

**ARTICLE 27  
PROPOSED AMENDMENTS**

**DOWNTOWN AREA DESIGN EXCELLENCE BOARD ~~{COURTHOUSE AREA DESIGN OVERLAY ZONE}~~**

**27-1 INTENT** - The intent of the Downtown Area Design Excellence Board ~~{Courthouse Area Design Overlay Zone}~~ is to encourage growth and redevelopment in the downtown area, while preserving and protecting the unique features and characteristics of the area in conformity with the Comprehensive Plan and the design standards and guidelines for the Downtown ~~{Courthouse Area}~~ Area adopted by the Lexington-Fayette Urban County Council.

**27-2 APPLICATION OF REGULATIONS** - The classifications and regulations hereunder shall be established in addition to the zone classifications and regulations for the B-2, B-2A, and B-2B zones as provided under Article 8 herein. ~~{as shown on the zoning map atlas for the subject areas. Except as provided herein below, the use, dimensions and other requirements for said zones, as provided in the Zoning Ordinance, shall apply. Where there are conflicts between the procedures and regulations within the Zoning Ordinance, the more restrictive shall apply.}~~

**27-3 DEFINITIONS** - As used in this Article, the following terms shall mean:

**AUTHORIZATION PERMIT** - A document which certifies the findings of the Board or the Design Excellence ~~{Review}~~ Officer that the work proposed by the applicant is appropriate. The Authorization shall also delineate any conditions imposed by the Board or Officer in approving the request. In order to grant an Authorization, the Board or Officer shall consider all circumstances related to the proposal, and may grant the Authorization if it finds that the proposed changes are consistent with the adopted Downtown ~~{Courthouse}~~ Area Design Excellence Standards and Guidelines.

**BOARD** - The Downtown ~~{Courthouse}~~ Area Design Excellence ~~{Review}~~ Board of the Lexington-Fayette Urban County Government.

**DEMOLITION** - Any act that destroys, in whole or in part, a building or structure; or which results in the moving of any building or structure.

**DESIGN EXCELLENCE ~~{REVIEW}~~ OFFICER** - The employee of the Lexington-Fayette Urban County Government assigned ~~{by the Chief Administrative Officer}~~ to carry out the duties and functions of the officer as defined herein. This individual shall ~~{demonstrate expertise and/or}~~ have a professional degree in architecture, design, or a similar field so as to be qualified to carry out such duties. The term "officer" when used in this Article refers to the Design Excellence ~~{Review}~~ Officer.

**EXTERIOR CHANGE** - Rehabilitation or replacement which is not ordinary maintenance and repair. New construction of any building element, addition, building or structure is an exterior change. Demolition of any building element, addition, building or structure is an exterior change.

(1) **EXTERIOR CHANGE** includes, but is not limited to:

(a) **MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF BUILDING ELEMENTS.**

- (1) Rehabilitating large amounts of existing building elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Rehabilitating/replacing existing building elements when changes are made in materials, style or configuration;
- (3) Installing new building elements;
- (4) Replacing missing building elements and/or materials;

- (5) Painting a structure or material not previously painted;
- (6) Removing paint from a material previously painted.

(b) **MAJOR REHABILITATION, REPLACEMENT AND INSTALLATION OF SITE ELEMENTS**

- (1) Rehabilitating large amounts of existing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Rehabilitating or replacing existing site elements when changes are made in materials, style or configuration;
- (3) Installing new site elements;
- (4) Replacing missing site elements or materials;
- (5) Painting a site element not previously painted;
- (6) Removing paint from a site element which has been painted;
- (7) Removing trees with trunks more than 10" in diameter;
- (8) Major landscaping projects, including installation, relocation or redesign of new or existing site elements;
- (9) Disturbing fields, archaeological and other land features by demolition or new construction on sites.

**ORDINARY MAINTENANCE AND REPAIR** - The correction of minor deterioration to site and building elements and structures when changes are made with the same materials with the same size, shape, configuration, style, texture and material color.

- (1) **ORDINARY MAINTENANCE AND REPAIR** includes the following activities:

(a) **ROUTINE MAINTENANCE AND REPAIR OF BUILDING ELEMENTS**

- (1) Repairing small amounts of existing building materials and elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Painting a structure or material that is already painted;
- (3) Caulking and weather stripping windows and doors.

(b) **ROUTINE MAINTENANCE, REPAIR AND INSTALLATION OF SITE ELEMENTS**

- (1) Repairing site elements when repairs are made with materials of the same size, shape, style, configuration, texture and material color;
- (2) Pruning trees and shrubbery and removal of trees less than 10" in diameter;
- (3) Planting vegetable and flower gardens, except as part of a major landscaping plan;
- (4) Planting shrubs and trees, except as part of a major landscaping plan;
- (5) Installing temporary signs (real estate, political, etc.);

- (6) Installing building numbers and mailboxes.

#### 27-4 DOWNTOWN ~~{COURTHOUSE}~~ AREA DESIGN EXCELLENCE ~~{REVIEW}~~ BOARD

**27-4(a) ESTABLISHMENT** - The Downtown ~~{Courthouse}~~ Area Design Excellence Board ~~{Review Commission}~~ is established to review and decide applications in compliance with the provisions of this Article.

**27-4(b) MEMBERSHIP** – The Downtown ~~{Court House}~~ Area Design Excellence Board shall consist of seven (7) ~~{five (5)}~~ voting members, including the Chair ~~{Chairman}~~, appointed by the Mayor and approved by Council. The Board shall:

- (1) Include only members who are residents of Fayette County;
- (2) Have at least three (3) members that are design-related professionals: one (1) shall be an architect, one (1) shall be a landscape architect, and the other design professional could include the professions of architecture, historic preservation, urban design or related disciplines such as urban planning or landscape architecture.
- (3) One (1) member that is a resident within a B-2, B-2A or B-2B zoning category;
- (4) One (1) member that is a business owner within a B-2, B-2A or B-2B zoning category;
- (5) One (1) member that is a real estate agent or broker or developer within a B-2, B-2A, OR B-2B zoning category; and
- (6) One (1) citizen-at-large.

~~{All members must be residents of Fayette County. At least two (2) of the five (5) members shall be design or preservation-related professionals. These include the professions of architecture, history, archaeology, architectural history, historic preservation, urban design or related disciplines such as urban planning or landscape architecture. One (1) member shall be an employee of the Lexington Fayette urban County Government who is not the Design Review Officer; one (1) member shall be a representative of the banking or financial community; and one (1) member shall be a property or business owner within the Court House Area overlay Zoning District.}~~

When the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board reviews an issue, and that field is not represented on the Downtown ~~{Courthouse}~~ Area Design Excellence ~~{Review}~~ Board, the Downtown ~~{Courthouse}~~ Area Design Excellence ~~{Review}~~ Board may ~~{shall}~~ seek expert advice before rendering its decision.

**27-4(c) ETHICS** - The Downtown ~~{Courthouse}~~ Area Design Excellence ~~{Review}~~ Board shall prepare and keep on file, available for public inspection, the members' qualifications. Article 16, the Code of Ethics of the Lexington-Fayette Urban County Government Charter, shall apply to members of the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board.

**27-4(d) OFFICERS** - The Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall annually elect one (1) of its members to be Chair ~~{chairman}~~ and one (1) of its members to be Vice-Chair ~~{Vice Chairman}~~. The Secretary of the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall be the Design Excellence ~~{Review}~~ Officer, who shall also serve as a non-voting member of the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board.

**27-4(e) LENGTH OF TERM** - The terms of Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board members shall be as follows:

- (1) Members shall serve a term of four (4) years~~{, except that the membership of those representing particular organizations or offices shall be deemed to have terminated upon their leaving their respective memberships or positions}.~~

- (2) Terms shall be staggered in such manner to allow the appointment or reappointment of at least one-half of the membership every two (2) years.
- (3) Term of membership shall extend from July 1 of one year through and until June 30 of the designated year.
- (4) Vacancies, when they occur during a term of office, shall be filled for the unexpired term in the manner prescribed for original appointment.
- (5) Members may serve consecutive terms but must go through the reappointment process to do so. The maximum length of membership shall be two terms, or eight years, whichever is longer.
- (6) Any member may be removed from office by a majority of the Council of the Lexington-Fayette Urban County Government.

**27-4(f) COMPENSATION** - The members shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties, subject to sufficient funds being appropriated by the Lexington-Fayette Urban County Council for this purpose.

**27-4(g) BYLAWS** - The Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall adopt bylaws for the transaction of its business and the transactions of the business of all of its sub-committees.

- (1) MEETINGS - ~~At least one (1) meeting shall be held each month, and special meetings called, as provided in KRS 61.825. {Regular meetings shall be held and special meetings may be held as specified in the bylaws.}~~ Minutes of all meetings and records of all proceedings, including the number of votes for and against each question and the record of the vote of each member, shall be kept and made available for public inspection.
- (2) ANNUAL REPORT - The Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall prepare a written annual report, which shall be kept and made available for public inspection.
- (3) QUORUM - A simple majority of the total membership of the Downtown ~~{Courthouse}~~ Area Design Excellence ~~{Review}~~ Board shall constitute a quorum for the transaction of business. ~~{The chair man votes only in case of a tie.}~~
- (4) ATTENDANCE - Each member shall be required to attend meetings regularly as defined in the bylaws. Failure to do so may result in removal from the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board.

~~{The Court House Area Design Review Board shall have the power to establish sub-committees as it deems necessary, from both within and without its membership, and to receive assistance in its work from outside individuals, groups and organizations. The Court House Area Design Review Board may give special recognition to outside individuals, groups and organizations.}~~

**27-4(h) JURISDICTION** - The jurisdiction of the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall include all necessary and implied powers as shall be described herein with respect to the regulation of the B-2, B-2A or B-2B Zones ~~{Court House Area Overlay Zone}~~.

**27-4(i) POWERS AND DUTIES** - In addition to such other powers, duties and authorities as are set forth in this Article, the Downtown ~~{Court House}~~ Area Design Excellence ~~{Review}~~ Board shall, in order to accomplish the purpose of this Article, perform duties that include, but are not limited to, the following:

- (1) Review and decide applications for Authorization Permits as provided herein below.
- (2) Periodically review the adopted design standards and guidelines and make recommendations to the Urban County Council for changes to design standards and guidelines.

- (3) Cooperate with and advise the Lexington- Fayette Urban County Council and other government agencies, departments, commissions and offices with regard to such matters as may be appropriate with respect to the Downtown Area.
- (4) Form sub-committees as necessary from both within and without its membership, and to receive assistance in its work from outside individuals, groups and organizations. The Downtown Area Design Excellence Board may give special recognition to outside individuals, groups and organizations.
- (1) ~~Present to the Lexington Fayette Urban County Council and the Planning Commission annually a report containing (i) a statement of goals and objectives for the county for the next ensuing five year period; (ii) any financial records pertaining to the Court House Area Design Review Board's operation.~~
- (2) ~~Cooperate with and advise the Lexington Fayette Urban County Council and other government agencies, departments, commissions and offices with regard to such matters as may be appropriate with respect to the Court House Area.~~
- (3) ~~Form sub-committees as necessary.~~
- (4) ~~Establish criteria for which applications may be acted upon by the Design Review Officer, and which cases require both a preliminary and final review by the Board.~~
- (5) ~~Review and decide applications for Authorization Permits as provided herein below.~~
- (6) ~~Periodically review the adopted design guidelines and make recommendations to the Urban County Council for changes to design guidelines.~~

~~[27-5] DESIGNATION OF THE COURT HOUSE AREA DESIGN ZONE (CA) — To further the goals and purposes of this Article and the preservation, protection, perpetuation and use of the Court House Area, the Urban County Council shall have the authority to designate properties protected by a zoning overlay district to be known as the CA zone. The procedures to establish such zoning shall comply with all applicable state statutes and requirements contained in this Zoning Ordinance for the creation of a zoning district as a zoning map amendment.]~~

#### **27-5 ~~[27-6]~~ AUTHORIZATION PERMITS**

~~{An Authorization Permit shall be required before a person may undertake any exterior changes on a property or structure within a zone protected by a CA overlay. Ordinary maintenance and repair as defined under Article 27-3(f) may be undertaken without an Authorization Permit, provided that the work involves repairs to existing features of a building or the replacement of elements of a building with identical pieces, and provided that the work does not change the exterior appearance of the building.}~~

**27-5(a) ~~[27-6(a)]~~ WHERE REQUIRED** – An Authorization Permit shall be required prior to the initiation of any new construction on; any exterior change to; ~~{or}~~ the demolition of all, or any part of, any building, structure or sign; the construction of any drive-thru or drop-off; on any premises in a B-2, B-2A or B-2B zone ~~{protected by a CA overlay}~~. Ordinary maintenance and repair as defined under Article 27-3 may be undertaken without an Authorization Permit, provided that the work involves repairs to existing features of a building or the replacement of elements of a building with identical pieces, and provided that the work does not change the exterior appearance of the building. In no case shall an Authorization Permit be required to change the paint color of a previously painted surface.

~~[27-6(b)] PROCEDURES FOR ISSUANCE OF AN AUTHORIZATION PERMIT FOR EXTERIOR CHANGES AND NEW CONSTRUCTION — Authorization Permits specified herein below.~~

~~[27-6(b)(1)] AUTHORIZATION PERMITS ISSUED BY THE BOARD — All application for Authorization Permits shall be reviewed by the Board at a public hearing, except those applications for work which have been specifically delegated to the~~

~~Design Review Officer under 27-6(b)(2).~~

~~[In addition, the Board shall review all applications for Authorizations referred by the Design Review Officer or those requested for public hearing by the applicant.]~~

~~(Note: This existing sub-section is moved to later in the document. See Article 25-5(c) below.)~~

**27-5(b) STAFF REVIEW OF SMALL SCALE REHABILITATION, ADDITIONS, NEW CONSTRUCTION AND DEMOLITION PROJECTS**

~~[27-6(b)(2) AUTHORIZATIONS ISSUED BY THE DESIGN REVIEW OFFICER—An Authorization issued by the Design Review officer is intended to expedite approval of routine applications for exterior changes without full hearing and action by the Board.]~~ The application for an Authorization Permit shall be reviewed by the Design Excellence Officer for the following issues unless the Officer refers the matter to the Board or the applicant requests Board review.

- (1) **Rehabilitations** - the minimum square footage of the existing building is less than 10,000 square feet and the building has not been designated outstanding or significant by the Downtown Building Inventory; and the modification of the exterior is less than 50% of the existing building.
- (2) **Additions** - the minimum square footage of the existing building is less than 10,000 square feet and the building has not been designated outstanding or significant by the Downtown Building Inventory; and the addition is less than 25% of the square footage of the existing building.
- (3) **New Construction** - the development site size is less than .75 acres, the building footprint is less than 30,000 square feet, or the building height is less than 96 feet or eight stories (whichever is greater).
- (4) **Demolitions** - the building has not been designated outstanding or significant by the Downtown Building Inventory and the demolition is less than 25% of the existing principle structure or is an accessory structure.

The Board may also review and delegate additional items to the responsibility of the Design Excellence ~~[Review]~~ Officer for review and issuance of Authorization Permits. The delegation of these items shall be reviewed by the Board at a public hearing and recorded in the minutes of the Board.

The procedure to obtain an Authorization Permit is specified herein below.

~~[27-6(b)(2)(a) — PROCEDURES FOR ISSUANCE OF AN AUTHORIZATION BY THE DESIGN REVIEW OFFICER]~~ *(Note: delete section heading only)*

- ~~(1)~~ (a) **FILING** – Depending on the scope of work of the project, the Design Excellence Officer shall require the submission of any or all of the following: application and proposal summary, site analysis, site plan, floor plans(s), elevations, sections, and renderings. [The applicant shall file sufficient information as to accurately depict the location, design and scope of the work to be done.] The Officer shall review the information and promptly notify the applicant if the material is not adequate for review and advise the applicant what specific information will be required.
- ~~(2)~~ (b) **REVIEW** - The Officer shall review the application for compliance with the adopted standards and guidelines and consult with other Divisions, as appropriate, to ensure proper review. Upon determination that all requirements of the standards and guidelines have been met and that the application complies with the requirements of the Board, the Design Excellence ~~[Review]~~ Officer shall approve the application and issue the Authorization Permit. If any question arises as to compliance, or if the Design Excellence ~~[Review]~~ Officer or applicant feels that the application raises issues deserving review by the full Board, the application shall be referred to the Board for action.
- ~~(3)~~ (c) **AUTHORIZATION PERMIT ISSUANCE** - Upon approval by the Design Excellence ~~[Review]~~ Officer, the Officer shall issue the Authorization Permit and notify the applicant. In addition, the Officer shall forward a copy of the Authorization and application materials to the Division of Building Inspection.

**27-5(c) BOARD REVIEW OF LARGE SCALE REHABILITATIONS, ADDITIONS, NEW CONSTRUCTION, DRIVE-THRU, DROP-OFFS, AND DEMOLITIONS -**

The application for Authorization Permit shall be reviewed by the Board at a public hearing if:

- (1) **Rehabilitations** - the minimum square footage of the existing building is 10,000 square feet or greater or the building has been designated outstanding or significant by the Downtown Building Inventory; and the modification of the exterior is 50% or greater of the existing building; or
- (2) **Additions** - the minimum square footage of the existing building is 10,000 square feet or greater or the building has been designated outstanding or significant by the Downtown Building Inventory; and the addition is 25% or greater of the square footage of the existing building; or
- (3) **New Construction** - the development site size is .75 acres or greater, the building footprint is 30,000 square feet or greater, or the building height is 96 feet or eight stories or more (whichever is greater); or
- (4) **Demolition** - the building has been designated outstanding or significant by the Downtown Building Inventory or the demolition is 25% or more of the existing principle structure;
- (5) The plan contains a drive-thru or drop-off; or
- (6) The matter has been referred to the Board by the Design Excellence Officer or the applicant has requested Board review.

The procedure to obtain an Authorization Permit is specified herein below.

- (a) **PRE-FILING CONFERENCE** - Prior to formal filing, the applicant shall meet with the Design Excellence Officer to discuss preliminary design concepts, applicable procedures, submittal documents, and similar matters.
- (b) **FILING MATERIALS** - Depending on the scope of work of the project, the Board shall require the submission of any or all of the following: application and proposal summary, site analysis, site plan, floor plans(s), elevations, sections, and renderings

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state the specific information that will be required. In such cases, the applicant shall not be deemed to have made a bona fide application to the Board until the specific information is submitted.

- (c) **NOTICE** - Notice of the time, place and reason for holding a public hearing shall be given by first class letter at least fourteen (14) days in advance of the public hearing to owners of all properties located within two hundred (200) feet of the subject property. It shall be the obligation of the Design Review Officer to prepare, certify and mail all notice as required herein.

Further, the Board shall give notice of the time, place and reason for holding a public hearing by publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing.

- (d) **BOARD PUBLIC HEARING** - After notice, the Board shall consider the request for an Authorization Permit at a public hearing. Prior to the hearing, the Board shall receive the written report of the Officer. At the hearing, the Board shall allow the applicant, protestors and other interested citizens to testify and rebut evidence presented by others, provided the Chair shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence.

In its review of material submitted, the Board shall examine the architectural design and the exterior surface treatment of the proposed construction on the site in question and its relationship to other structures within the area, the

relationship of the proposed construction to the design of the building, and other pertinent factors affecting the appearance and efficient functioning of the structure.

The Board shall not consider any interior arrangement. The Board shall make no requirements except for the purpose of preventing development incongruous in scale, design or materials to the district.

In reviewing proposals, the Board shall utilize the adopted design standards and guidelines. These standards and guidelines shall form the basis of any action by the Board.

The Board shall vote to approve all or part of the application or disapprove all or part of the application within sixty (60) days after the completed application is filed. The Board shall be required to make written findings regarding what Standards and Guidelines were followed and which were not, with reasons for any variance.

(e) **AUTHORIZATION PERMIT ISSUANCE** - The Design Excellence Officer shall promptly issue the Authorization Permit in accordance with the action of the Board. Copies of the Authorization and the application materials shall be forwarded to the Divisions of Planning and Building Inspection and/or the Division of Code Enforcement, as appropriate.

27-5(d) **MULTI-PHASE BOARD REVIEW** – Multi-phase Board review shall be required for large scale new construction, as defined in Section 27-5(c)3. The applicant shall first obtain Board approval for site, building mass, parking, and scale and subsequent approvals for all other design standards and guidelines. The standards and guidelines approved in the initial review will not be reviewed in subsequent proceedings unless a material change has been made. The applicant may have as many Board reviews as needed to complete the project. The applicant may also receive both approvals in one (1) Board review.

27-5(e) ~~[27-6(e)]~~ **AUTHORIZATION PERMITS FOR DEMOLITION** - The Division of Building Inspection shall issue no permit which would result in the demolition of any or all of a structure within a ~~B-2, B-2A or B-2B zone~~ [protected by a CA overlay] unless and until an Authorization Permit has been issued by the Design Excellence Officer or approved by the Board at a public hearing, and a building permit has been approved for an allowed use.

27-5(e)(1) ~~[27-6(c)(1)]~~ **PROCEDURES** – ~~[The procedure for review of an Authorization Permit for demolition shall be as set forth in Article 27-5(e) ~~[27-6(b)(2)]~~ above.]~~ The Design Excellence Officer or the Board ~~[shall hear evidence concerning the application at its public hearing and]~~ may approve an Authorization Permit for demolition only if one of the following conditions is determined to exist:

- (a) The application is for demolition of an addition, for a portion of a building or for an accessory structure which is not significant to the principal structure, site, streetscape, or district; and the approval of the application would not adversely affect those parts of a building, site, or district which are significant.
- (b) The application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property, the streetscape and the downtown district ~~[in a zone protected by a CA overlay].~~
- (c) No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation. In order to make this claim, ~~[If the owner wishes to make a claim that the denial of the permit would amount to a taking of the property without just compensation]~~ the ~~[owner]~~ applicant shall submit to the Board, not less than twenty (20) days prior to the public hearing, the following information:

1. **For all property:**

- (a) The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was pur-

chased;

- (b) The assessed value of the land and improvements thereon, according to the two (2) most recent assessments recorded in the office of the Property Valuation Administrator;
- (c) The two most recent real estate tax bills;
- (d) Annual debt service for the previous two (2) years recorded by the lending agency;
- (e) All appraisals obtained within the previous two (2) years by the owner in connection with his purchases, financing or ownership of the property;
- (f) Listings of the property for sale or rent, price asked and offers received, if any;
- (g) Any consideration by the owner as to profitable adaptive uses for the property.

2. **For income-producing property:**

In addition to the information required in Section 27-5(e)(1)(c)(1), the applicant must also provide information of:

- (a) Annual gross income from the property for the previous two (2) years;
- (b) Itemized operating and maintenance expenses for the previous two (2) years;
- (c) Annual cash flow for the previous two (2) years.

3. The Board may require that the applicant [~~property owner~~] furnish such additional information as the Board believes is relevant to its determination of taking without just compensation and may provide, in appropriate instances, that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information that cannot be obtained, and shall describe the reasons why such information cannot be obtained.

Should the Board find that the material submitted is not adequate for the proper review of the proposal, the Board shall promptly notify the applicant and state specifically the information that the Board requires.

Deterioration of historic buildings attributable to the owner's failure to provide proper maintenance over an extended period of time will not be considered a mitigating circumstance in evaluations of economic hardship. Such "hardship" will be considered "self-imposed," restoration costs to remediate such neglect will not be considered.

27-5(e)(2) ~~{27-6(e)(2)}~~ **ACTION** - Notwithstanding any other provision of this Article, the Board, after hearing evidence at its public hearing, may vote to postpone action to approve or deny an appeal for a reasonable period of time not to exceed one (1) year from the filing date of application in order to conduct studies, surveys and/or gather information concerning the following:

- (a) Alternatives which may be or may become available, including restoration, rehabilitation, adaptive reuse, or other alternatives to demolition; and
- (b) Study the question of economic hardship for the applicant, including whether the structure can be put to reasonable beneficial use without the approval of the demolition; and whether the applicant can obtain a reasonable return from his/her existing building and offering the property at fair-market value to party willing to renovate the building. If economic hardship or the lack of a reasonable return is not proved, the Board shall deny the demolition application,

giving the facts and reasons for its decision.

27-5(e)(3) [27-6(d)] **EFFECT OF AUTHORIZATION PERMIT** - Upon receipt of the Authorization Permit from the Design Review Officer, a 7-day waiting period shall begin in which no demolition activity may be undertaken by the applicant or its agents, and no demolition permits may be issued. Upon completion of the waiting period, the Division of Building Inspection shall issue a demolition or wrecking permit, in accord with the Authorization Permit, provided that a building permit has been issued and the application meets all other requirements of law. In the instance an applicant is required to and has obtained a building permit for new construction on the site, no mandatory waiting period shall apply, and the Division of Building Inspection shall issue a building permit upon receipt of the Authorization Permit from the Design Excellence ~~[Review]~~ Officer, provided the application meets all other requirements of law.

~~[The Division of Building Inspection shall enforce all provisions of the Authorization, including any conditions thereof, and shall inspect the property at regular intervals to insure strict compliance. The Building Inspector who inspects the site shall be governed by the design guidelines adopted by the Court House Area Design Review Board and shall receive technical assistance from the Officer in this inspection.]~~

27-5(f) **AUTHORIZATION PERMIT VALID FOR ONE YEAR FROM DATE OF ISSUANCE** - The property owner shall obtain permits, when required, and commence work on all work authorized by the Authorization Permit within one (1) year from the issuance of the Authorization.

27-6 [27-6(e)] **FAILURE OF BOARD OR DESIGN EXCELLENCE OFFICER TO ACT** - Upon failure of the Board or the Design Excellence Officer to take final action upon any application within sixty (60) days after the completed application has been filed; and unless a documented mutual [written] agreement between the Board and the applicant has been made for an extension of time, the application shall be deemed to be approved and an Authorization Permit shall be issued to the applicant, and a copy of said Authorization transmitted to the Divisions of Planning and of Building Inspection. ~~for the Division of Code Enforcement, as appropriate.]~~

#### 27-7 APPEALS –

~~[Any person or entity claiming to be injured or aggrieved by any decision of the Board to Approve or deny any request for an Authorization Permit may appeal such decision to the Planning Commission within thirty (30) days of the Board's action. Such appeal shall be in writing and shall fully state the grounds upon which the appeal is sought. Upon receipt of the appeal, the Secretary to the Planning Commission shall notify the Design Review Officer, who shall promptly transmit the entire record of the Board, including tapes and transcripts, if any. In addition, within five (5) days of the filing of the appeal, the Secretary to the Planning Commission shall, by certified mail, notify the applicant of the appeal, if the applicant is not the appellant. The Commission shall then hold a de novo hearing on the appeal and render a decision within ninety (90) days of the date of filing the appeal.]~~

#### 27-7(a) — PROCEDURE FOR THE DE NOVO PUBLIC HEARING

27-7(a)(1) — NOTICE All parties to the appeal, including the Board, shall be notified of the time, place and reason for the public hearing by first class letter at least fourteen (14) days in advance. In addition, notice of the appeal shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty one (21) days nor later than seven (7) days before the public hearing.

27-7(a)(2) — ACTION BY THE PLANNING COMMISSION After notice, as required above, the Commission shall conduct a public hearing and vote to approve or deny the appeal. At the hearing, the Planning commission shall allow its staff, Design Review Officer, the Board members, the appellant, protestors, and other interested citizens to testify and rebut the evidence presented, provided that the Chairman shall have the power to limit repetitive testimony and exclude irrelevant testimony and evidence. In its deliberations, the Planning Commission shall give due consideration to the decision of the Board and the finding and conclusions reflected in the Board's record and shall apply the adopted design guidelines.]

27-7(a) [27-7(b)] **APPEAL TO THE FAYETTE CIRCUIT COURT** - Any person or entity claiming to be injured or aggrieved by any order of the Downtown Area Design Excellence Board ~~[Planning Commission]~~ to affirm, modify or set aside

the Authorization Permit and/or final decision of the Board may appeal from the Board's ~~{Planning Commission's}~~ action to the Fayette Circuit Court within thirty (30) days of that order in the manner as established in KRS 100.347. All orders of the Board ~~{Planning Commission}~~ which have not been appealed within thirty (30) days shall become final.

27-7(b) ~~{27-7(e)}~~ **CONSIDERATION BY THE BOARD OF PREVIOUSLY DENIED APPEALS** - In the event the appeal of an applicant is denied by the Board, the building, or any portion thereof, which was the subject of the applicant's application, shall not be included in a subsequent application to the Board for an Authorization Permit and/or final decision until the expiration of one (1) year from the date of the order of the Board ~~{Planning Commission}~~.

However, before the expiration of one (1) year, the Board may allow the filing of an application for an Authorization Permit and/or final decision if the Board finds that there are new facts or conditions not considered previously, or that there has been a change in the adopted guidelines which has substantially altered the character of the request. In such cases, after the evidence is presented by the applicant, the Board shall vote to approve or deny such a request for a new hearing. The Board's reconsideration of the application shall take into consideration the new evidence presented. The Board's decision need not be restricted to the new evidence. If the new evidence is withdrawn at any time during the reconsideration by the applicant, the Board shall have no authority to reconsider the application.

**27-8 ENFORCEMENT** – The Design Excellence Officer shall be responsible for reviewing construction authorized under the provisions of this Article to determine compliance. Matters involving violations shall be administered under the authority ascribed to the Director of the Division of Planning as Zoning Administrator under Article 5 of the Zoning Ordinance.

~~{COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS in order to prevent purposeful neglect of structures within zone protected by CA overlays, all properties shall comply with the BOCA, adopted Basic Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Design Review Officer shall quarterly consult with appropriate enforcement officials and compile and forward to the Board and the court House area Design Review Board a list of those properties in zone with CA overlays which have been found to be in violation of the BOCA Basic Property Maintenance Code.}~~