



VCU

Virginia Commonwealth University
VCU Scholars Compass

Theses and Dissertations

Graduate School

2010

Coordinating Code in Virginia's Historic Districts

Drew Gruber

Virginia Commonwealth University

Follow this and additional works at: <https://scholarscompass.vcu.edu/etd>



Part of the [Urban Studies and Planning Commons](#)

© The Author

Downloaded from

<https://scholarscompass.vcu.edu/etd/2304>

This Thesis is brought to you for free and open access by the Graduate School at VCU Scholars Compass. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of VCU Scholars Compass. For more information, please contact libcompass@vcu.edu.

Coordinating Code in Virginia's Historic Districts

Drew A. Gruber

A thesis submitted in partial fulfillment of the requirements for the degree of

Masters of Science

In

Urban and Regional Planning

Virginia Commonwealth University

Wilder School of Government and Public Affairs

December 2010

**Under the direction of
Kimberly Chen**

Table of Contents

ABSTRACT	iii
LIST of TABLES and ILLUSTRATIONS	iv
LIST of ABBREVIATIONS	v
CHAPTER	
I. INTRODUCTION	
A: Forward	1
B: Methodology	2
II. REGULATORY ZONING IN VIRGINIA	
A: Early Zoning Efforts	3
B: Euclidean Zoning	6
C: Form Based Zoning	8
D: Regulatory Results	11
III. PRESERVATION PLANNING	
A: Historic Preservation	12
B: Federal Legislation	15
C: Virginia Legislation	17
D: Historic District Overlay Zones	19
IV. Review Board Considerations	
A: Design and Design Guidelines	22
B: Use and Compatibility	25
V. COMPATIBILITY AND COORDINATION	
A: Disparities in Design	29
B: Nonconforming Buildings	33
C: Conflicting Codes and Statutes	35
D: Appeals and deferred governing boards	38
E: Code violations and demolition by neglect	42
Conclusion	45
BIBLIOGRAPHY	46

ABSTRACT

This thesis explores the evolution and limitations of regulatory and historic district overlay zones and the inherent conflicts between the two as applied in Virginia. Historic district overlay zoning and the establishment of local historic districts and design review boards has developed in response to the failures of traditional zoning techniques to adequately protect the architectural character of Virginia's historic urban landscapes. After almost fifty years of practice and improvement in the fields of urban planning and historic preservation, synchronizing regulatory and historic district overlay zones still presents difficulties for municipal administrators. Several Virginia jurisdictions are highlighted in the thesis to provide an insight into the application of these planning and preservation paradigms. These different municipal codes will provide a sample set of the most common problems which exist between regulatory and historic district overlay zoning. These issues include-design, nonconforming uses, code and conflicting ordinances, appeals, and demolitions by neglect clauses. While this thesis seeks to identify the most common problems found between regulatory and historic districts within Virginia it is not comprehensive nor does it provide recommendations for how to address the inherent conflicts.

LIST of CHARTS

Chart 2.1- New Market, Virginia Zoning Ordinance	Page 7
Chart 2.2- Portsmouth, Virginia Zoning Ordinance	Page 9
Chart 4.1- Virginia Statistics	Page 19
Chart 5.1- 2008 Certified Local Government Statistics	Page 40

LIST of ABBREVIATIONS

ARB	Architectural Review Board
BAR	Board of Architectural Review
CLG	Certified Local Government
HPC	Historic Preservation Commission
NHPA	National Historic Preservation Act
NPS	National Park Service
NRHD	National Register Historic District
SOI	Secretary of the Interior
TPS	Technical Preservation Services
VDHR	Virginia Department of Historic Resources

ARB

For purposes of this study unless otherwise noted ARB will be used to identify all review board nomenclature including; Certified Local Governments, Historic Preservation Commission, Design Review Board, Design Review Committee, Board of Architectural Review, Commission of Architectural Review or Architectural Review Board.

I. INTRODUCTION

I. A: Forward

The establishment of historic district overlay zoning and the creation of local historic districts and design review boards has developed in response to the failures of traditional zoning techniques to adequately protect the architectural character of Virginia's historic urban landscapes. After almost fifty years of practice and improvement in the fields of urban planning and historic preservation, the ability to harmonize regulatory and historic district overlay zones is yet to be realized. While the maturation of planning and preservation paradigms has given rise to improvements such as demolition by neglect clauses and form based zoning efforts, the omnipresent issues faced by design review boards warrants a thorough reexamination.

To that end, this thesis seeks to document the philosophical and political underpinnings of urban planning and historic preservation. Several Virginia jurisdictions which utilize historic districts and design review boards will provide examples into the application of those planning and preservation paradigms. An examination of these different municipal codes will provide a sample set of the most common problems which exist between regulatory and historic district overlay zoning.

I. B: Methodology

Due to the nature of the planning and preservation fields which are sustained by a complex web of legislation that has been validated through legal discourse, a cumulative and methodical analysis was utilized in this thesis.

Virginia Code supplemented with affirming legal precedents provides a strong foundation for the study of city ordinances. Several secondary sources including related texts, and journal articles afforded a practical lens through which the ramifications of planning and preservation initiatives could be assessed. These secondary sources were written over the course of three decades and they lend themselves as evidence to the continually evolving fields of preservation planning and zoning regulation.

Issues concerning design review boards and historic district overlays are typically found in downtowns and as such several Virginia municipalities were examined. These include Fredericksburg, New Market, Portsmouth, Petersburg, Smithfield and Vienna. These localities were selected because each jurisdiction operates with a different interpretation or standard when compared to the state enabling legislation which has been adapted to suit their perceived needs and aspirations as a community. The fundamental differences between regulatory zoning and historic district overlays can only in part be understood through such a comparative examination. However, analysis of the enabling legislation as they are applied within localities would provide a final level of understanding which this thesis does not explore.

II. REGULATORY ZONING IN VIRGINIA

II. A: Early Zoning Efforts

To better understand the dichotomy between regulatory and overlay zoning, a comprehensive look at the creation and application of regulatory zoning is necessary. Zoning is a tool employed by local government to regulate what type and where development may occur.¹ Within Virginia, zoning's limitations lie within the powers granted by the General Assembly, as defined in 1950.² Since then, zoning has taken a number of forms as it has developed over the last sixty years.³

Initially, planning efforts took their roots in the form of basic building and fire codes. The problems of overcrowding, filth and amenities came to a head in New York City, where immigration and industrialization was quickly reaching its zenith by the late nineteenth century. In 1916, the city adopted the nation's first comprehensive zoning ordinance.⁴ Many municipalities across the country followed, enacting their own ordinances.

By 1926 the United States Supreme Court upheld the constitutionality of zoning as a valid police power in the case of *Village of Euclid, Ohio Vs. Ambler Realty Co.*⁵ Police powers, are typically understood to be the ability of a municipal government to

¹ "'Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put." Virginia General Assembly. Code of Virginia §15.2-2201. "Definitions" <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2201> (accessed September 5, 2010).

² John M. Levy, *Contemporary Urban Planning*. 5th Ed. (Upper Saddle River: Prentice-Hall Inc. 2000), 60. Dillon Rule Defined.

³ Virginia General Assembly. Code of Virginia; §15.2-2280. Zoning ordinances generally. Code of Virginia § 15.2-1102. General grant of power; enumeration of powers not exclusive; limitations on exercise of power. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed September 5, 2010).

⁴ John M. Levy, *Contemporary Urban Planning*. 5th Ed. (Upper Saddle River: Prentice-Hall Inc. 2000), 64.

⁵United States Supreme Court. *Village of Euclid, Ohio Vs. Ambler Realty Co.* LexisNexis Academic. (Accessed September 2nd, 2010.)

further public safety, health and welfare. The Tenth Amendment of the United States Constitution, which was tested in the landmark 1926 case, does not mention what powers should be given to local municipalities.⁶ The case found that powers not given or prohibited by the Constitution are reserved for the states. To legitimize zoning as a power which is not only constitutional, but one which is an appropriate extension of local government authority, states would have to choose a method to enable them. Virginia is a Dillon Rule state- which references the case *Clark v. City of Des Moines 1865*, wherein the presiding Judge Dillon stated that localities only have powers which have been expressly or fairly implied by the States.

Virginia like many states was experiencing rapid growth during the post-World War II housing boom. Emigration from the cities and the growth of suburbs caused a myriad of planning problems including incompatible interaction of uses which became a catalyst for zoning legislation. By 1950, the Virginia General Assembly took advantage of the constitutionality of zoning practices to adopt their own enabling legislation

Code of Virginia 15.2-1102 provided a definition and legitimatization of police power.

“A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof...”⁷

⁶ United States Constitution, Tenth Amendment. LexisNexis Academic. (Accessed August 2, 2010.)

⁷ Virginia General Assembly. Code of Virginia §15.2-1102. “General grant of power; enumeration of powers not exclusive; limitations on exercise of power,” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-1102> (accessed September 20, 2010).

The next step for localities which had not already begun pseudo-zoning efforts was provided in the Code of Virginia 15.2-2280, “Zoning ordinances generally.”⁸ Adoption of this additional legislation extrapolated upon police powers set forth by the Virginia Assembly in the previous code which were legitimized by the Supreme Court in *Village of Euclid, Ohio v. Ambler Realty Co.* This directly allows, but does not mandate, that municipalities are able to classify geographic areas into different districts.

“Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or ...”⁹

Alongside the enabling of jurisdictions to separate land into zones came the ability of jurisdictions to amend districts, adopt appeals processes as well as some design regulations.¹⁰

⁸ Virginia General Assembly. Code of Virginia §15.2-2280. “Zoning ordinances generally.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed September 19, 2010).

⁹ Virginia General Assembly. Code of Virginia § 15.2-2280. “Zoning ordinances generally,” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed September 8, 2010).

¹⁰ Virginia General Assembly. Code of Virginia § 15.2-2308. “Boards of zoning appeals to be created; membership, organization, etc,” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2308> (accessed October 1, 2010).

By enabling localities to set up zoning regulations, it then became the burden of municipalities to adapt and define uses, intensities and the gross or bulk dimensions of each feature within the zone. As defined by the General Assembly, the application of this enabling legislation is a daunting task. The challenges presented by the existing landscape gave rise to a few predominant methods of zoning regulations which are employed today.

II. B: Euclidean Zoning

The most prevalent method for zoning in Virginia is Euclidean Zoning.¹¹ This method of zoning relies upon the separation of uses into different geographic areas. While Euclidean Zoning has its limitations, it is easily implemented and understood. Because of its ease of use and simplicity it is popular with planners and administrators.

Euclidean zoning is often considered the conventional zoning method and is characterized by the segregation of land within a jurisdiction into different districts such as residential, commercial or industrial. To help guide zoning and to navigate conflicts, especially those which dealt with existing structures that did not fit into the new categories municipalities sought to break each category into subsections. More often than not each zone also has stipulations which also dictate the density and dimensional standards.

¹¹ United States Supreme Court. *Village of Euclid, Ohio Vs. Ambler Realty Co.* LexisNexis Academic. (Accessed September 2, 2010.) The term Euclidean Zoning derives its name from the court case.

As seen in Table 2.1, in addition to specifying the particular use of a parcel the density of that use is normally specified by the zoning regulations. For example, density of the lot or acre determines how many

<i>R1</i>	Low Density Residential
<i>R2</i>	Med. Density Residential
<i>R2a</i>	Med. Density Residential, Main Corridor
<i>R3</i>	High Density Residential
<i>B1</i>	General Business
<i>B2</i>	Business, Interstate Corridor
<i>M1</i>	Limited Industrial
<i>FC</i>	Floodplain Conservation
<i>HOD</i>	Historic District

offices, apartments, houses or parking spaces are acceptable within that defined use. Zoning intensity is based upon the use and can be broken down into four criteria: the number of dwellings per acre for residential uses and the lot size, floor area and massing restrictions.¹²

Design restrictions are another attribute which can be directly or indirectly dealt with by a jurisdiction's zoning code. Usually, both the lot and structure are defined within the zoning regulations which will specify the mass or gross dimensions of the structures. These generally include the setback of the structure from the right of way and placement on the lot as well as the height and depth of the building on the lot.¹³ A primary example of this is found in New Market, Virginia, where Medium Density Residential (or R-2) the zoning code calls for certain heights as well as size of yards and square foot regulations. Additionally, New Market has a locally designated historic district overlay zone which is in addition to the existing underlying districts, meaning structures must conform to both those guidelines as well as those set forth by the R-2 zoning designation.

¹² Eric Kelly and Barbara Becker, *Community Planning* (Washington D.C.: Island Press, 2000), 207.

¹³ Setbacks highlighted specified in Virginia General Assembly. Code of Virginia §15.2-2279. "Ordinances regulating the building of houses and establishing setback lines." <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2279> (accessed September 22, 2010). Any locality may by ordinance regulate the building of houses in the locality including the adoption of off-street parking requirements, minimum setbacks and side yards and the establishment of minimum lot sizes.

While legitimized as a valid police power by the General Assembly, Euclidean zoning, while effective in many respects, did not answer all the questions being pursued by planners. Codes and ordinances throughout Virginia which adhered to this method by the 1960s and 1970s created exclusive districts or areas of one particular use. One criticism of this type of regulation was that it prohibited common patterns in urban downtowns of residential units above commercial store fronts.¹⁴

II. C: Form Based Zoning

Form-based zoning (or form-based code as it is often referred to) utilizes physical massing and not the separation of uses as the method for organized planning.¹⁵ This method of regulating development has gained popularity principally in urban areas where Euclidean zoning is restricted by the extant built environment. One of the most frequently cited problems associated with planning and regulatory zoning is the loss of an area's character.¹⁶ By relying on form and its contextual relationship to a place this has become a viable alternative for urban localities.

Just as Euclidean zoning seeks to protect citizens and enable commerce through the separation of uses into amenable areas which in turn develop and shape a community; form-base code starts with the shape as the foundation into which uses are then introduced. The design, form, or massing standards detailed in the locality's ordinance

¹⁴ Eric Kelly and Barbara Becker, *Community Planning*. (Washington D.C.: Island Press, 2000), 206-208.

¹⁵ Form Based Code Institute. "Resources-Definition," <http://www.formbasedcodes.org/definition.html> (accessed October 5, 2010).

¹⁶ This loss of character is not wholly the fault of regulatory zoning. A municipality may be able to protect its urban character with regulatory zoning only or with an addition of an overlay however market pressures are typically the force which pressures regulatory zoning to the point where historic fabric and character are lost. In most cases the architectural and historic character of a town was established prior to the implementation of zoning ordinances and as a result these long established areas do not conform to the zoning.

includes, but is not limited to, the building or block’s footprint, height, and set-back. This is often confused with design overlay zones which are advisory and will be discussed in Chapters Two and Three. Each district or zone naturally also regulates use and density through design form.

Table 2.2	
Portsmouth, Va. Zoning Ordinance	
<i>General Urban Frontage</i>	
Attributes	Characteristics
<i>Height</i>	Two to Five Stories
<i>Siting</i>	Uses 75% of frontage
<i>Elements</i>	20-70% fenestrated frontage
<i>Use</i>	Commercial or Residential

Table 2.2 demonstrates that within these neighborhoods or districts the height, building setting, and detailed elements (such as windows) are defined. Portsmouth has further defined the possible uses for this zone breaking

down what types of residential and commercial uses are appropriate. For instance, while banking would be permitted on the ground floor, no drive through facility is permitted based upon the ‘siting’ design attribute.¹⁷

The effectiveness of a form-based code is judged by its affect on the immediate landscape. If a proposed use required a larger space whose form does not conform to the regulations for that zone it would disrupt the spatial and social continuums as well as the vehicular and pedestrian traffic.¹⁸ Form-based code is also synonymous with other planning initiatives aimed at achieving a consistent urban character.

Mixed-use zoning (or mixed-use development) is similar to form-based code. As its name implies, mixed-use initiatives focus on utilizing traditional development patterns to achieve vibrant streetscapes and density. The Virginia General Assembly defines mixed-use development as: “...property that incorporates two or more different uses, and

¹⁷ Portsmouth, Virginia. Uptown D2 District Form-Based Code. November, 2009.

¹⁸ Hedman and Jaszewski. *Fundamentals of Urban Design* (Washington D.C.: Planners Press, 1984) 18

may include a variety of housing types, within a single development.”¹⁹ “Neo-classical” or “new urbanist” designs which have a ‘main street’ feel are often considered to be mixed-use when they offer commercial frontage with apartments or offices above. Design or form is the major driving force behind the appropriate placement of uses. Often employed in new developments in the suburbs or on the periphery of central business districts, new mixed use developments have met with limited successes. However, mixed use zoning has been utilized within downtown zoning regulations to correct problems with previous regulatory zoning which neglected the potential of the building forms as well as integration of different uses.

“Ultimately, a form-based code is a tool; the quality of development outcomes is dependent on the quality and objectives of the community plan that a code implements.”²⁰ The application of form-based code has yet to gain wide acceptance in Virginia. Due to its subjective nature, it often requires special staff such as historic preservationists or architectural historians in addition to normal planning staff. Form-based code is often amalgamated into the Euclidean method making it hard to identify in Virginia jurisdictions.

¹⁹ Virginia General Assembly. Code of Virginia §15.2-2201. “Definitions.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2201> (accessed October 1, 2010).

²⁰ Form-Based Codes Institute. “What are form-based codes?” Form-Based Codes Institute, <http://www.formbasedcodes.org> (accessed October 11, 2010).

II. D: Regulatory Results

Since the purpose of this thesis is to diagnosis where regulatory and historic district overlay zoning diverge from one another, understanding how zoning methods differ is paramount. While zoning is not required by the Virginia General Assembly, the interpretation and need of each municipality to regulate land use varies. Both zoning methods, Euclidean and form-based, typically highlight design to some degree in their theoretical approaches to organizing an urban landscape.

Many of the issues faced by communities prior to the adoption of Euclidean-style zoning methods were not answered with regulatory zoning measures. Deterioration of historic fabric or the loss of community identity, environmental issues, and a vehicular dominated landscape were among the several reoccurring themes noticed by planners.²¹ Form-based code was a progressive step, utilizing the predominate form of an area to determine the appropriate use. Mixed-use initiatives also helped amend conventional zoning to perpetuate a large breadth of densities and uses within one jurisdiction.

In Virginia, many communities have adopted overlay zoning or have modified the existing Euclidean style codes to include clauses for the central business district or older urban areas rather than reassessing their assets, goals and draft regulations. Many communities have adopted form based codes to help combat older plans and revitalize their downtown cores. Progress through trial and error, was made over the last fifty years but, even with these efforts, the ability of Virginia architectural review boards to work effectively with regulatory zoning code have not been fully realized.

²¹ Robert Stipe, *A Richer Heritage* (Chapel Hill: University of North Carolina Press, 2003) 1-18.

III. PRESERVATION PLANNING

III. A: Historic Preservation

To better understand where regulatory and historic district overlay zoning fail to coordinate, a comprehensive look at the creation and application of historic preservation initiatives is necessary.

America's urban landscapes were changing quickly by the late nineteenth century. Especially in northern cities where immigration from Eastern European countries coupled with a large influx of southerners, expansion, overcrowding and industrialization caused fledgling governments to consider regulating where and what development occurred. By the early and mid twentieth century with explosive suburban growth, American cities had long passed their social and commercial pinnacles. However, since the late nineteenth century a growing appreciation for cultural resources has spurred a vibrant and successful preservation movement.

Frequently cited as the precursor to modern preservation initiatives, the Mount Vernon Ladies Association typified much of the late nineteenth and early twentieth century grassroots preservation organizations. The Association for the Preservation of Virginia Antiquities (now Preservation Virginia), formed in 1889, and the Society for the Preservation of New England Antiquities (now Historic New England) formed in 1910, illustrate regional coordination. Congress enacted the Historic Sites Act in 1935 to confirm affirming that the Federal government had recognized it was necessary to, "preserve for public use historic sites, buildings, and objects of national significance."²²

²² Historic Sites Act, as amended. Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. (Washington D.C: U.S. Government Printing Office, 2006),12

By the 1940s and 50s as freeways, housing projects and high rises replaced “blighted” historic structures and neighborhoods across America, appreciation for historic structures and neighborhoods continued to gain popularity. For example, Alexandria, Virginia was one of the first Virginia municipalities to act. The city was surveyed by the Historic American Buildings Survey in 1941.²³ Additionally, Alexandria created a local historic district in 1946, the third oldest in the United States which was original enacted to protect the city’s colonial heritage and control development along Washington Street.²⁴

Growing public involvement and political pressure saw the formation of the National Trust for Historic Preservation by Congressional charter in 1949 which was to provide, “leadership, education and advocacy to save America’s diverse historic places and revitalize our communities.”²⁵ By the 1960s and 70s historic preservation efforts were commonplace alongside other contemporary social agendas.²⁶ Politicians and legislators were pressed into implementing preservation oriented plans.

A multitude of court cases have validated the ability of local and state governments to regulate and designate historic properties and resources as appropriate police powers. Two United States Supreme Court cases validated preservation and aesthetics regulation alone as a valid police power, which became paramount in local historic preservation efforts. Supreme Court case *Berman v. Parker* in 1954 legitimized

²³ “100-0121 Alexandria Historic District Final Nomination 1969.” Virginia Department of Historic Resources. http://www.dhr.virginia.gov/register/Cities/register_Alexandria.htm (accessed September 25, 2010).

²⁴ City of Alexandria, “Old and Historic Alexandria District Board of Architectural Review,” Planning and Zoning Department, <http://alexandriava.gov/planning/info/default.aspx?id=33280> (accessed October 1, 2010)

²⁵ National Trust for Historic Preservation. “About Us,” National Trust for Historic Preservation, <http://www.preservationnation.org/about-us/> (accessed September 27, 2010)

²⁶ Jane Jacobs, *The Death and Life of Great American Cities*. (New York: Vintage Books, 1961) 241-244.

aesthetics as a government regulation.²⁷ While the case dealt with the removal of blighted structures, the ability to use this precedent reciprocally for preservation was realized. In 1978 the United States Supreme Court case of *Penn Central Transportation Co. Vs. The City of New York*.²⁸ Under their “Landmarks Preservation Law,” the City of New York offered protection for their historic resources, including review for alteration or demolition as well offering transfers of development rights. The Supreme Court found in favor of the City stating that this was not a “takings,” essentially upholding the ability of local governments to enact preservation ordinances.²⁹

The 1966 National Historic Preservation Act (NHPA) which manifested the local preservation efforts was a result of this political pressure. The NHPA gave rise to the Virginia General Assembly’s involvement in historic preservation and subsequently two codes were adopted authorizing local governments to draw historic district boundaries, survey their resources, and adopt review boards. While not necessitating local involvement the two codes charged the protection of historic urban neighborhoods to local review boards. By 2005, fifty-five architectural review boards (ARBs) had been established in jurisdictions across Virginia. By 2010, that number had risen to approximately seventy-eight.³⁰

²⁷ Berman v. Parker, Cornell University Law School, Legal Information Institute, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0348_0026_ZS.html (accessed September 22, 2010).

²⁸ Penn Central Transportation Co. v. New York City, Cornell University Law School, Legal Information Institute, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0438_0104_ZS.html (accessed September 22, 2010).

²⁹ Ibid.

³⁰ 2005 figure; Kathleen Kilpatrick. *Virginia’s Historical Register*. Department of Historic Resources. 2007. Pg 5. 2010 figure; This information was collected between May and August 2010 for the Department of Historic Resources by Drew A. Gruber.

III. B: Federal Legislation

On October 15, 1966, President Lyndon Johnson signed into law the National Historic Preservation Act (NHPA), acknowledging preservation efforts which had previously been limited to local and regional initiatives since the 19th century. Correlating with widespread pressure for other social and environmental reforms and reinforced by a publication highlighting the loss of significant numbers of architectural resources, the effort met wide bi-partisan political support.³¹ Among other things the NHPA established the National Register of Historic Places, state historic preservation offices (SHPO), funding sources and definitions of cultural resources.

The National Register of Historic Places was to be a repository and listing of historic properties across the nation and while it provided no protection it drew attention to these places worthy of a nation's adoration. This register became the catalyst for a shift in recognition from single buildings to the recognition of complexes, neighborhoods and architectural seriation (arrangement) within larger landscapes.³² This change in perspective allowed historic districts to gain greater public recognition and potential listing in this nationally significant inventory.

The NHPA was amended in 1980 to permit certification by the State Historic Preservation Officer (SHPO) of local governments who adhere to a number of historic preservation oriented provisions.³³ These Certified Local Governments (CLGs) are

³¹ Then Secretary of the Interior Stewart Udall also championed the *Endangered Species Act*.

³² The Historic Sites Act of 1935, as amended, allowed recognition of districts before this as national historic landmarks. Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. (Washington D.C: U.S. Government Printing Office, 2006),12.

³³ "(c)(1)(A) enforces appropriate State or local legislation for the designation and protection of historic properties; (B) has established an adequate and qualified historic preservation review commission by State or local legislation; (C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section; (D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the

affirmed by Virginia Code and are able to utilize funds through the Department of Historic Resources (Virginia's SHPO).³⁴ Federal recognition in local government participation in historic preservation efforts is a direct precedent for the formation of local architectural review boards (ARBs) in Virginia.

The NHPA also enables states to form a state historic preservation review board. In Virginia this state review board coupled with the Virginia Board of Historic Resources assesses National Register Nominations and Virginia Landmarks Register nominations and appeals as well as handles documentation and funding issues concerning the state historic preservation initiatives.³⁵ The NHPA stipulated that these state historic preservation review boards must have, "a majority of the membership," which must be qualified in the following or related fields of, "history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation and landscape architecture..."³⁶

The 1966 National Historic Preservation Act coupled with two later amendments affected a number of policies which directly relate to the creation of local historic districts and architectural review boards. By acknowledging the importance of architectural groupings or districts the stage was set for the states and local governments to enact zoning to respect those neighborhoods. Creation of Certified Local Governments

National Register; and (E) satisfactorily performs the responsibilities delegated to it under this Act." National Historic Preservation Act. (c) (1). Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. Page 45

³⁴ National Historic Preservation Act. (c) (1). Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. (Washington D.C: U.S. Government Printing Office, 2006), 45

³⁵ National Historic Preservation Act. (c) (1). Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. Page 80. Virginia Department of Historic Resources, "The State Review Board and the Virginia Board of Historic Resources.

http://www.dhr.virginia.gov/homepage_features/board_members.htm (accessed September 25, 2010).

³⁶ Ibid.

(CLGs) was a physical manifestation of how the NHPA paradigms could operate at the local level and be comparable with local overlays, districts and ARBs.

Virginia adopted many of these policies in a series of code, legislation and additional amendments. This “enabling” legislation translated and interpreted these larger preservation themes into directives for localities to utilize. While the NHPA does not demand but guides historic preservation measures, the Virginia General Assembly added significantly towards the creation of ARBs.

III. C: Virginia Legislation

Virginia sought to adopt legislation which would perpetuate those preservation goals found in the NHPA as well as expand upon the design precedents and previous localized efforts prior to 1966. As a “Dillon rule” state, localities do not have any permission other than the express permission dictated in the Virginia code.³⁷ Similar to regulatory zoning the Virginia General Assembly would adopt a series of codes and ordinances allowing jurisdictions to create historic districts and or design review boards.

Two pieces of Virginia General Assembly legislation are paramount in understanding and following the creation and operation of local historic districts. First and foremost is Virginia Codes 15.2-2280, “Zoning ordinances generally.”³⁸ This code extrapolated upon the police powers set forth by the Virginia General Assembly. This allows but does not necessitate that localities are able to classify geographic areas into different districts of use. Secondly, Virginia Code 15.2-2285, “Preparation and adoption

³⁷ John Levy. *Contemporary Urban Planning*. (Upper Saddle River: Prentis-Hall, Inc, 2000) 60-61. *Clark v. City of Des Moines 1865*

³⁸ Virginia General Assembly. Code of Virginia §15.2-2280, “Zoning ordinances generally.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed October 1, 2010).

of zoning ordinance and map and amendments thereto; appeal,” further describes the subdivision of land into district districts of use.³⁹ Section A of this code best summarizes the abilities prescribed in the enabling legislation. It reads;

“A. The planning commission of each locality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district.”⁴⁰

As seen in Chapter Two, these regulatory zoning legislations mandate adequate notice, public hearings and a review process.

The two aforementioned pieces of legislation were both written in 1950 while allowing for different regulatory zones do not specifically mention historic properties or historic preservation initiatives. However, backed by two Supreme Court rulings in favor of aesthetic and preservation regulations, the Virginia General Assembly followed suit. By 1973 Virginia zoning legislation included a definition for a “historic area” defined as;

“...an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.”⁴¹

In addition, a new piece of legislation was adopted in 1973 to help codify historic preservation as a legitimate mission to be undertaken by localities. Code 15.2-2306, “Preservation of historical sites and architectural areas,” includes four subsections laying out what measures localities may undertake. These include provisions that any locality

³⁹ Virginia General Assembly. Code of Virginia §15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto; appeal.” <http://leg1.state.va.us/000/cod/15.2-2285.HTM> (accessed October 2, 2010).

⁴⁰Virginia General Assembly. Code of Virginia §15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto; appeal.” <http://leg1.state.va.us/000/cod/15.2-2285.HTM> (accessed October 2, 2010).

⁴¹ Virginia General Assembly. Code of Virginia §15.2-2201. “Definitions” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2201> (accessed September 5, 2010).

may adopt and ordinance setting forth historic landmarks including historic districts that they may provide for a review board to administer the ordinance, that the ordinance may provide a review before demolition of a property, as well as an appeals process.

The ability of a municipality to preserve the character of their jurisdiction falls back to the issue of design. As illustrated here while there may be clauses protecting structures from razing and while designation of landmarks the erection, reconstruction, alteration or restoration is gauged by either the review board or governing body. This review is based upon architectural compatibility.

III. D: Historic Districts

Due to the failures of regulatory zoning methods to protect cultural resources like historic structures, the Virginia General Assembly authorized the creation of additional zoning districts specifically oriented towards

historic urban areas.⁴³ These new historic districts are either adopted as an overlay zone- additional policy set atop the underlying or existing regulatory zoning- or as amendments to existing regulatory zones.

Chart 3.1	
Virginia Statistics	
943	Census Designated Places
272	Incorporations
47	ARBs
31	CLGs
257	NRHD
175	Local Historic Districts
75	Districts w/o ARBs

⁴² This information was collected between May and August 2010 for the Department of Historic Resources by Drew A. Gruber. Numbers are approximate.

⁴³ "Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation. Virginia General Assembly. Code of Virginia §15.2-2201. "Definitions" <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2201> (accessed October 13, 2010).

In 1973, the Virginia General Assembly adopted code § 15.2-2306, “Preservation of historical sites and architectural areas,” which expounding upon the zoning legislation, previous preservation efforts in cities like Alexandria, and the provisions of the NHPA. This particular piece of legislation is a directive stating that localities may amend their zoning ordinances to adopt local historic districts.

“A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas...”⁴⁴

The code continues by providing for a review board if the locality should choose to adopt one. It reads;

“The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.”⁴⁵

Localities are able to adopt both historic district zoning overlays and review boards entirely, however they are not mutually exclusive. While the NHPA set forth membership guidelines for the state review board as well as guidelines for the Certified Local Governments, these requirements were not wholly adopted by Virginia enabling legislation.

⁴⁴ Virginia General Assembly. Code of Virginia. §15.2-2306. “*Preservation of historical sites and architectural areas.*” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed September 6, 2010).

⁴⁵ Ibid.

Identification of a historic area as a zoned district does not mandate its protection or future authenticity. In addition to the ability of a municipality to install a review board which would evaluate the potential impact of additions or changes to properties within the defined historic area, the city ordinance may also provide that no demolition take place within the historic district without review and permission by the review board of the governing body.⁴⁶ To further assist in the protection of the district another provision in the code, “Preservation of historical sites and architectural areas,” also affords municipalities the ability to purchase properties and or associated lots within the historic district.⁴⁷

With the adoption of Virginia Code § 15.2-2280, “Zoning ordinances generally,” and Virginia Code 15.2-2306, “Preservation of historical sites and architectural areas,” Virginia enabled its localities to pursue preservation initiatives in a variety of intensities.⁴⁸ Protection of the historic district is typically synonymous with design. While previous legal precedents have upheld that design or historic preservation ordinances are acceptable forms of police power, proving that an addition or new construction is architecturally compatible becomes the burden of the jurisdiction.⁴⁹

⁴⁶ “2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.” Virginia General Assembly. Code of Virginia § 15.2-2306. “Preservation of historical sites and architectural areas.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed September 5, 2010).

⁴⁷ “4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people...” Virginia General Assembly. Code of Virginia §15.2-2306. “Preservation of historical sites and architectural areas.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed September 5, 2010).

⁴⁸ Virginia General Assembly. Code of Virginia §15.2-2280. “Zoning ordinances generally,” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed September 8, 2010).

⁴⁹ Berman V. Parker and Penn Central Transportation Co V. The City of New York

IV. REVIEW BOARD CONSIDERATIONS

IV. A: Design and Design Guidelines

Alongside the validation of local historic districts as an appropriate police power the Virginia General Assembly enabled municipalities to create review boards to administer historic districts.⁵⁰ Alongside a demolition clause, a review board is perhaps the strongest protective element a locality could adopt. Review boards consider reconstructions, alterations, restorations and in some cases signage. Design, coordination with the community's character is an immense issue. Within some historic districts across Virginia, design guidelines have been adopted to help direct review boards in their deliberations.⁵¹

Each Virginia municipality which chooses to adopt local historic district zones as well as design review boards will have variations in their built environments. The boundaries by which the historic district zones are defined tend to follow architectural styles or patterns of historic neighborhood development. Hence using design as the medium from which decisions are made is contextually sensitive. Furthermore the result of the review decision is also dependent upon the expressed need of the citizens and the competency of the board.

The General Assembly loosely stated that decisions by the review board or during an appeal must be, "architecturally compatible with the historic landmarks, buildings or

⁵⁰ As a Dillon Rule state municipalities are not required to adopt a review board alongside historic district overlay zoning or identification of landmarks.

⁵¹ It should be noted that CLGs are not required to have design guidelines. While DHR encourages guidelines they are not required. Virginia Department of Historic Resources. Certified Local Governments, http://www.dhr.virginia.gov/pdf_files/CLG%20VA%20Program%20full%20document.pdf (Accessed 1, November 2010).

structures therein.”⁵² Architectural compatibility is the only principal guiding review board decisions as stipulated by the Virginia General Assembly. The interpretation of architectural compatibility, coupled with the architectural variations within and across jurisdictions will be inconsistent.

A great example of the interpretive width can be gleaned by looking at Fredericksburg and New Market city codes. In Fredericksburg, which is a Certified Local Government and as such is held to state standards as prescribed by the NHPA, the ARB utilizes a two stage, twenty-one point criteria as their standards in approving alterations of an existing building.⁵³ In comparison the town of New Market which chose to adopt a review board in addition to its historic district overlay zone utilizes just two overriding principles.⁵⁴ Within these two principles the review board is instructed to use, “no specific architectural standards...”⁵⁵

Conversely there are a number of historic districts and review boards throughout Virginia which utilize a set of design guidelines to help administer the district(s) and guide the review board in their decision making process.⁵⁶ Design guidelines while not

⁵² Virginia General Assembly, Code of Virginia, §15.2-2306, “Preservation of historical sites and architectural areas.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed Septmeber 11, 2010).

⁵³ Fredericksburg ARB Sec. 78-759. (Code 1991, §14-594)

Standards for approval of alteration of existing structure.

(a) The architectural review board shall base its decisions on the U.S. Secretary of the Interior's Standards for Rehabilitation, as may be amended from time to time, in determining the appropriateness of any application for approval pertaining to existing structures under this division, as follows: (10 criteria)

(b) In conjunction with the U.S. Secretary of the Interior's Standards for Rehabilitation, as may be amended from time to time, the architectural review board, in reviewing applications for certificates of appropriateness involving additions or alterations to existing structures within the HFD, shall take into account the following specific review criteria to ensure that the application is consistent with the character and historic aspects of the HFD: (11 criteria)

⁵⁴ Town of New Market, Virginia. Zoning Ordinance. Amended October 18, 2004. Sec 70-110.

⁵⁵ Ibid.

⁵⁶ The National Alliance of Preservation Commissions currently reports eight sets of design guidelines in Virginia. Smithfield makes an ninth. Online Design Guidelines, National Alliance of Preservation Commissions, <http://www.uga.edu/napc/programs/napc/guidelines.htm> (access November 1, 2010).

required of any CLG or ARB is recommended by the Virginia Department of Historic Resources.⁵⁷ Design guidelines are typically tailored to the presiding architectural styles within the historic district(s) of that municipality and offer both primers on identification of stylistic details, suggestions for additions or alterations as well as principles for set-backs. These guidelines should be drawn up with heavy consideration to the regulatory zoning which underlies them.

Smithfield, Virginia, which is a CLG has a “HP-O” or Historic Preservation Overlay District which is administered by a review board. Smithfield’s Board of Historic and Architectural Review utilizes a set of design guidelines as their primary resource for decision making.⁵⁸ The guidelines themselves are broken down into several categories which help contextualize the buildings, spaces and historic district landscape in addition to providing architectural design by date and use. The Smithfield Historic District Guidelines are also separated into sections which allow both the review board members and the public to assess a project’s validity. For example, it provides guidelines for maintenance, rehabilitation, and new construction in addition to covering many issues which may occur concerning the demolition of structures and the potential impact to the streetscape.

As illustrated by these examples, each Virginia municipality will handle the issue of architectural compatibility differently. Some municipalities choose not to have review boards to administer their historic districts and thirty-one have chosen to take historic

⁵⁷ Department of Historic Resources. Certified Local Government Program in Virginia. “Model Historic District Ordinance.” <http://www.dhr.virginia.gov/clg/clg.htm> (accessed November 24, 2010).

⁵⁸ In Smithfield code the “Historic District Architectural Design Guidelines” are one of eight points which the review board must consider during their deliberation. Smithfield Virginia, City Code. Article 3.M. Historic District Overlay District. Section E. HP-O District Administration: Board of Historic and Architectural Review.” Sub-section 2, General Considerations for Review. Smithfield Virginia. Appendices. Historic District Guidelines. 2005-2006. http://www.smithfieldva.gov/pdf/Historic_district_guidlines_full.pdf (accessed October 8, 2010).

district administration to the highest level (CLGs) basing their decisions upon the Secretary of the Interior Standards (SOI). The remaining municipalities which have adopted review boards operate at a variety of intensities based upon their perceived needs and local political constraints.

IV. B: Use and Compatibility

While architectural character is the predominant consideration within historic districts, a host of other variables often affect their success. As described in Chapter Two, use is often decided through some form of regulatory zoning which historic district ordinances often defer too. However, since overlay zones deal specifically with historic architectural styles, conflicts with building codes or regulatory zoning often occur.⁵⁹ Extant structures which do not conform to the regulatory zoning at the time it is implemented are typically defined as nonconforming buildings or uses.

New Market's zoning ordinance specifically stipulates that within historic district overlay zones the issue of use is deferred to the existing zoning districts. Section 70-105, Overlay Concept subsection (c.) states;

“The building regulations of the historic overlay district will conform to the existing zoning districts that the overlay district is superimposed upon, and nothing in this article shall be construed to prevent the use of any land, building or structure in the historic overlay district permitted by the regulations prescribed in this chapter for the district in which the land, building or structure is located.”⁶⁰

⁵⁹ Department of Historic Resources. Historic District Zone Model Ordinance Draft #1. July 28, 2010. http://www.dhr.virginia.gov/pdf_files/HDZ%20Model%20Ordinance%20%28HCDfinal%29%20%282%29.pdf (accessed November 22, 2010).

⁶⁰ Town of New Market, Virginia. Zoning Ordinance. Amended October 18, 2004. Section 70-105, “Overlay Concept.”

Smithfield is another municipality which has defined their historic district as an overlay, again deferring the issue of use to the underlying regulatory zoning.⁶¹ They state specifically that, “Any requirements of the Historic District Ordinance are in addition to zoning regulations and building codes.”⁶²

Smithfield also addresses use within their design guidelines. Unlike regulatory zoning which defines where a use is appropriate, Smithfield’s design guidelines utilize use as an element to help the review board determine appropriate designs. While highlighting commercial, industrial or residential architectural trends is not an anomaly, it should be noted that this potentially increases the design disparity between regulatory and historic district overlay zones.

A locality may utilize a number of planning techniques to address the issue of nonconforming uses. These techniques stem from Virginia Code 15.2-2307, “Vested rights not impaired, nonconforming uses.”⁶³ This code authorizes localities to include ordinances which allow for uses which do not conform to the prescribed zoning of that district depending upon some basic criteria. This code allows many historic structures and their associated uses protection regardless of a locality’s adoption of a historic district overlay zone.

Virginia’s status as a Dillon Rule state and the wording of this code illustrate that localities may choose not to allow nonconforming uses. However, the ability to adopt an ordinance such as this helps planning departments cope with older extant uses. Further

⁶¹ Smithfield Historic District Design Guidelines I. Background C. Smithfield Preservation Programs 4. HP-O Zoning Page 4. http://www.smithfieldva.gov/pdf/Historic_district_guidelines_full.pdf (accessed November 5, 2010).

⁶² Smithfield Historic District Design Guidelines I. Background C. Smithfield Preservation Programs 4. HP-O Zoning Page 6. http://www.smithfieldva.gov/pdf/Historic_district_guidelines_full.pdf (accessed November 5, 2010).

⁶³ Virginia General Assembly, Code of Virginia, §15.2-2307, “Vested rights not impaired; nonconforming uses.” <http://leg1.state.va.us/000/cod/15.2-2307.HTM> (accessed November 8, 2010).

explored in the proceeding chapter nonconforming uses and market pressures often push the ability of regulatory zoning and historic district overlay zones to coordinate effectively.

V. Compatibility and Coordination

As illustrated in the previous four chapters the degrees of separation between regulatory and historic district overlay zoning require that the coordination of regulatory and historic district overlay zoning must become more efficient and clearly defined.

However, the adoption of local historic districts to supplement regulatory zoning has not been wholly fruitless. As a Dillon Rule state each municipality may interpret the Virginia enabling legislation differently. Just as varied as their architectural styles, each Virginia municipality faces various challenges when administering their preservation ordinances.

Design, the nucleolus of the review board process is plagued by a number of problems, one of which is the disparity in guidance between a municipality's regulatory and overlay zoning. Nonconforming uses which do not conform for a number of reasons to the regulatory zone in which they reside present an additional conflict for most historic district administrators. Conflicting codes, not just within a locality but between state legislation and city code represent the third element identified. Demolition by neglect and differing appeals processes for localities present additional issues for ARBs and zoning administrators.

These five challenges are each presented through examples drawn from several Virginia jurisdictions, and thus provide a context for how the problems are addressed. While this thesis seeks to identify some of the challenges faced by localities it is not comprehensive nor does it make recommendations. While a locality's ordinance may address one of the challenges highlighted herein, the application of those paradigms may or may not prove effective.

V. A: Disparities in design

In most localities regulatory zoning predates overlay zoning and due to their different perspectives in approaching planning problems each is written with a bias. These biases often cause the regulatory zoning and the overlay zoning to conflict with one another making neither ordinance effective. This disparity is created when the historic uses or building configurations do not match the current regulatory zoning designations, and are often recognized when a historic structure is rehabilitated for another use, or when a new building is introduced into a historic district.

Historic districts and preservation ordinances seek to identify and protect the built character of the district with design regulations. A locality may choose to simply address the aesthetic regulations loosely using no specific architectural standards as seen in New Market, or reciprocally they may choose to adopt specific design guidelines as seen in Smithfield. Within that large breadth of interpretation the overriding district character is the medium from which either guidelines are drawn or from which decisions are made; even without specific architectural standards.

Design Details

A historic district(s) may run the gamut of architectural styles, dates of construction and alteration, and original uses and subsequent changes in use. Depending upon how intense a locality chooses to pursue preservation ordinances as authorized by Virginia Code 15.2-2306 “Preservation of historical sites and architectural areas,” they may choose to look at each neighborhood as a separate architectural resource that is

identified by certain architectural patterns, including, height, setback, or density which do not necessarily conform to the underlying regulations for that area.⁶⁴

Setbacks which are defined as the distance between the exterior walls of a structure and the property line are an important planning element often found in regulatory zoning.⁶⁵ Smithfield's Historic District Design Guidelines addresses the regulatory issue of setbacks in a series of suggested principles. The historic district design guidelines highlight thirteen predominant residential architectural styles with differing lot usages and recommend that residential structures are set back twenty feet from the street. This suggestion is based upon eighty percent of residential structures in town which fall within this setback.⁶⁶ Variations in setbacks and transitions between different setbacks or voids in a streetscape are discussed and presiding principles are suggested to help guide the review board in their decisions. Smithfield's regulatory zoning contains five different residential classifications in which the front yard set back varies between twenty and thirty-five feet.⁶⁷ A conflict occurs because twenty percent of the residential structures do not conform to the twenty foot set back contained in the historic district guidelines and further the existing or recommended set back may not comply with the regulatory zoning. Even after the initiatives taken by the design guidelines to coordinate their efforts with the regulatory zoning, these variations highlight the exhaustive nature of the differences between code and design guidelines.

Height is another architectural element which often presents issues. Gross architectural elements like height are utilized in regulatory zoning as an element which

⁶⁴ Density, parking requirements, fire code influencing side yard and frontage are also commonplace.

⁶⁵ Building codes deal with the structure itself but typically do not dictate setbacks.

⁶⁶ Smithfield Virginia. Appendices. Historic District Guidelines. 2005-2006.

http://www.smithfieldva.gov/pdf/Historic_district_guidlines_full.pdf (accessed October 8, 2010).

⁶⁷ Ibid.

helps differentiate certain uses, such as light from heavy industrial or single family from multiple family residences. Height which is typically simplified in stories becomes more complicated when historic roof lines, which may include dormers, half stories or shed additions, are overlaid atop rigid regulatory specifications. Furthermore, height is typically defined in regulatory zoning by feet whereas overlay zones or architectural styles are typically defined by the number of stories.

Differing Perspectives

The most common problem concerning ARBs is that of differing perspectives or interpretations of architectural design and compatibility. While the most prevalent issue, it is also the most difficult to concisely address because of its subjective nature. The conflict with design perspectives includes differences in the levels of design and preservation education of review board members; the scope of the municipality's preservation goals and objectives; the strength of the code's language and intent; and the extant historic fabric.

Robert Stipe argues that, "(there is not) sufficient emphasis placed on the overall special character of each local district..."⁶⁸ Stipe's comments revolve around the idea that a general overemphasis is placed upon single structures or upon a historicist's insistence upon specific architectural details, essentially ignoring the diversity of the district's architectural character.⁶⁹ Planners seeking to revitalize a district by creating a strong community identity through its built environment or a chamber of commerce seeking to market a brand may applaud Stipe's comment. Conversely, a 'purist' may

⁶⁸ Robert Stipe, *A Richer Heritage* (Chapel Hill: University of North Carolina Press, 2003) 132.

⁶⁹ Robert Stipe, *A Richer Heritage* (Chapel Hill: University of North Carolina Press, 2003) 140.

assert that a stronger adherence to specific architectural details instills that community identity, neighborhood continuity and marketability.

Still others assert that design review, “encourages mimicry and the dilution of the authenticity of place...places where extreme control is exerted have a kinship to theme park perfection or urban fantasy...”⁷⁰ Colonial Williamsburg epitomizes the theme park mimicry however it is unique considering the level of political and financial support coupled with in house preservation tradesmen. Some members of the current architectural community may argue that new design which complements the existing character further the evolution of the built environment. However it is precisely the level or detail of complement which is at the crux of the design debate.

In many cases the divide over the local design review argument centers on the physical limitation; materials and cost. The purist or historicist member of the design review board may seek more detailed replication of a predominant style when considering an infill project or when considering an addition to a historic structure. This can be taken as far as to recommend utilizing salvaged materials instead of modern equivalents. The opposite of the historicist could be called the modernist. Regardless of their stance the members are committed to making a decision which will be upheld by the BZA or elected body and adheres to either the design guidelines or local ordinance.

This difference in opinion between review board members often stems from a variety of elements. Personality, taste and education are the most predominant reasons dictating a member’s perspective or interpretation of design. Kristen Hoffman states that, “A major question when conducting design review is how to mold the design review

⁷⁰ Scheer, B. C., and Prieser, W. F. E. *Design Review: Challenging urban aesthetic control* (New York: Spring Publishers, 2004) 8.

process to ensure that the decision makers are not simply having a taste war.”⁷¹ To help mitigate the issues of personality, taste and education some efforts have been made by SHPOs and organizations like the National Alliance of Preservation Commissions to train and network design review boards.⁷²

A locality may establish a preservation ordinance which affords any combination of identification of historic structures and districts, design review boards or the adherence to higher standards by becoming a CLG. In any case their interpretation of Virginia Code, coupled with their historic buildings, the goals of the community and the competency of the administrative bodies complicates the process of ARB operations. Architectural design is the foundation from which local ordinances seek to preserve the urban character of the municipality. It is truly an exhaustive element within the larger conflicts found in coordinating regulatory and historic district over zoning.

V. B: Nonconforming Buildings

As previously mentioned regulatory zoning efforts have often been in conflict with older buildings which existed prior to the imposition of zoning. These older buildings often called non-conforming and are handled by planners in a variety of ways including the issuance of variances, and special use permits, clauses within regulatory zoning ordinances, or through the adoption of mixed-use or form-based zoning or transitional zoning designations. Historic district overlay zones do not typically deal with use and defer to the regulatory zoning, which often contains basic design requirements. These historic buildings become non-conforming when their extant form does not match

⁷¹ Kristen Hoffman, “Designing our Future” (master’s thesis, Tufts University, 2009.) 16

⁷² National Alliance of Preservation Commissions. <http://www.uga.edu/napc/> (accessed December 1, 2010).

the requirements of the regulatory zoning. This often comes to light when older structures are rehabilitated, or altered or when infill projects are proposed within a historic district.

When looking at the myriad of state and local codes which all seek to combat the problems arising from planning and preservation initiatives this conflict becomes clearer.

Virginia Code 15.2-2307, “Vested rights not impaired; nonconforming uses,” States that:

“A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; ...Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.”

As seen in the other Virginia enabling legislation, the provisions authorized by this are voluntary.

Looking at Fredericksburg’s code we can see how nonconforming uses are handled.⁷³ Fredericksburg allows nonconforming uses as long as the use is continued without a two year lapse, the buildings are maintained without enlargement and are fiscally up to date.⁷⁴ As seen here a nonconforming use clause adopted by a locality within their regulatory zoning presents a tool for planners to begin minimizing the impact that regulatory zoning may have on older structures.

Problems may arise with nonconforming buildings during restoration, rehabilitation or reconstruction. Additions or significant alterations which are often touted as necessary to prevent razing or to promote commerce could cause a historic

⁷³ Code of Ordinances. City of Fredericksburg, Virginia. Division 5. Nonconforming Uses and Structures. <http://newords.municode.com/newordinances.aspx?productid=12340> (accessed November 1, 2010).

⁷⁴ Ibid.

nonconforming buildings to lose their status.⁷⁵ According to the enabling legislation (if the locality chooses to adopt the provisions) these additions or significant alterations would then place the nonconforming building under the auspices of the regulatory zoning, with which comes a host of other requirements. Within an overlay, this potential conflict could not only alter the building's character but could drastically alter the landscape.

Nonconforming code helps planning departments cope with older extant buildings and uses within regulatory zones. These older uses and buildings are typically historic and may be administered by a historic district overlay. The market pressures which have produced trends such as the rehabilitation of older industrial buildings into loft residences typically result in alterations to these structures.⁷⁶ Resulting from these pressures the use of the rehabilitated structure will require a municipality to have competent methods for handling variances, zoning and design precedents. Akin to design details, these repercussions push the limitations of coordination between regulatory and overlay zoning codes.

V. C: Conflicting Codes and Statutes

In addition to concerns over the coordination of regulatory and overlay zoning within a municipality, other local code, ordinances or statutes may cause consternation. The strength inherent in regulatory and overlay zoning ordinances changes when pitted against local ordinances which were authorized by a differing Virginia articles. This

⁷⁵ Nonconforming status for a historic structure within a regulatory zone, typically equates to the physical protection of the structures historic attributes. However nonconforming can also be understand as a new structure or infill which does not conform to a historic district overlay zone.

⁷⁶ When rehabilitations take place they often do so to utilize historic tax credits. In doing so they must conform to SOI standards.

causes the administration of overlay zoning to become exponentially more difficult when comparing their elements to those required by building or fire codes.

Code of Virginia 15.2, “Counties, Cities and Towns,” authorized localities to adopt both regulatory and historic district overlay zones.⁷⁷ It also covers a number of other planning tools such as appeals and utilities. However, according to Virginia Code 15.2-2315, “Conflict with statutes, local ordinances or regulations,” whenever a regulation made under the authority of Article 15.2 requires higher or more stringent standards than required in any other local ordinance- the rule sanctioned by Article 15.2 takes precedent.⁷⁸ Whenever a local ordinance or regulation requires higher standards than are required by this article those provisions shall take precedent in the decision.

Higher standards are typically understood to be those which place greater or more stringent restrictions upon the property and generally deal with issues of health and life safety.⁷⁹ Historic district overlay zones for example are assumed to be considered a higher standard than those of regulatory zoning. When rulings of the review boards are challenged the appeals committee must weigh the priorities of both sets of zoning against the project and its potential merits. A similar paradigm is highlighted in this piece of Virginia code. Unlike many of the pieces of enabling legislation illustrated throughout

⁷⁷ Virginia General Assembly. Code of Virginia, Title 15.2, “Counties, Cities and Towns.” <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+TOC1502000001400000000000> (accessed November 10, 2010).

⁷⁸ “Whenever the regulations made under authority of this article require a greater width or size of yards, courts or other open spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern.” Virginia General Assembly. Virginia Code §15.2-2315, “Conflict with statutes, local ordinances or regulations.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2315> (accessed Septmeber 10, 2010).

⁷⁹ Eric Kelly and Barbara Becker, *Community Planning* (Washington D.C.: Island Press, 2000), 203-208.

this text, Virginia Code 15.2-2315, “Conflict with statutes, local ordinances or regulations,” is not voluntary but a presiding rule which localities must adhere to.

This causes concern for historic districts. Title 27, “Fire Protection,” Title 36, “Housing,” may authorize local code which would restrict the use within an overlay further; superseding those regulations already mandated by the structure in the regulatory and overlay zoning.⁸⁰ It has been noted that, “Conversely, something may be allowed under Title 27 but not be allowed under the historic district overlay, in which case the historic district overlay would govern.”⁸¹

In June, 2010 the Virginia Supreme Court tried a case where the code was specifically mentioned alongside a historic district. In the case, *Covel v. Town of Vienna* the validity of Vienna’s historic district ordinance as well a COA application was being appealed.⁸² The landowner (Covel) argued that according to Virginia Code 15.2-2315 the higher standards required of Vienna town code as a prerequisites for the historic district, were not fulfilled, refuting the validity of the historic district. His interpretation of 15.2-2315 was out of context; hence the Supreme Court dismissed that portion of the argument

While Covel used Virginia Code 15.2315 out of context the Circuit and Supreme Courts still heard the appeal. This set not only a legal precedent but helped solidify the definitions of a “higher standard.” It was noted, “Each of the terms associated with “higher standards” refers to sizes, heights, or percentages.”⁸³ Since the case was heard in both courts it illustrates the legitimacy of conflicts between statutes, local ordinances or

⁸⁰ Conversation with Lane Pearson, Esq. Property Director. Alliance to Conserve old Richmond Neighborhoods and Kimberly Chen, Architectural Historian and Partner, Johannas Design Group. November 29, 2010. Title 36 contains the statewide building codes.

⁸¹ Ibid.

⁸² *Covel v. Town of Vienna*. Findlaw, Va Supreme Court. June, 2010. <http://caselaw.findlaw.com/va-supreme-court/1527048.html> (accessed November 15, 2010).

⁸³ *Covel v. Town of Vienna*. Findlaw, Va Supreme Court. June, 2010. <http://caselaw.findlaw.com/va-supreme-court/1527048.html> (accessed November 15, 2010).

regulations. Planners and ARB members need to be cognizant of the differences between not only overlay and underlying zoning but the provisions cited in their municipal codes which are authorized by any other Virginia titles.

V. D: Appeals and deferred governing boards

Virginia has mandated that every locality which enacts a zoning ordinance must have a board for appeals. Typically called the Board of Zoning Appeals (BZA), it is made up of five to seven residents who are appointed by the local circuit court.⁸⁴ Dependent upon the level of participation and interpretation of Virginia Code 15.2-2306, “Preservation of historical sites and architectural areas,” not only will the role of the appeals boards differ but also in some cases the review board may be the governing body or zoning administrator.

According to the previously mentioned code a locality may adopt a variety of preservation initiatives without others. For example a locality may adopt a preservation ordinance which just identifies individual landmarks and districts, or an ordinance which both identifies resources and establishes a review board. Other municipalities may not adopt review boards hence, understanding these nuances in local code will help determine by whom and how decisions are made.

Virginia Code 15.2-2306, “Preservation of historical sites and architectural areas,” states that a locality may have a provision that no erections, reconstructions, alterations, restorations, razing, demolitions or moves are approved unless by the review board or, on appeal, by the governing body. Furthermore it states that,

⁸⁴ Virginia General Assembly. Virginia Code §15.2-2308 “Boards of zoning appeals to be created: membership, organization, etc.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2308> (accessed Septmeber 10, 2010).

“The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body.”⁸⁵

If a locality chooses to adopt any part of Virginia Code 15.2-2306, “Preservation of historical sites and architectural areas,” it must provide for an appeals committee which places the appeal of any ARB, landmarks or district decision into the hands of the circuit court.

Referencing New Market’s appeals portion of the city code it is clearly illustrated that the appeals board may change the effectiveness of an overlay zone. Article XIX, “Board of Zoning Appeals” states that the BZA is made up of five town residents appointed by the county circuit court. Under the “Powers and Duties” subsection the code states that, “...the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest...”⁸⁶ Fulfilling their obligation when considering a variance the BZA in this case has the ability to override the recommendation of the architectural review board and would offer others the grounds to appeal future decisions of the review board that they found oppressive. However, New Market has included a clause within their code to prevent the abuse of the appeals process as grounds from which to challenge future decisions. Under “Powers and Duties,” the code states that, “The previous approval of a

⁸⁵ Virginia General Assembly, Code of Virginia, §15.2-2306, “Preservation of historical sites and architectural areas.” Subsection 3. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed September 10, 2010).

⁸⁶ Town of New Market, Virginia. Zoning Ordinance. Article XIX, Section 70-195, “Powers and Duties.” No. 5

similar variance is insufficient grounds for the granting of a variance.”⁸⁷ While addressed by the New Market Zoning Code by providing a clause that previous variances are insufficient grounds for similar applications, the issue of appeals could potentially change the effectiveness of review boards as a viable regulatory committee.

The NHPA has no authority to mandate the creation of a local ARB, historic preservation review board, committee or commission. However it defines that outside of CLGs these collegial bodies (ARBs) appointed by states or localities which will deal in historic preservation related review should be made up of members who have certain qualifications.⁸⁸ A recent survey of CLG appeals coordinated by the VDHR found that of those who responded to a survey, the petition for appeal would go to the Clerk of Council and the City Council.⁸⁹ Further appeals of that decision are made to the Circuit Court.⁹⁰

The Virginia Department of Historic Resources has created a model historic district ordinance.⁹¹ While not mandatory it is representative of an ordinance which utilizes an elements authorized

Chart 5.1 CLG Statistics for 2008			
Reviewed	Approved	Denied	Appealed
1,718	1,363	89	17
Approx. 29 of 33 CLGs reporting			

⁹²

⁸⁷ Town of New Market, Virginia. Zoning Ordinance. Article XIX, Section 70-195, “Powers and Duties.” No 7.

⁸⁸ (A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation and landscape architecture or related disciplines, to the extent such professionals are available in the community concerned, and (B) such other persons as have demonstrated special interest, experience or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission. National Historic Preservation Act. (c) (1). Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. Page 81.

⁸⁹ Conversation with Pamela Schenian, CLG Program Manager and Architectural Historian, Department of Historic Resources. November 19, 2010.

⁹⁰ Ibid.

⁹¹ Virginia Department of Historic Resources. Model Historic District Ordinance. July 28th, 2010. http://www.dhr.virginia.gov/pdf_files/HDZ%20Model%20Ordinance%20%28HCDfinal%29%20%282%29.pdf (accessed November 18, 2010).

⁹² Pamela A. Schenian, CLG Program Manager and Architectural Historian, Department of Historic Resources.

in multiple pieces of state enabling legislation. It includes a detailed method for handling appeals. The model ordinance shows the passage of appeals from the review board to the local governing body and upon further appeal from the local governing body to the circuit court.

As seen in the New Market example the ability of the BZA to alter a decision of the review board during the appeals process may also undermine the legitimacy of design as a planning tool. CLG's typically operate with higher standards than other municipalities with historic district overlays hence the model ordinance illustrates that the governing body which is handling the review board appeal, "shall give due consideration to the recommendations of the ARB."⁹³ It further suggests that, the governing body shall conduct a full hearing "using the same standards, criteria and design guidelines...before rendering any decision."⁹⁴ Any CLG or non CLG adopting the model standards can be certain that the preservation paradigms expressed by the review board are considered again during the appeals process.⁹⁵

Regardless of how heavily a municipality has chosen to participate in preservation the appeals process inherent with any zoning code has the potential to affect the legitimacy of design as a viable in the regulatory method in that locality. Legally design has been authenticated as a police power. However, if a city council, BZA or circuit court does not base their appeals decisions upon the same considerations and with the same biases that the ARB utilized in the initial review process they can potentially undermine

⁹³Virginia Department of Historic Resources. Model Historic District Ordinance. July 28th, 2010. http://www.dhr.virginia.gov/pdf_files/HDZ%20Model%20Ordinance%20%28HCDfinal%29%20%282%29.pdf (accessed November 18, 2010).

⁹⁴ Ibid.

⁹⁵ Richmond has recently included in their appeals process a clause stating that in order to appeal the appellant has to cite the portion of the design guidelines which were violated. The council (BZA) can only render their decision based upon finding that portion of the guidelines were violated. This removed the ability to an appeal to have political grounds. Conversation with Kim Chen, December 1, 2010.

the effectiveness of the historic overlay district. While more abstract than debate over design details, appeals are equally taxing procedures for localities with regulatory zoning and overlay districts.

V. E: Code violations and demolition by neglect

A uniform state-wide building code was adopted in Virginia in 1950 as a way to protect residents from poor building practices or materials.⁹⁶ These building codes adopted by localities as authorized by Virginia Code, Title 36, “Housing,” tend to come into conflict with regulatory and overlay zoning.⁹⁷ While preservation ordinances typically seek to prevent the destruction of the historic built environment they may or may not provide for demolition clauses.⁹⁸ By examining the role played by city code enforcement and demolition clauses the deviation between two municipal departments may be illustrated.

Over the past few decades, Petersburg, Virginia, has increasingly dealt with the issue of code enforcement and demolition by neglect. While no demolition or code infraction figures were available from the Petersburg Planning or Code Compliance departments the Census illustrates a mature housing stock showing some disinvestment. The 2000 Census identified 13.5% of the municipal housing stock as vacant.⁹⁹ By 2007 the percentage of vacant housing stock had risen to 23.5% with almost 10% of the

⁹⁶ Virginia Department of Housing and Community Development. State Building Codes and Regulations. <http://www.dhcd.virginia.gov/AboutDHCD/> (accessed November 5, 2010).

⁹⁷ Virginia General Assembly. Code of Virginia. Title 36, “Housing.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC3600000> (accessed October 25, 2010).

⁹⁸ In many cases code enforcement officers or managers are more familiar with new construction building code and not always rehabilitation code. Conversation with Pamela Schenian, CLG Coordinator VDHR. December 5, 2010.

⁹⁹ U.S. Census Bureau. American Fact Finder. Summary File 1. Petersburg, Va.

housing stock being valued at less than \$50,000.¹⁰⁰ Of all the occupied housing stock almost 25% was occupied by persons age 65 or older and 27% of the extant buildings were built before 1939.¹⁰¹ The number of vacant parcels within the seven historic districts cannot be accurately assessed but, there are 353 vacant parcels citywide.¹⁰²

Petersburg adopted the Virginia Uniform Building Code pursuant to Code of Virginia 36, "Housing." An enforcement officer, utilizing the statewide building code issues violations for poor maintenance in addition to supervising new construction. If a violation is ignored the officer is able to submit, "a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the code official may issue or obtain a summons or warrant."¹⁰³

In division two, "Enforcement Authority" of the Petersburg code besides allowing the violation consequence, the city also has the express authority to make emergency repairs or raze an unsafe structure.¹⁰⁴ As a CLG, Petersburg has adopted seven historic district overlay zones which defer to regulatory zoning, and as such their code reflects the coordination of both zoning efforts. As evidence that code compliance issues in typical zoning district differs when an overlay district is involved, Petersburg building code and subsequent enforcement section includes this clause.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² These figures are drawn from the City of Petersburg online tax assessment records. 187 Urban Residential, 49 Suburban Residential, 62 Multifamily Residential, 27, Commercial and 28 Industrial.

¹⁰³ Virginia Uniform Statewide Building Code. 2006 Virginia Maintenance Code. Part III. http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/Virginia_Uniform_Statewide_Building_Code.htm (accessed November 20, 2010).

¹⁰⁴ City of Petersburg, Virginia. Code. Article II, "Building Code." http://library1.municode.com/default-test/home.htm?infobase=11423&doc_action=whatsnew (accessed November 22, 2010).

“(a) No permit required under this article shall be issued for any building or structure subject to view from any public street, right-of-way, or place within a historic area established pursuant to article 35 of the city's zoning ordinance, as amended, until the zoning administrator has certified to the building code official that such exterior alteration either does not require the issuance of a certificate of appropriateness pursuant to article 35, section 6 of the city's zoning ordinance, or that such certificate has been issued by the architectural review board or, on appeal, by the city council.”¹⁰⁵

Petersburg Historic District Design Guidelines address the issue of demolition in Chapter 11. In considering the demolition of a structure within a historic district the decision to issue a COA must express the over whelming public necessity for the demolition. This is established only after considering a set of alternatives which include consideration of the structures relocation, the reason for demolition, and a feasibility study for the rehabilitation of the structure.¹⁰⁶

¹⁰⁵ City of Petersburg, Virginia. Code. Article II, “Building Code.” Section 22-68, “Permits and inspections in historical areas within the city. http://library1.municode.com/default-test/home.htm?infobase=11423&doc_action=whatsnew (accessed November 21, 2010).

¹⁰⁶ Petersburg Historic Districts Design Guidelines. Frazier Associates, 2007. 11-2.

Conclusion

Virginia's historic districts face a wide array of challenges. The challenge begins with a localities interpretation of Virginia Code, as reflected in their zoning ordinances. Coordination between regulatory zoning and historic district overlays in perusing their separate missions often results in an overall lack of efficiency and effectiveness. This thesis has focused on providing an outline of the evolution and boundaries of planning and preservation initiatives. It concludes in this final chapter by highlighting five predominant problems faced in Virginia's locally designated historic districts. These major issues include the exhaustive debate surrounding design criteria and interpretation, nonconforming uses, conflicts between codes and ordinances, the appeals process and demolition by neglect.

While the five challenges presented here are not a comprehensive list of those faced by Virginia's municipalities, the limits of this study should give pause to the reader. The issues faced by historic districts across the Commonwealth are as limitless as the architectural styles found in them or as differing as the goals and objectives of each of their citizens. In summary the paradigms and methods illustrated throughout this thesis should assist in understanding the problems faced in Virginia's historic districts by planners, preservationists and property owners.

Bibliography

- City of Alexandria. "Old and Historic Alexandria District Board of Architectural Review." Planning and Zoning Department. <http://alexandriava.gov/Planning> (accessed September 22, 2010).
- City of Petersburg. Office of the City Assessor. Online Records. <http://www.petersburg-va.org/assessor/records.asp> (accessed October 20, 2010).
- Conversation with Lane Pearson, Esq. Property Director. Alliance to Conserve Old Richmond Neighborhoods and Kimberly Chen, Architectural Historian and Partner, Johannas Design Group. November 29th, 2010.
- Conversation with Pamela Schenian, CLG Coordinator VDHR. November 19, 2010
- Dovey, Kim. *Becoming place: urbanism, architecture, identity and power*. London; New York: Routledge, 2010.
- Form Based Code Institute. "Resources-Definition." <http://www.formbasedcodes.org/definition.html>
- Frazier Associates and Town of Smithfield. *Smithfield Historic District Design Guidelines*. 2006.
- Frazier Associates and City of Petersburg. *Petersburg Historic Districts Design Guidelines*. 2007.
- Fredericksburg, Virginia. Planning and Community Development. Zoning Ordinances. http://library1.municode.com/default-test/home.htm?infobase=12340&doc_action=whatsnew (accessed October 1, 2010).
- Green, Melvyn and Anne Watson. *Building Codes and Historic Buildings*. Washington DC: National Trust for Historic Preservation, 2005.
- Goldberger, Paul. *Why Architecture Matters*. New Haven: Yale University Press, 2009.
- Hedman, Richard and Andrew Jaszewski. *Fundamental of Urban Design*. Washington D.C.: Planners Press, 1984.
- Historic Sites Act of 1935, as amended. Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. Washington D.C.:U.S. Government Printing Office, 2006.
- Hoffman, Kristin Elena. "Designing our Future: Exploring the Boundaries of Design Review." M.A., Tufts University, 2009.

- Jacobs, Jane. *The Death and Life of Great American Cities*. New York: Vintage Books, 1961.
- Kelly, Eric and Barbara Becker, *Community Planning*. Washington D.C.: Island Press, 2000.
- Kilpatrick, Kathleen. *Virginia's Historical Register*. Virginia Department of Historic Resources. 2007.
- Levy, John M. *Contemporary Urban Planning*. 5th Ed. Upper Saddle River: Prentice-Hall Inc. 2000
- Morris, Stephen A. "Zoning and Historic Preservation." *Cultural Resources Partnership Notes*. Washington DC: Heritage Preservation Services, 1998.
- National Alliance of Preservation Commissions. <http://www.uga.edu/napc/> (accessed September 22, 2010).
- National Historic Preservation Act of 1966. Federal Historic Preservation Laws. National Park Service, Department of the Interior. 2006 Edition. Washington D.C.: U.S. Government Printing Office, 2006.
- National Park Service. "Secretary of the Interior Standards for the Treatment of Historic Properties." Department of the Interior. <http://www.nps.gov/history/hps/tps/standguide/> (accessed October 10, 2010).
- National Trust for Historic Preservation. "About Us." <http://www.preservationnation.org/about-us/> (accessed September 10, 2010).
- Nelson, Lee H. *Architectural Character: Identifying the Visual Aspects of Historic Buildings as an Aid to Preserving Their Character*. National Park Service Preservation Brief, 17. Washington DC: U.S. Department of the Interior, 1982.
- New Market, Virginia. Code of Ordinances. <http://www.municode.com/resources/gateway.asp?pid=12830&sid=46> (accessed September 5, 2010).
- Portsmouth, Virginia. Zoning Ordinances. Form Based Code. November 24, 2009. <http://www.portsmouthva.gov/planning/destinationptown5.aspx> (accessed September 20, 2010).
- Rypkema, Donovan D. *The Economics of Historic Preservation: A Community Leaders' Guide*. Washington, DC: National Trust for Historic Preservation, 1994

- Schmickle, William. *Politics of Historic Districts: A Primer for Grassroots Preservation*. Lanham: Altamira Press, 2006.
- Sendlich, Emina. *Planning and urban design standards*. Hoboken: John Wiley & Sons, 2006.
- Stipe, Robert. *A Richer Heritage*. Chapel Hill: University of North Carolina Press, 2003.
- United States Census Bureau. American Fact Finder. Summary File 1. Petersburg, Virginia. http://factfinder.census.gov/home/saff/main.html?_lang=en (accessed October 30, 2010).
- United State Constitution. Tenth Amendment. Cornell University Law School, Legal Information Institute. <http://topics.law.cornell.edu/constitution/billofrights> (accessed September 5, 2010).
- United States Supreme Court. “Berman V. Parker.” Cornell University Law School, Legal Information Institute. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0348_0026_ZS.html (accessed October 1, 2010).
- United States Supreme Court. “Penn Central Transportation Co. v. New York City.” Cornell University Law School, Legal Information Institute. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0438_0104_ZS.html (accessed October 1, 2010).
- United States Supreme Court. “Village of Euclid, Ohio v. Ambler Realty Co.” Cornell University Law School, Legal Information Institute. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0272_0365_ZS.html (accessed October 1, 2010).
- Virginia Department of Historic Resources. *Alexandria Historic District*. National Register of Historic Places and Virginia Landmarks Register. http://www.dhr.virginia.gov/registers/Cities/Alexandria/100-0121_Alexandria_HD_textlist.htm (accessed October 5, 2010).
- Virginia Department of Historic Resources. Certified Local Government Program in Virginia. <http://www.dhr.virginia.gov/clg/clg.htm> (accessed October 1, 2010).
- Virginia Department of Historic Resources. Certified Local Government Program. “Model Historic District Zoning Ordinance.” [Http://www.dhr.virginia.gov/pdf_files/HDZ%20Model%20Ordinance%20\(HCDfinal\)%20\(2\).pdf](http://www.dhr.virginia.gov/pdf_files/HDZ%20Model%20Ordinance%20(HCDfinal)%20(2).pdf) (accessed October 1, 2010).
- Virginia General Assembly. Code of Virginia. 15.2, “Counties, Cities and Towns.”

- <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1502000> (accessed September 5, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-1102, “General grant of power; enumeration of powers not exclusive; limitation on exercise of power.”
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-1102> (accessed September 5, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-2201, “Definitions.”
<http://leg1.state.va.us/000/cod/15.2-2201.HTM> (accessed September 10, 2010).
- Virginia General Assembly. Code of Virginia §15.2-2279, “Ordinances regulating the building of houses and establishing setback lines.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2279> (accessed September 10, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-2280, “Zoning Ordinances Generally.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2280> (accessed September 8, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-2285, “Preparation and adoption of zoning ordinance and map and amendments thereto; appeal.”
<http://leg1.state.va.us/000/cod/15.2-2285.HTM> (accessed September 10, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-2306, “Preservation of historical sites and architectural areas.” <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2306> (accessed September 4, 2010).
- Virginia General Assembly. Code of Virginia. §15.2-2308, “Boards of zoning appeals to be created; membership, organization, etc.”
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2308> (accessed September 4, 2010).
- Virginia General Assembly. Code of Virginia. Title 36, “Housing.”
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC3600000> (accessed October 5, 2010).
- Virginia Supreme Court. “Covel v. Town of Vienna.” June, 2010. Find Law.Com.
<http://caselaw.findlaw.com/va-supreme-court/1527048.html> (accessed October 20, 2010).
- Virginia Uniform Statewide Building Code. *2006 Virginia Maintenance Code*. Virginia Department of Housing and Community Development.
http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/Virginia_Uniform_Statewide_Building_Code.htm (accessed October 1, 2010).