

## 9.5 DOWNTOWN URBAN DESIGN OVERLAY DISTRICT REGULATIONS

Revised 4.30.26(A)

### 1. Ordinance Purpose.

The purpose of the Downtown Urban Design Overlay District (DUDOD) is to enhance the quality, image, and economic vitality of Downtown Clarksville. Accordingly, to that ends, the DUDOD imposes urban design guidelines to coordinate the physical improvements that will be made to this important geographic area by private entities. Regulations are limited to the most fundamental aspects of new buildings (height, width, setbacks, roof form, and rhythm of façade openings), key design elements of existing buildings (openings, entrances and roof forms), site issues (parking, landscaping, lighting, etc.), and signage. The implementing guidelines exclude work not visible from a public street. Single-family houses are the only category of building type exempt from review.

### 2. Common Design Review Board.

#### 2.1: Composition of the Board

The Common Design Review Board shall consist of eleven (11) members who shall have been bona fide residents of the area of jurisdiction of Montgomery County, being at least twenty-one years of age, for not less than three (3) years immediately prior to appointment and who shall continue to be so eligible as long as they serve. The Board shall be made up of the following:

The seven members of the Clarksville-Montgomery County Regional Historic Zoning Commission (per the City Zoning Ordinance and County Zoning Resolution) consisting of:

- A. A representative of a local patriotic or historical organization;
- B. An architect, if available;
- C. One (1) representative of the Clarksville City Council;
- D. One (1) representative of the Montgomery County Commission;
- E. One (1) representative of the Clarksville-Montgomery County Regional Planning Commission; and
- F. Two members of the general public.

Plus, four members who are not members of the Clarksville-Montgomery County Regional Historic Zoning Commission or the Clarksville-Montgomery County Regional Planning Commission.

Any appointed architect may practice in the public and/or private sectors. However, they must recuse themselves from discussions and voting on any Certificate of Appropriateness (COA) applications for which they may have a conflict of interest.

#### 2.2: Appointment of the Board Members

- A. The appointment of the members of the Common Design Review Board who are not also members of the Clarksville-Montgomery County Regional Historic Zoning Commission is as

follows: The Mayor of the City of Clarksville shall appoint the four members of the general public who reside or conduct business in the City of Clarksville; and the appointments of the Mayor shall be subject to confirmation by the City Council.

### 2.3: Board Member Terms, Compensation, Removal, and Vacancies

CDRB members shall serve five (5) year terms. However, the members appointed initially shall be appointed for staggered terms so that the terms of at least one (1) member, but not more than two (2) members, shall expire each year. The term of the member nominated from the Regional Planning Commission shall be concurrent with their term on the Regional Planning Commission. All members shall serve without compensation, and they may be removed from membership by the appointing authority for just causes. Any member being so removed shall be provided, upon request, a public hearing on the removal decision before the City Council and County Commission. Vacancies on the CDRB shall be filled for the unexpired term of those members whose position has become vacant in the manner herein provided for the appointment of such member. Vacancies shall be filled within sixty (60) days following their removal. The CDRB may adopt rules and regulations consistent with the provisions of this Section.

### 2.4: Powers and Duties of the Board

The CDRB shall have the following powers and duties:

- A. To make recommendations to the City Council on the adjustment of boundaries of the existing Downtown Urban Design Overlay District (DUDOD).
- B. To adopt Design Guidelines, to review applications for Certificates of Appropriateness (COA) based upon those guidelines, and to make decisions on COA applications for proposed reviewable alterations to properties in the DUDOD.
- C. To secure the services of experts in urban design, historic preservation, architecture, landscape architecture, structural engineering, and similar disciplines to assist the CDRB in carrying out its responsibilities in accordance with this ordinance.
- D. To establish reasonable fees to be paid by applicants as part of their COA application.

### 2.5: Election of Officers, Rules and Meetings

The CDRB shall elect from its members its own Chairman and other officers deemed appropriate to carry out its purpose. However, only members of the Common Design Review Board who are also members of the Regional Historic Zoning Commission are eligible for election to the position of chairman and vice chairman. The CDRB shall adopt Rules of Order for conducting meetings and establish regular meeting dates.

### 2.6: Conflict of Interest

Any member of the CDRB who has a direct or indirect interest in any property or COA applicant that is the subject matter of, or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, or proceedings of the CDRB in connection therewith.

### 2.7. Right of Entry Upon Land

The CDRB, its members, employees, and authorized experts, may enter upon any land within its jurisdiction and make examinations and place or remove public notices as required by this section as part of their work. However, there shall be no right of entry into any building without the consent of the owner.

### 2.8. Liability of CDRB Members, Employees and Authorized Experts

Any CDRB member, employee, and authorized expert acting within the powers granted by this section is relieved from all personal liability for any damage and shall be held harmless by the City and County governments. Any suit brought against any CDRB member, employee or authorized expert shall be defended by a legal representative furnished by the City of Clarksville or Montgomery County, until the final termination of the procedure.

### **3. Boundary Revisions to the Downtown Urban Design Overlay District.**

The CDRB may initiate revisions to the boundaries of the DUDOD. Likewise, other entities and individuals may do the same.

#### 3.1: District Boundary Criteria

The DUDOD is a geographically definable area that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects that are united by a cohesive urban character by physical development. Any expansions or contractions of the DUDOD boundaries should conform with those criteria.

#### 3.2: District Boundary Revisions Process

The process for revising zoning districts is described in *Section 11.4: Amendments* of the zoning ordinance. A summary of that detailed process includes the following key elements, including the few deviations for the DUDOD:

- A. *Initiation of the Process:* A proposed change of zoning district boundaries may be initiated by the City Council, the Regional Planning Commission, or by petition of one or more owners or authorized agents of the owner or owners of property within the area proposed to be changed. For the DUDOD, changes to boundaries can also be initiated by the CDRB.
- B. *Scheduling of a Hearing:* Upon receipt of the valid application, the CDRB staff shall schedule a hearing with the CDRB, having first given at least fifteen (15) days notice thereof by one publication in a newspaper of general circulation for the DUDOD map amendment.
- C. *CDRB Hearing:* Any proposed DUDOD map amendment shall first be submitted to and approved by the CDRB. Notice should have been given at least fifteen (15) days prior to the hearing in a newspaper of general circulation.
- D. *Planning Commission Hearing:* Following approval by the CDRB, any proposed DUDOD map amendment shall next be submitted to and approved by the Regional Planning Commission. Notice should have been given at least fifteen (15) days prior to the hearing in a newspaper of general circulation.

*E. City Council Hearing:* If the proposed DUDOD map amendment is disapproved by the Planning Commission, a favorable vote of the majority of the entire membership of the City Council must be secured for the amendment to be approved.

Upon the boundary revisions of the DUDOD, the boundaries shall be shown on the zoning map or on special overlays thereto that are made a part of this ordinance section and may be viewed via the Regional Planning Commission's and the CDRB's readily available information. No structure shall be constructed, altered, repaired, moved, or demolished or signage added in the DUDOD unless the action complies with the requirements set forth in this section. Alterations and repairs to the interiors of buildings are not subject to these requirements, and single-family detached houses are also exempt from review.

3.3: Relationship of the Downtown Urban Design Overlay District (DUDOD) to Zoning  
Zoning districts are considered to be underlying "base districts" and they regulate the most fundamental aspects of land use and development, including permitted and conditional uses, residential densities and non-residential intensities, and building heights and setbacks. The DUDOD is considered to be an "overlay district" in which another layer of regulation applies to the underlying base districts. Where conflicts occur between the requirements of the underlying base zoning district and those of the DUDOD for any given property, the zoning district requirements shall supersede those of the DUDOD in all matters related to land use, density and intensity. Where conflicts exist regarding design issues, including lot widths, building heights, building setbacks, and similar design issues, the requirements of the DUDOD shall supersede those of the underlying base zoning district.

#### **4. Design Guidelines and Design Review.**

##### 4.1: Adoption of Design Guidelines

This ordinance for the DUDOD functions as enabling legislation that addresses the legal and administrative aspects of the district. It intentionally does not include the actual design-related standards to be applied to properties within the district. The CDRB shall approve a separate Design Guidelines document to be utilized in the consideration of applications for a Certificate of Appropriateness (COA). While it is a separate document from this ordinance, the Design Guidelines shall carry the same legal authority as given to other formally adopted zoning and development regulations. Following approval by the CDRB, the Design Guidelines shall be approved and adopted by the Regional Planning Commission.

##### 4.2: Design Review Process

###### *A. Step One - Application*

The first step in undertaking a project in the DUDOD is to submit an application to the Common Design Review Board (CDRB). CDRB staff will provide the applicant with the adopted Design Guidelines. It is recommended that the applicant become familiar with the guidelines prior to planning the project and before the development of any working drawings. The applicant must submit one set of the following documents signed by the applicant that will be retained by the CDRB:

- Copies of the proposed site plan (to an engineering scale) showing all site improvements such as buildings, walls, walks, parking, signs, plant materials, and lighting.
- Completed color exterior building elevations (1/4<sup>th</sup> = 1' architectural scale minimum, although 1/8<sup>th</sup> or 3/16<sup>th</sup> = 1' may be acceptable for larger buildings with staff approval)
- Exterior painting schedule (color name and brand). Painting should not detract from any nearby historic structures.
- Samples of proposed exterior materials (brick, stone, metals, glass, roofing, etc.).
- Color photographs of all sides of the existing building's exterior for remodeling, rehabilitation, or demolition. Photographs shall also show contiguous properties.

#### *B. Step Two – Appearance Before the CDRB*

Regular meeting dates and times, and the deadline for submitting complete applications for each regular meeting, shall be established by the CDRB. The applicant shall appear before the CDRB at a regularly-scheduled meeting to present the application. All meetings of the board shall adhere to the Tennessee Open Meetings Act (TCA sec. 8-44-101, et seq.), and the CDRB will provide an opportunity for public comment. Should the application indicate proposed work that is not governed by this ordinance, the CDRB staff may exempt the application from the provisions of the Design Guidelines. Also, if the application is for proposed work that can be approved administratively by CDRB staff (Minor Work), the applicant will not be required to appear before the CDRB.

#### *C. Step Three – Approval, Conditioned Approval or Disapproval*

After a careful review of the application and presentation, the CDRB will Approve, Conditionally Approve, or Disapprove the application. An Approval requires no changes by the applicant to the submitted application and plans. A Conditional Approval comes with revisions to the submitted application and plans required by the CDRB and agreed upon by the applicant as part of the CDRB approval.

**Approval or Conditioned Approval:** Upon Approval or Conditional Approval of any application, the CDRB shall transmit a report to the City Building Official or the County Building Commissioner stating the basis upon which such approval was made, and cause a Certificate of Appropriateness (COA) to be issued to the applicant. Upon failure of the CDRB to take final action within thirty (30) days after receipt of a complete application, the case shall be deemed approved, except when mutual agreement has been made for an extension of the time limit. When a COA has been issued, a copy shall be transmitted to the City Building Official or the County Building Commissioner who shall inspect the construction or alteration of the exterior approved by such COA, and report to the CDRB any work not in accordance with the COA before issuing a Certificate of Zoning Compliance.

**Disapproval:** In the case of Disapproval of any application, the CDRB shall state the reasons therefore in a written statement to the applicant in terms of design, arrangement, texture, color, material, and the like of the property involved. Notice of such Disapproval and a copy of the written statement of reasons shall also be transmitted to the City Building Official or the County Building Commissioner.

COA approvals expire after three (3) years of being issued.

#### 4.3: Contributing Resources

Contributing resources can include buildings, structures and other features of a property that are considered to be contributing to the overall character and architectural or historic integrity of the DUDOD. Resources not meeting this definition are considered to be Non-Contributing Resources. Details relating to this issue are addressed in the Design Guidelines that supplement this ordinance. However, a typical Contributing Resource is a building that contributes positively to the character and visual continuity of the district. The Design Guidelines are more permissive for Non-Contributing Resources than for Contributing Resources with respect to alterations, removal, demolition or redevelopment so long as the proposed actions do not make the resource even more incompatible with the DUDOD.

#### 4.4: Building Permits

The City Building Official and the County Building Commissioner shall not issue any permit for the construction, reconstruction, alteration, or extension of a building or other structure within the DUDOD, nor shall any other agency issue a permit for the demolition or removal of any building or other structure within said district without first submitting a Certificate of Appropriateness (COA) application with all exterior plans, elevations, and other information necessary to be passed upon by the CDRB. In the case of applications for demolition of a building or structure deemed to be “Contributing” (contributing to the character of the district), plans or other information for the subject property shall be required to be submitted by the applicant. See Section 4.6 below for the approval process for proposed demolitions.

#### 4.5: Proposed Actions Subject to Design Review

It shall be the duty of the CDRB to decide on COA applications for properties within the DUDOD in which the following types of actions are proposed:

- A. Constructing new buildings or structures – review is limited to building heights, widths, setbacks, roof forms, and the rhythm of façade openings
- B. Altering the exterior of any building or structure with respect to its openings, entrances or roof forms
- C. Demolishing a portion or all of a building or structure – a delay may be required per 4.6 below
- D. Installing signs
- E. Making site alterations related to off-street parking areas, drives accessing the property, sidewalks along the public right-of-way, landscaping or lighting

The CDRB shall not review and regulate the interior of buildings or structures, any work not visible from a public street, and work related to single-family detached houses.

#### 4.6: Building Removal or Demolition

In the event an application for removal or demolition of a building or other structure within the DUDOD that has been deemed by the CDRB as “contributing” to the character of the district is submitted or such demolition is required, the governmental agency receiving such request or initiating such action shall transmit a copy thereof to the CDRB. The applicant must submit a

COA application for such proposed action, and the CDRB shall decide upon the application based upon the relevant criteria within the DUDOD Design Guidelines. The CDRB has the authority to delay the action for one hundred and twenty (120) days to identify a buyer (including the CDRB) to save the building or structure.

#### 4.7: Unreasonable Economic Hardship

When a claim of Unreasonable Economic Hardship is made due to the effect of this ordinance, the owner of record must present evidence sufficient to prove that, as a result of the CDRB's action, he is unable to obtain a reasonable return or a reasonable beneficial use.

##### *A. Hardship as an Appeal Process*

The step for addressing an Unreasonable Economic Hardship can only occur after the CDRB has denied approval for a Certificate of Appropriateness (COA). Thus, it is a built-in appeal process that is not based upon the merits of the denied application, but rather solely on the issue of Unreasonable Economic Hardship.

##### *B. Required Property Information*

The owner of record shall submit by affidavit to the CDRB for its review information that shall include, but not be limited to, the following:

- 1) Date the property was acquired by its current owner;
- 2) Price paid for the property (if acquired by purchase) and the relationship (if any) between the buyer and the seller of the property;
- 3) Mortgage history of the property, including the current mortgage, if applicable;
- 4) Current market value of the property;
- 5) Equity in the property (the portion of a property's value that an individual owns outright, free and clear of any debts or liens);
- 6) Past and current income and expense statements for a three (3) year period;
- 7) Past capital expenditures during ownership of current owner;
- 8) Appraisals of the property obtained within the previous three (3) years; and
- 9) Income and property tax factors affecting the property.

The CDRB may require that an applicant furnish additional information relevant to its determination of Unreasonable Economic Hardship. The CDRB may also receive and consider studies and economic analyses from other public agencies and from private organizations relating to the property in question.

##### *C. Decision Process*

Should the CDRB determine that the owner's present return is not reasonable, it must consider whether there are other uses currently allowed that would provide a reasonable return and whether such a return could be obtained through investment in the property for rehabilitation purposes. Should the applicant satisfy the CDRB that he will suffer an Unreasonable Economic Hardship if a COA's disapproval is not reversed, such COA disapproval must be reversed by the CDRB.

#### 4.8: Appeals from CDRB Decisions

Anyone who may be aggrieved by any final order or judgment of the CDRB may have such order or judgment reviewed by a court of competent jurisdiction (circuit or chancery court) by procedure of statutory certiorari as provided for in Tennessee Code Annotated § 27, Chapter 8 (Acts 1982, Ch. 814 and 1;1987, Ch. 40 and 6).

#### 4.9: Public Safety Exclusion

None of the provisions of this ordinance shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the City Building Officials or the Fire Department and where the proposed actions have been declared necessary by such authorities to correct the said condition. However, only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any Contributing Resource located within the DUDOD shall be damaged by fire or other calamity to such an extent that it cannot be repaired and rehabilitated, it may be removed in conformity with normal permit procedures and applicable laws, provided that:

- A. The City Building Officials concur with the property owner that the resource cannot be repaired and restored and so notifies the CDRB in writing.
- B. The CDRB, if in doubt after receiving such notification from the City Building Officials, shall be allowed time to seek outside professional expertise from an independent structural engineer experienced with older buildings before issuing a COA for the demolition. The CDRB may indicate in writing by letter to the City Building Officials that it will require a time period of up to ninety (90) days for this purpose, and, upon such notification to the City Building Officials, this section shall be suspended until the expiration of such a delay period.

#### 4.11: Penalties for Ordinance Violations

In accordance with section 4-601.h of the City's Codes, any person, firm, corporation or agent, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, or who shall erect, construct, alter, demolish or move any structure, or has erected, constructed, altered, repaired, moved or demolished a building or structure in violation of this code shall be prosecuted within the limits provided-by state or local laws. Upon conviction for any violation, any such person shall be subject to a civil fine of up to fifty dollars (\$50.00) per day for each day a violation continues or occurs. Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed or continued.

### **5. Severability.**

#### 5.1: Ordinance Provisions

If any court of competent jurisdiction invalidates any provision of this ordinance, then such judgment shall not affect the validity and continued enforcement of any other provision of this ordinance.

#### 5.2: Ordinance Application

If any court of competent jurisdiction invalidates the application of any provision of this ordinance to a particular property, structure, or situation, then such judgment shall not affect the application of that provision to any other building, structure, or situation not specifically included in that judgment.

5.3: Conditions of Approval

If any court of competent jurisdiction judges invalid any condition attached to the approval of a COA application, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.

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