes.* No owner, lessee, or occupant of any landmark or structure in an historic district shall fail to comply with all applicable provisions of this section and other ordinances of the city regulating property maintenance.

(b) *Owner notification.* Before the city attorney files a complaint in municipal court for failure to maintain the property on the landmark site or historic district, the board shall notify the property owner, lessee, or occupant of the need to repair, maintain, or restore the property, shall assist the owner, lessee, or occupant in determining how to preserve the property, and shall give the owner a reasonable time to perform such work.

*5-4-17 Recognition of structures of merit.* The board may approve a list of structures of historical or architectural merit that have not been designated as landmarks and are not situated in designated historic districts, to which the board may add from time to time, in order to recognize and encourage the protection, enhancement, and use of such structures. But nothing in this section shall be construed to impose any regulations or controls upon, or to provide incentives or awards to, structures of merit solely because they are included on the list.

(a) *Recognition program.* The board may authorize such steps as it deems desirable to recognize the merit of and to encourage the protection, enhancement, perpetuation, and use of any listed structure or of any designated landmark or any structure in a designated historic district by, without limitation, issuing certificates of recognition and authorizing plaques to be affixed to the exteriors of such structures.

*5-4-18 Enforcement and penalties.* No person shall violate or permit to be violated any of the requirements of this section or the terms of a landmark certificate.

(a) *Violations.* Violations of this section are punishable as provided in Code section 1-16 and are subject to the following additional penalties:

(1) Alterations to a designated landmark or district without an approved landmark alteration certificate will result in a one-year moratorium on all building permits for the subject property;

(2) Moving or demolishing a designated structure without an approved landmark alteration certificate will result in a five-year moratorium on all moving, demolition, or building permits for the structure and for the property at the structure's original location.

(Ord. No. 1990-10, § 1, 6-18-90)

*5-4-19 Criteria for designation.* The historic preservation board and city council will consider the following criteria in reviewing nominations of properties for designation:

(a) *Landmarks.* Landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social or geographic/environmental significance as described in sections 5-4-19(a)(1) through (3). A landmark could be exempt from the age standard if it is found to be exceptionally important in other significant criteria.

(1) Historic sites shall meet one (1) or more of the following:

a. *Architectural.*

1. Exemplifies specific elements of an architectural style or period.
2. Example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally.
3. Demonstrates superior craftsmanship or high artistic value.
4. Represents an innovation in construction, materials or design.
5. Style particularly associated with Durango area.
6. Represents a built environment of a group of people in an era of history.
7. Pattern or grouping of elements representing at least one of the above criteria.
8. Significant historic remodel.

b. *Social.*

1. Site of historic event that had an effect upon society.
2. Exemplifies cultural, political, economic or social heritage of the community.
3. Association with a notable person or the work of a notable person.

c. *Geographic/environmental.*

1. Enhances sense of identity of the community.
2. An established and familiar natural setting or visual feature of the community.



(2) Prehistoric and historic archaeological sites shall meet one (1) or more of the following:

a. *Architectural.*

1. Exhibits distinctive characteristics of a type, period or manner of construction.
2. A unique example of structure.

b. *Social.*

1. Potential to make an important contribution to the knowledge of the area's history or prehistory.
2. An association with an important event in the area's development.
3. An association with a notable person(s) or the work of a notable person(s).
4. A typical example/association with a particular ethnic group.
5. A unique example of an event in Durango's history.

c. *Geographic/environmental.*

1. Geographically or regionally important.

Buried human remains will be handled in as culturally sensitive and appropriate manner as possible.

(3) All properties will be evaluated for their physical integrity using the following criteria (a property need not meet all of the following criteria):

- a. Shows character, interest or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation.
- b. Retains original design features, materials and/or character.
- c. Original location or same historic context after having been moved.
- d. Has been accurately reconstructed or restored based on documentation.

(b) *Districts.* For the purposes of this section, a district is a geographically definable area including a concentration, linkage or continuity of subsurface sites, buildings, structures and/or objects. The district is related by a pattern of either physical elements or social activities. Significance is determined by applying criteria to the pattern(s) and unifying element(s). Nominations will not be considered unless the application contains written approval of fifty-one (51) percent of the property owners within the district boundaries. Properties that do not contribute to the significance of the historic district may be included within the boundaries, as long as the noncontributing elements do not noticeably detract from the district's sense of time, place and historical development. Noncontributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location, and/or information potential.

District boundaries will be defined by visual changes, historical documentation of different associations or patterns of development, or evidence of changes in site type or site density as established through testing or survey.

In addition to meeting at least one (1) of the criteria outlined in subsections (1) through (4) of this subsection (b), the district must be at least fifty (50) years old. The district could be exempt from the age standard if the resources are found to be exceptionally important in other significant criteria.

(1) Historic districts shall meet one (1) or more of the following:

a. *Architectural.*

1. Exemplifies specific elements of an architectural period or style.
2. Example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally or locally.
3. Demonstrates superior craftsmanship or high artistic value.
4. Represents an innovation in construction, materials, or design.
5. Style particularly associated with Durango area.
6. Represents a built environment of a group of people in an era of history.
7. Pattern or grouping of elements representing at least one of the above criteria.
8. Significant historic remodel.

b. *Social.*

1. Site of historic event that had an effect upon society.
2. Exemplifies cultural, political, economic or social heritage of the community.
3. An association with a notable person(s) or the work of a notable person(s).

c. *Geographic/environmental.*

1. Enhances sense of identity of the community.
2. An established and familiar natural setting or visual feature of the community.

b[d]. *Archaeology/subsurface.*

1. Potential to make an important contribution to the area's history or prehistory.
2. An association with an important event in the area's development.
3. An association with a notable person(s) or the work of a notable person(s).
4. Distinctive characteristics of a type, period or manner of construction.
5. Geographical importance.

6. A typical example/association with a particular ethnic group.
7. A typical example/association with a local cultural or economic activity.
8. A unique example of an event or structure.

(Ord. No. 1991-21, § 4, 1-7-92; Ord. No. 1994-23, § 1, 10-18-94)

*5-4-20 Criteria to review an alterations certificate.* The historic preservation board shall issue an alterations certificate for any proposed work on a designated historical site or district only if the board can determine that the proposed work would not detrimentally alter, destroy or adversely affect any architectural or landscape feature which contributes to its original historical designation. The board must find a proposed development is visually compatible with designated historic structures located on the property in terms of design, finish, material, scale, mass and height. When the subject site is an historic district, the historic preservation board must also find that the proposed development is visually compatible with the development on adjacent properties. For the purposes of this section, the term "compatible" shall mean consistent with, harmonious with, and/or enhances the mixture of complementary architectural styles either of the architecture of an individual structure or the character of the surrounding structures.

(a) The historic preservation board will use the following criteria to determine compatibility:

- (1) The effect upon the general historical and architectural character of the structure and property.
- (2) The architectural style, arrangement, texture and material used on the existing and proposed structures and their relation and compatibility with other structures.
- (3) The size of the structure, its setbacks, its site, location, and the appropriateness thereof, when compared to existing structures and the site.
- (4) The compatibility of accessory structures and fences with the main structure on the site, and with other structures.
- (5) The effects of the proposed work in creating, changing, destroying, or otherwise impacting the exterior architectural features of the structure upon which such work is done.
- (6) The condition of existing improvements and whether they are a hazard to public health and safety.
- (7) The effects of the proposed work upon the protection, enhancement, perpetuation and use of the property.
- (8) Compliance with the Secretary of the Interior's Standards for Rehabilitation as listed below. (detailed discussions of the Secretary of the Interior's Standards are available in a booklet at the Office of Community Development):
  - a. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
  - b. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

- c. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- d. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- e. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
- f. Deteriorated historic features shall be repaired rather than replaced. When the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- g. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- h. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- i. New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.
- j. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(Ord. No. 1991-21, § 5, 1-7-92)

*5-4-21 Criteria to review relocating a structure.* In addition to the alterations criteria in section 5-4-20, the historic preservation board will use the following criteria in considering alteration certificate applications for relocating a landmark, a structure on a landmark site, a building or structure within a historic district; a structure onto a landmark site; or a structure onto property in an historic district:

(a) For consideration of the original site, the board will review for compliance with all of the following criteria:

- (1) Documentation showing the structure cannot be rehabilitated or reused on its original site to provide for any reasonable beneficial use of the property;
- (2) The contribution the structure makes to its present setting;
- (3) Whether plans are specifically defined for the site to be vacated, and have been approved by city staff;

(4) If the structure can be moved without significant damage to its physical integrity and the applicant can show the relocation activity is the best preservation method for the character and integrity of the structure.

(5) Whether the structure has been demonstrated to be capable of withstanding the physical impacts of the relocation and re-siting.

(6) Whether a structural report submitted by a licensed structural engineer adequately demonstrates the soundness of the structure proposed for relocation.

(b) For consideration of the new location, the board will review for compliance with all of the following criteria:

(1) Whether the building or structure is compatible with its proposed site and adjacent properties; and if the receiving site is compatible in nature with the structure or structures proposed to be moved.

(2) The structure's architectural integrity and its consistency with the character of the neighborhood.

(3) Whether the relocation of the historic structure would diminish the integrity or character of the neighborhood of the receiving site.

(4) If a relocation plan has been submitted and approved by the city staff, including posting a bond, to ensure the safe relocation, preservation and repair (if required) of the structure, site preparation and infrastructure connections as described in section 6-20 of this Code.

(Ord. No. 1991-21, § 6, 1-7-92)

*5-4-22 Criteria to review demolition of a structure.* If a demolition approval is granted on any basis other than that of an imminent hazard or economic hardship, a certificate will not be issued until a replacement/reuse plan for the property has been approved by the city staff.

(a) *Review criteria for total demolition.* Applicants requesting a certificate for demolition must provide data to clearly demonstrate that the situation meets all of the following criteria:

(1) The structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to properly maintain the structure; and

(2) The structure cannot be rehabilitated or reused on site to provide for any reasonable beneficial use of the property; and

(3) The structure cannot be practically moved to another site in Durango; and

(4) The applicant demonstrates that the proposal mitigates to the greatest extent practical the following:

a. Any impacts that occur to the visual character of the neighborhood where demolition is proposed to occur.

b. Any impact on the historic importance of the structure or structures located on the property and adjacent properties.

c. Any impact to the architectural integrity of the structure or structures located on the property and adjacent properties.

(5) In the case of archaeological sites, consideration will be given to whether information can be recovered as part of the demolition process.

(b) *Review criteria for partial demolition.*

(1) The partial demolition is required for the renovation, restoration or rehabilitation of the structure; and

(2) The applicant has mitigated, to the greatest extent possible:

a. Impacts on the historic importance of the structure or structures located on the property.

b. Impacts on the architectural integrity of the structure or structures located on the property.

(Ord. No. 1991-21, § 7, 1-7-92)

*5-4-23 Exemptions from an alteration certificate.* If an alteration certificate request does not conform to the applicable criteria set forth in this section (5-4-20, 5-4-21 or 5-4-22) the applicant may request an exemption from the certificate requirement. The applicant must provide adequate documentation and/or testimony to establish qualification for one (1) of the listed exemptions. The data provided by the applicant must be substantiated by either professionals in an applicable field, or by thorough documentation of how the information was obtained. The historic preservation board may request additional information from the applicant as necessary to make informed decisions.

(a) *Economic hardship exemption.* Exemptions are granted only to the specific owner and use and are not transferable.

(1) For investment, or income producing properties:

a. The owner's inability to obtain a reasonable rate of return in its present condition or if rehabilitated.

(2) For non-income producing properties consisting of owner occupied single-family dwellings and/or non-income producing institutional properties not solely operating for profit:

a. The owner's inability to convert the property to institutional use in its present condition or if rehabilitated.

(3) The consideration for economic hardship shall not include willful or negligent acts by the owner, purchase of the property for substantially more than the market value, failure to perform normal maintenance and repairs, failure to diligently solicit and retain tenants, or failure to provide normal tenant improvements.

(b) *Undue hardship.* An applicant requesting an exemption based on undue hardship must show that the application of the criteria create a situation substantially inadequate to meet the applicant's needs because of specific health and/or safety issues.

(c) *Inability to use.* Three (3) years after denial of a demolition permit approval, if no feasible use or ownership is found for the structure, the owner may request a waiver of all or a part of the restraint of demolition. The historic preservation board will include the following factors in their consideration of the request:

(1) Documented evidence of applications and written correspondence, including written consultations, illustrating efforts made by the property owner to make

necessary repairs, to find an appropriate user, or to find a purchaser for the property, and

(2) The adequacy of the property owner's efforts to locate available assistance for making the property functional without demolition.

(Ord. No. 1991-21, § 8, 1-7-92)

*5-4-24 Compliance with historic design guidelines.* Alterations of structures within legally established historical districts or alterations of designated historic structures shall be completed in compliance with the Design Guidelines for the City of Durango East Third Avenue Historic District dated February 1998, or subsequent amendments thereto, copies of which are on file in the office of the city clerk.

(Ord. No. 1998-11, § 2, 6-16-98)

### **Sec. 5-5. Commercial use design guidelines.**

5-5-1 Adoption of commercial use design guidelines Pursuant to C.R.S., 31-16-201, et seq. (2004), there is hereby adopted for the purpose of regulating and controlling the design of commercial sites, commercial buildings, commercial signage and commercial corridors within the city the "December, 2004 City of Durango Commercial Use Design Guidelines," prepared and published by Winter & Company, 1265 Yellow Pine Avenue, Boulder, Colorado 80304. One (1) copy of such commercial use design guidelines is on file in the office of the city clerk and may be inspected during regular business hours.

5-5-2 Intent of the guidelines. Through the adoption of these guidelines, the city wishes to protect its unique character, which is a combination of spectacular natural features, early building traditions and diverse cultural heritage. In each case, the designated commercial corridors are important places where the character and functional qualities of the area can greatly enhance the community. These corridors also serve as key routes into the core of the city and set expectations for the quality of development in the downtown area. For these reasons, the city seeks to assure that development in the commercial corridors will result in dynamic, attractive neighborhoods and also will reflect the overall goals for high-quality design for the city at large.

The commercial use design guidelines are the outgrowth of existing community design goals and policies which are defined in other official documents of the city. The city guides the character of development through the Land Use and Development Code (Chapter 27 of the Code of Ordinances). Zoning categories and corresponding regulations establish standards for land development, including lot size, setbacks, parking standards and street design. In any case where there is a conflict between the Land Use and Development Code and these guidelines, the development code shall take precedence over the guidelines.

5-5-3 Application of the guidelines. The adopted guidelines address the primary commercial corridors within the City of Durango and, as authorized under an intergovernmental agreement between the City of Durango and La Plata County, in the city's planning area, also known as the urbanizing area. These commercial corridors include U.S. Highway 160/550, U.S. Highway 160/Grandview, Highway 3/Sawmill Road, U.S. Highway 160 West, North Main Avenue, as well as 8th Avenue and College Drive (6th Street). While these designated corridors are a focus of the commercial use design guidelines, all commercial uses will be reviewed and approved as necessary, using the design principles and policies outlined in the commercial use design guidelines.

The commercial use design guidelines shall apply to any improvements, excavation or construction of any commercial building or structure, or the alteration, expansion, conversion or repair of any commercial building or structure. These guidelines shall also apply to any request

for new or modified signage for any building or site that falls within the designated commercial uses. Review shall precede the issuance of a building permit for any such activities.

Review and approval of commercial uses as set forth in the commercial use design guidelines shall be in accordance with the provisions of this article and with section 12-3 of the land use and development code pertaining to the design review board. Review and approval by the design review board shall be required in accordance with section 12-3 unless, in the opinion of the code administrator, the following situations apply:

- (a) The amount of site disturbance is less than ten (10) percent of the site;
- (b) The size of the lot to be developed is less than four thousand (4,000) square feet;
- (c) The amount of new construction is less than ten (10) percent of the overall value of the total improvements on site; or
- (d) Only landscaping or parking improvements are proposed.

In such situations, the code administrator, following submittal of applicable site plans and/or building elevations, and color and material designations, shall approve the proposed improvement prior to the issuance of any required building permit; provided, however, the code administrator shall have the discretionary authority to submit any such application to the design review board for its review and approval prior to the issuance of a building permit.

(Ord. No. O-2005-15, § 1, 4-19-05)

**\*Cross reference(s)**--Zoning districts and zoning map, Ch. 27, Art. 4; overlay zones generally, Ch. 27, § 4-1-8; planned development zone districts, Ch. 27, Art. 6; general development and performance standards, Ch. 27, § 10-1; sign provisions, standards, and procedures, Ch. 27, § 10-3; design review board, Ch. 27, § 12-3.