

Brunswick Code of Ordinances

Chapter 7, Article 1, Title 6, Section 7-1601

Conservation District Ordinance

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Article 1 LEGISLATIVE AUTHORITY

The Mayor and Council of Brunswick, Maryland (“**Mayor & Council**” or “**City**”), derives the authority for this Ordinance through and by virtue of its conformance with the State of Maryland Enabling Act for Historic Area Zoning (Title 8: Historic Preservation, Land Use Article, Annotated Code of Maryland as amended).

As granted by the State of Maryland under the Land Use Article, Annotated Code of Maryland, as amended, and codified in the By-Laws and Procedures of the Brunswick Planning Commission, Section 1, as amended, the Brunswick Planning Commission has the responsibility to review, approve, modify, or deny development within a Conservation District in accordance with this Ordinance. Furthermore, all matters relating to development in a Brunswick Conservation District shall be governed by the procedures and adopted submission schedule as established in the By-Laws and Procedures of the Brunswick Planning Commission, as amended.

Article 2 PURPOSE

The Preservation of Sites, Structures, and districts of historical, archeological, or architectural significance together with their Appurtenances and Environmental Settings is a public purpose in the City. Additionally, as affirmed by the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior and administered by the National Park Service (NPS) and supported by the latest *City of Brunswick NRHP Inventory Nomination Form*, certain properties in the City’s corporate limits along with their settings and appurtenances may claim historic recognition. Therefore, the purpose of this Ordinance is to ensure that development and Character within the Conservation District as hereby established conforms with the guidance found in the *City of Brunswick – Conservation District Design Guidelines* document, as amended by Mayor & Council resolution, hereafter referred to as the “**Design Guidelines.**”

It is the further purpose of this Ordinance to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of the City by preserving Sites, Structures, or Character-Defining Features which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values in and around a Conservation District; to foster civic beauty; and to preserve and promote the Preservation and appreciation of historic Sites, Structures and Character-Defining Features for the education and welfare of the citizens of the City, Frederick County, the State of Maryland, and the United States of America.

Article 3 DEFINITIONS

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them:

- (a) **Addition** The introduction of new floor area to an existing Building or Structure. (See also **New Construction**).
- (b) **Alteration** Any exterior change that would affect the historic, archeological, or architectural significance of a designated Site or Structure, any portion of which is visible

or intended to be visible from a public way, including, but not limited to, construction, Reconstruction, moving, or Demolition but excluding Routine Maintenance.

- (c) **Appurtenances and Environmental Settings** All that space of grounds and Structures thereon which surrounds a designated Site or Structure and to which it relates physically or visually. Appurtenances and Environmental Settings shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, pastures, croplands, waterways, open space, setbacks, parks, public spaces, and rocks.
- (d) **Architectural Feature** Any cornice, canopy, eave, fire escape, unenclosed porch, portico, patio, stoop, terrace, veranda, balcony, bay window, dormer window or other projection from a Structure.
- (e) **Building** Includes, but is not limited to, any Building, Structure, dwelling, excavation, matter, condition or thing in or about the lot on which the Building is situated, and the plumbing, sewage, drainage, light or ventilation thereof.
- (f) **Character** All those visual aspects and physical Character-Defining Features that comprise the appearance of every Historic Property.
- (g) **Character-Defining Feature** The overall shape of the Structure, its materials, craftsmanship, decorative details, interior spaces and features, as well as the various aspects of its site and environment.
- (h) **Conservation District** A significant concentration, linkage, or continuity of Sites, Structures, or objects united historically, architecturally, archeologically, culturally, aesthetically, socially, economically, or politically by plan or physical development. A Conservation District shall include all property within its boundaries as defined and designated by the Mayor & Council. The Conservation District shall be a zoning overlay that shall not alter the existing rights of the property over which it is placed under its current zoning classification except to the extent of required conformance with the Design Guidelines.
- (i) **Contributing Resource** A Building, Structure, Site, district, or object with qualities of historical or architectural interest as designated according to the NRHP.
- (j) **Demolition** The intentional destruction of all or part of a Building, Structure, or Architectural Feature.
- (k) **Demolition by Neglect** Any neglect in the maintenance and repair of an individually designated Landmark, Site, or Structure, or a Site or Structure within a designated Conservation District, not including any Appurtenances and Environmental Settings.
- (l) **Exterior Features** The architectural style, design, and general arrangement of the exterior of a Historic Property, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs, or similar items found on or related to the exterior of a Historic Property.

- (m) **Exterior Renovation or Remodeling** The process of Alteration to Exterior Features that does not expand the footprint of the existing Structure. (See also **Alteration** and **Restoration**).
- (n) **Historic Property** [As defined by NPS,] “Any prehistoric or historic district, Site, Building, Structure, or object included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties.”
- (o) **Historic Site** [As defined by NPS,] “The site of a significant event, prehistoric or historic occupation or activity, or Structure or landscape (extant or vanished), where the site itself possesses historical, cultural, or archeological value apart from the value of any existing structure or landscape” as designated according to the NRHP.
- (p) **In-kind** A material of the same type. In-kind replacement refers to replacing deteriorated building materials with materials of the same size, shape, and appearance.
- (q) **Landmark** Any designated Site or Structure outside the boundaries of a Conservation District that is of exceptional historic, archeological, or architectural significance by itself and is worthy of Rehabilitation, Restoration, and Preservation according to the NRHP.
- (r) **National Park Service (NPS)** [As defined by NPS,] “A bureau within the United States Department of Interior. The NPS preserves unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations.”
- (s) **National Register of Historic Places (NRHP)** [As defined by NPS,] “...the official list of the Nation's historic places worthy of Preservation. Authorized by the National Historic Preservation Act of 1966, the NPS's NRHP is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.”
- (t) **New Construction** The introduction of Buildings, Structures, or new site features to a previously unoccupied land area or Addition to an existing Building or Structure. (See also **Reconstruction**).
- (u) **Non-Contributing Resource** A Building, site, Structure, or object that does not add to the historic significance of a property or district as designated according to the NRHP.
- (v) **Planning and Zoning Staff Report** A report compiled by the Planning Director for use during a Planning Commission meeting. This report may include, but is not limited to, background information, description, review, and analysis of an agenda item topic. The report may also include a consolidated list of all agency opinions and recommendations.
- (w) **Planning Director** Planning and Zoning Administrator or the Director of the Division of Planning for the City, or designee.

- (x) **Preservation** The act or process of applying measures necessary to safeguard and sustain the existing form, integrity, and materials of a Historic Property. Work generally focuses on maintenance and repair of historic materials and Character-Defining Features, rather than extensive replacement and New Construction.
- (y) **Reconstruction** The act or process of depicting, by means of New Construction, the form, Architectural Features, and detailing of a non-surviving Site, landscape, Building, Structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.
- (z) **Rehabilitation** The act or process of returning a property or Structure to usable condition through repair, Alteration, renovation, and/or Preservation of its Character-Defining Features that are significant to its historical, architectural, and cultural values.
- (aa) **Restoration** The act or process of accurately depicting the form, Architectural Features, and Character of a property as it appeared at a particular period of time by means of the removal of Architectural Features from other periods in its history and Reconstruction of missing Architectural Features from the Restoration period.
- (bb) **Routine Maintenance** Ordinary maintenance needed to keep a Building or Structure in good repair; this process should have little material effect on the historic, archeological, or architectural significance of a designated Landmark, Site, Structure, or district.
- (cc) **Stabilization** Work to halt deterioration of a Building by making it weather tight and structurally stable, before extensive Rehabilitation can begin.
- (dd) **Structure** That which is built or constructed, including without limitation Buildings or portion thereof for any occupancy or use whatsoever, fences, signs, billboards, fire escapes, stairways, chute escapes, railings, water tanks, towers, open grade steps, sidewalk tents or anything erected and framed of component parts which is fastened, anchored or rests on a permanent foundation or on the ground. A combination of material to form a construction that is stable.
- (ee) **Subject Matter Expert** A qualified person, person(s), or firm appointed by Mayor & Council as a consultant to review Zoning Certificate application packages for work proposed in a Conservation District. The Subject Matter Expert must have an educational and professional background in historic Preservation or a related field including but not limited to archeology. Outside agency Subject Matter Experts may include, but are not limited to, the Maryland Historical Trust and the Frederick County Department of Development Review & Planning – Historical Preservation Office.
- (ff) **Taking** [As defined by Merriam-Webster,] “A seizure of private property or a substantial deprivation of the right to its free use or enjoyment that is caused by government action and especially by the exercise of eminent domain and for which just compensation to the owner must be given according to the Fifth Amendment to the U.S. Constitution.”

(gg) **Zoning Certificate** A written statement issued by the Zoning Administrator or an authorized representative authorizing the construction, Reconstruction, or Alteration of Buildings or Structures, or a change of use consistent with the terms of this Ordinance and for the purpose of carrying out and enforcing its provisions.

Article 4 DESIGNATION OF CONSERVATION DISTRICT OVERLAY

The Mayor & Council hereby establish and create the Conservation District Overlay. The Mayor and Council may designate boundaries for landmarks, Sites, Structures, or districts which are deemed to be of historic, archeological, or architectural significance for inclusion within the Conservation District Overlay following a duly advertised public hearing. The Mayor & Council shall consider the purpose of the Conservation District, the applicable elements of the Comprehensive Plan, the recommendation of City Staff and the Planning Commission and any other planning, aesthetic, economic, public health, safety and welfare issues in its decision as to the designation for the Conservation District Overlay. The boundaries of the Conservation District Overlay shall be reflected on the Conservation District Boundary Map but does not constitute a change in the underlying zoning designation of the affected property or structures and therefore the requirements for the approval of an individual zoning map amendment under Article 25 of the City Zoning Ordinance are not applicable to the Conservation District Overlay. A request for the Conservation District Overlay may be initiated by resolution of the Mayor & Council or Planning Commission.

Section 4.1. Designation Procedure

The Planning Commission may, after making full and reasonable study and in consideration of the *City of Brunswick NRHP Inventory Nomination Form*, recommend to the Mayor & Council after a duly advertised public hearing, appropriate areas within the City's corporate limits for designation as a Landmark, Historic Site, Structure, or district and inclusion within the Conservation District Overlay. The Planning Commission may also recommend boundaries for such landmarks, sites, structures or districts to be incorporated into the Conservation District Overlay. The Planning Commission's recommendations shall be submitted to the Mayor & Council. The Mayor & Council may approve, approve with modification(s), or disapprove the proposed designation of the Conservation District Overlay without further recommendation from the Planning Commission.

Article 5 PROJECT REVIEW AND DECISION

Section 5.1. Planning Director Review and Decision within Conservation District Overlay

The Planning Director may review and provide a decision on proposed Exterior Renovation or Remodeling projects that do not expand the existing footprint of the Structure, qualify as an In-Kind replacement, and/or clearly follow the Design Guidelines. New Construction (including Reconstruction), Addition, and Demolition projects require Planning Commission review and decision (see Section 5.2). Projects receiving historic review and approval through Federal/State grant or other programs are considered to be in alignment with Design Guidelines and not subject to the Design Guideline review process. However, applicants must still obtain a City Zoning Certificate prior to conducting work.

Section 5.2. Planning Commission Review and Decision within Conservation District Overlay

New Construction, Reconstruction, Additions, and Demolition projects proposed within a Conservation District are subject to Planning Commission decision according to the Design Guidelines, *City of Brunswick NRHP Inventory Nomination Form*, and a Planning and Zoning Staff Report, which incorporates Subject Matter Expert recommendations (as described in Section 5.2).

Projects receiving historic review through Federal/State grant or other programs are considered to be in alignment with Design Guidelines and not subject to the Design Guideline review process. However, applicants must still obtain a Zoning Certificate prior to conducting work. This exemption applies only to design considerations and does not exempt the project from standard Planning Commission Site Plan review for eligible residential and non-residential development.

Section 5.3. Outside Agency Review of Appropriateness

During any phase of the review process, the Planning Commission and/or Planning Director will utilize Subject Matter Experts to make an analysis of and a recommendation concerning the Preservation of Sites, Structures, or districts of historic, archeological, architectural, or cultural significance within the Conservation District. Such recommendations and reports may also include validating the appropriateness of proposed design treatments or characteristics or suggesting alternatives to design selections for New Construction, Reconstructions, Additions, Demolitions, or Exterior Renovation projects. This review of appropriateness is primarily based on the *City of Brunswick NRHP Inventory Nomination Form* as well as the Design Guidelines, both available for review at Brunswick City Hall or the Planning and Zoning Office. The outside agency reviewer will submit a report of their recommendations to the Planning Director to incorporate into the Planning and Zoning Staff Report and recommendation to the Planning Commission.

Article 6 APPLICATION AND REVIEW BY PROJECT TYPE

The application and review process determines the appropriate level of analysis and ensures alignment with the Design Guidelines.

Before the construction, Alteration, Reconstruction, moving, or Demolition of a Building or Structure within a Conservation District occurs; or if an exterior Alteration is involved which would affect the historic, archeological, or architectural significance or Character of a Building or Structure within a Conservation District—specifically, any portion of the Building or Structure visible or intended to be visible from a public way—the person, individual, firm, or corporation proposing to make the construction or change shall file a Zoning Certificate application with the Planning Director. The applicant must declare the project as occurring within a Conservation District on the Zoning Certificate application form.

Depending on project type, details, and considering the degree of Design Guideline alignment, project review and decisions are designated to the Planning Director and the Planning Commission, along with outside agency and Subject Matter Expert review assistance, as previously described in Section 5.2. An application that is substantially similar to a rejected application shall not be resubmitted within a period of one (1) year after the rejection. The review and decision process details are described hereinafter.

As described in Article 5 of this Ordinance, projects receiving historic review and approval under State or Federal grant programs are not subject to City of Brunswick Design Guideline review. However, applicants must still obtain a Zoning Certificate prior to conducting work. This exemption applies only to design considerations and does not exempt the project from standard Planning Commission Site Plan review for eligible residential and non-residential development.

Section 6.1. Routine Maintenance Projects

All proposed projects located within a Conservation District must first consult with the Planning Director. Projects identified as Routine Maintenance do not require further design review and may be approved for work by the Planning Director. If the following project types should have no material effect on the historic, archeological, or architectural significance of a designated Landmark, Site, Structure, or district they may be deemed "Routine Maintenance":

- (a) Exterior paint color
- (b) Painting exterior surfaces that are already painted
- (c) Maintenance that does not alter the exterior fabric or Character-Defining Features of the Structure, such as caulking, rust removal, replacing broken glass In-Kind, and repairing gutters or downspouts
- (d) Interior work that does not change the layout of the Building or Structure (such as painting or installing floor coverings (e.g. carpet or tile))
- (e) Replacement of non-original exterior materials with In-Kind materials

Notwithstanding that subsections (d) and (e) immediately above may not require further design review according to Conservation District Design Guidelines, these projects may require a standard Zoning Certificate and/or Frederick County permit prior to conducting work.

Section 6.2. Exterior Renovation or Remodeling

Exterior Renovation projects may be reviewed by the Planning Director. If in the opinion or determination of the Planning Director the proposed project details align with the Design Guidelines, the project may be approved without Subject Matter Expert review. For applications where alignment cannot be determined or an interpretation of the Design Guidelines is required, the Planning Director may consult with outside agencies and Subject Matter Experts for recommendations. After receipt and due consideration, the Planning Director will respond to the applicant with written comments and recommendations for changes to the application that will render it in alignment with the Design Guidelines. The applicant will then have the opportunity to revise the application according to these recommendations and receive project approval. If the applicant elects not to accept such recommendations and change its application accordingly, the application will be rejected by the Planning Director by written notice to the applicant. The applicant can either withdraw the application or submit an appeal through the Mayor & Council (see Article 8).

The failure of the Planning Director to act upon a completed application within thirty (30) days from the date the completed application was filed shall be deemed to constitute automatic approval of the application for the proposed project unless an extension of this thirty-day (30-day) period is agreed upon mutually by the applicant and Planning Director or the application has been withdrawn. Refer to Appendix A for the Exterior Renovation review process flow chart.

(a) Exterior Renovation or Remodeling Application Package Requirements

In addition to standard Zoning Certificate package requirements, applicants proposing Exterior Renovation or Remodeling to existing Structures in a Conservation District must include the following items in the project description or by attachment:

- i. A list and examples (images or samples) of proposed materials and/or finishes
- ii. A sketch of the Building or Structure elevation showing the proposed modification
- iii. Applicable Design Guidelines section citation referencing materials or application to be used

Section 6.3. New Construction or Additions

All New Construction, Reconstruction, and Building Addition projects proposed in a Conservation District will follow the current approved sixty-day (60-day) Planning Commission submittal and review schedule, as adopted annually.

The Planning Commission shall file with the Planning Director a decision certifying its approval, modification, or rejection of each application and plans submitted to it for review. The applicant may not seek County Building permits on any project until a recommendation for approval (or conditional approval) has been filed and Zoning Certificate for development in a Conservation District has been issued. The applicant may appeal a rejection decision through the Mayor & Council as described in Article 8. See Appendix B for the New Construction/Addition review process flow chart.

(a) New Construction/Addition Site Plan Package Requirements

In addition to standard Zoning Certificate and site plan package requirements, applicants proposing New Construction or an Addition in a Conservation District must include the following items in the project description or by attachment:

- i. List of adjacent or nearby Buildings used for material and Building Character design inspiration
- ii. Applicable Design Guidelines section citation referencing materials or application to be used
- iii. Color rendering of the proposed Building(s)
- iv. Building/façade materials list

- v. Detailed sketch of the proposed and existing features on the site, with Architectural Features identified

Section 6.4. Demolition

Demolition, while not prohibited, is an irreversible action and requires careful review to evaluate viable alternatives. Demolition proposals are subject to Planning Commission review. The conditions for Demolition and respective review process are described below and illustrated in Appendix C.

(a) Conditions for Demolition in a Conservation District

The Planning Commission will not consider Demolition of Structures in the District unless one (or more) of the following conditions apply:

- i. Structural failure has been clearly demonstrated by the presentation of sufficient documentation by a third-party engineer or architect.
- ii. The safety of the public requires that the Building be demolished.
- iii. Feasible alternatives to Demolition have been explored by the owner, including Rehabilitation, Stabilization, repair and the sale of the property to an owner who is able to undertake Rehabilitation.
- iv. An economic hardship exists which prevents the owner from rehabilitating or selling the property. (See Article 7 Economic Hardship for guidance).
- v. The Building or Architectural Feature does not contribute to the Character of the District because of its age or the degree to which it has been altered according to the NRHP.
- vi. Demolition by Neglect will not be considered or approved.

(b) Demolition Review Process

Demolition proposals meeting conditions above may apply for a Zoning Certificate to demolish a Building or Structure in a Conservation District. All Building or Structure Demolition projects proposed in a Conservation District will follow the current approved sixty-day (60-day) Planning Commission submittal and review schedule, as adopted annually.

The Planning Commission shall file with the Planning Director a decision certifying its approval, modification, or rejection of each application and plans submitted to it for review. The applicant may not seek County Building permits on any project until an approval (or conditional approval pending a Site Plan) has been filed and a Zoning Certificate for development in a Conservation District has been issued. Approved Demolition permits must be accompanied by a Site Plan depicting the final state of the disturbed parcel. Even if the parcel or lot is to remain as open space, a Site Plan that complies with the Design Guidelines is required.

The applicant may appeal a rejection decision through the Mayor & Council as described in Article 8. See Appendix C for the Demolition in a Conservation District review process flow chart.

(c) Demolition Application Package Requirements

In addition to standard Zoning Certificate package requirements, applicants proposing Demolition in a Conservation District must include the following items in the project description or by attachment:

- i. Citation of the applicable condition allowing Demolition as listed in Section 6.4.a.i-vi
- ii. Certificate of Insurance naming the City and adjacent property owners as additional insured
- iii. Property appraisal
- iv. Project alternatives analysis
- v. Conceptual Site Plan depicting existing and final site conditions following Demolition

Article 7 ECONOMIC HARDSHIP

Upon the request of an applicant and with the submission of a complete Zoning Certificate application, the Planning Commission will consider if economic hardship is justification for the approval of Alteration or Demolition of a Contributing Resource or Structure in a Conservation District. Economic hardship is a legal term with considerations related to the level of Rehabilitation of a particular resource being infeasible to the point that it equates to is a “Taking” by a governmental authority. Economic hardship is not related to the personal finances or wealth of the applicant or owner, nor is it applicable when a property has been willfully neglected. An applicant requesting an exception based on economic hardship must provide substantial structural and financial information to demonstrate the claim. Application requirements for this request are outlined in the following section.

Section 7.1. Evidentiary Checklist

The following checklist, as applicable, will be utilized by the Planning Commission when considering economic hardship claims:

- (a) Statement of why economic hardship is being claimed and form of ownership of the property.
- (a) Cost of the proposed Demolition or removal. (Bona fide third party estimates required from Maryland licensed contractors).
- (b) A report from an engineer licensed in the State of Maryland addressing the structural soundness of the Structure and its potential for Rehabilitation. Any dangerous conditions must be identified.
- (c) An appraisal of the fair market value of the property as determined by a qualified expert appraiser who regularly conducts fair market value appraisals for residential (only if a

residential property Structure is involved) and non-residential property in Frederick County, Maryland.

- (d) Most recent assessed value of the property and real estate taxes.
- (e) An itemized breakdown from an architect or contractor experienced in Rehabilitation regarding the economic feasibility of Rehabilitation of the Building or Structure proposed for Demolition.
- (f) Amount paid for the property, the date of purchase, and the party from whom it was purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased, any items of financing between the seller and buyer, the remaining balance on any mortgage, deed of trust or other financing instrument secured by the property and the annual debt service for the financing, if any, for the previous two years.
- (g) If the property is income-producing, the annual gross income from the property for the previous two years; the itemized operating and maintenance expenses for the past two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
- (h) Price asked and offers received, if any, within the previous two years.

Article 8 APPEALS

In the event that any party is aggrieved by a written decision of the Planning Commission or Planning Director, said party has the right of appeal to the Mayor & Council. Appeal requests must be in writing and addressed to the City Administrator. Requests must be received within twenty (20) days from the date of the written decision of the Planning Commission or Planning Director.

Article 9 VIOLATIONS

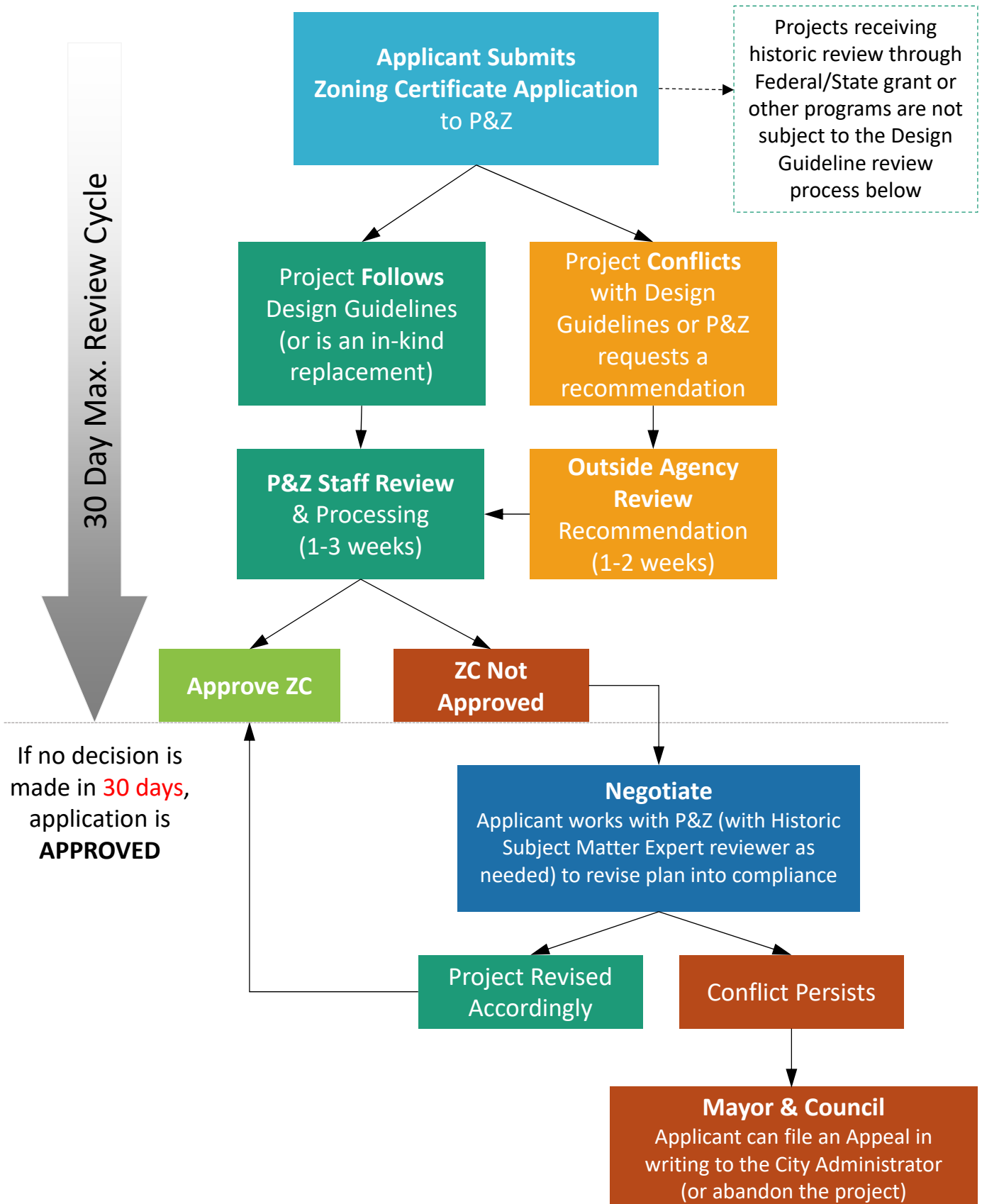
Any person(s) who violate(s) the provisions of this article by willfully performing or allowing to be performed any work without first obtaining a Zoning Certificate, failing to comply with any final notice issued pursuant to this article, or disregarding a decision of the Planning Commission will be in violation of this Article. A violation of this Article shall be deemed a civil zoning infraction as stated in Article 6 of the Brunswick Zoning Ordinance, resulting in applicable enforcement procedures.

Article 10 SEVERABILITY

If any provisions of this Article or the application thereof to any person(s) or circumstances are held invalid for any reason, such invalidity shall not affect the other provisions of any other application of this article which can be given effect without the invalid provisions or application, and to this end, all the provisions of this article are hereby declared to be severable.

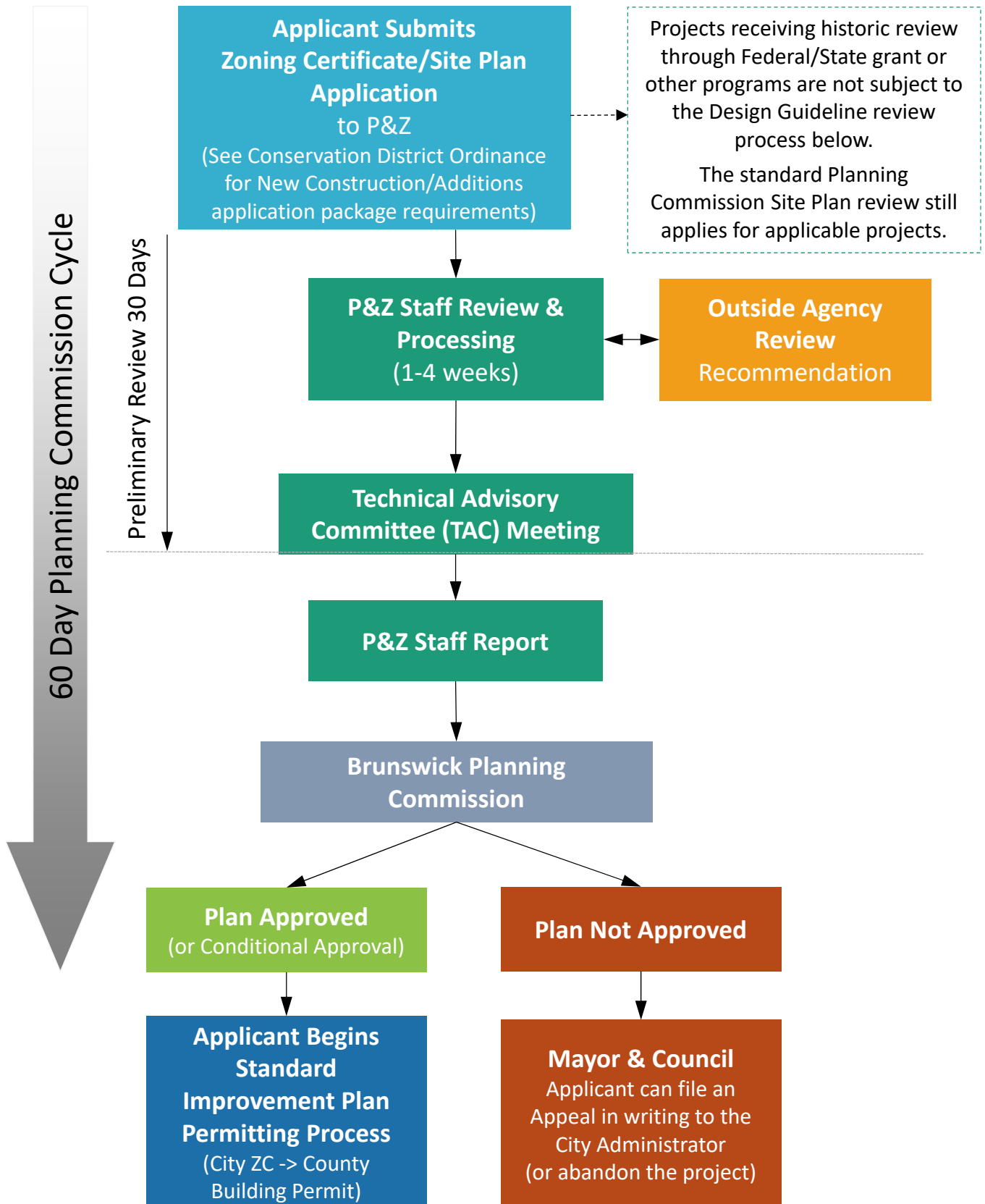
APPENDIX A

Exterior Renovation of Existing Structure in the Conservation District



APPENDIX B

New Construction/Additions in the Conservation District



APPENDIX C

Demolition in the Conservation District

(Typically accompanied by a Site Plan for Construction)

