

**26.415.070 Development Involving a Designated Historic Property**

- A. Exempt Development
- B. Certificate of No Negative Effect
- C. Minor Development
- D. Major Development
- E. Substantial Amendment to a Development Order

*Excerpt from the Aspen Municipal Code, Title 26:*

**26.415.070. Development involving designated historic property.**

No building or structure shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or district until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review. An application for a building permit cannot be submitted without a development order.

**A. Exempt development.**

1. Selected activities are exempted from the development review procedures including interior remodeling, paint color selection, exterior repainting or replastering similar to the existing finish or routine maintenance such as caulking, replacement of fasteners, repair of window glazing or other such minimally intrusive work.
2. If there is any question if a work activity qualifies as exempt, the Community Development Director shall make the determination as to its eligibility.

**B. Certificate of no negative effect.**

1. An application for a certificate of no negative effect may be made to the Community Development Director for approval of work that has no adverse effect on the physical appearance or character-defining features of a designated property. An application for a certificate of no effect may be approved by the Community Development Director with no further review if it meets the requirements set forth in the following Subsection 26.415.070.B.2:
2. The Community Development Director shall issue a development order based upon a certificate of no negative effect within fourteen (14) days after receipt of a complete application if:
  - a. It is determined that the activity is an eligible work item and meets the City Historic Preservation Design Guidelines and
  - b. Any modifications to the proposed work requested by the Community Development Director are agreed to by the owner/applicant and
  - c. The proposed work will not diminish, eliminate or adversely affect the significant historic and/or architectural character of the subject property or Historic District in which it is located.
3. An application for a certificate of no negative effect shall include the following:
  - a. The general application information required in Section 26.304.030.
  - b. Elevations or drawings of the proposed work.

- c. Photographs, building material samples and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
  - d. Verification that the proposal complies with Chapter 26.410, Residential design standards.
4. The following work shall be considered for a Certificate of No Negative Effect:
- a. Replacement or repair of architectural features which creates no change to the exterior physical appearance of the building or structure.
  - b. Replacement or repair of architectural features that restores the building or structure to its historic appearance.
  - c. Installation of awnings or similar attachments provided no significant feature is damaged, removed or obscured by the installation.
  - d. Fencing that has no adverse effect on the historic or architectural character of the property.
  - e. Mechanical equipment or accessory features that have no impact on the character-defining features of the building or structure.
  - f. Signs which have no effect on the character-defining features of the historic property.
  - g. Alterations to noncontributing buildings within historic districts that have no adverse effect on its historic or architectural character.
  - h. Alterations to no more than two (2) elements of nonprimary façades of a designated building.
  - i. Installation of site improvements, such as walkways, patios, pools or hot tubs, or similar significant features.
5. The development order and associated certificate of no negative effect shall expire and become null and void after three (3) years from the date of issuance by the Community Development Director unless a building permit is issued within that time.
6. In the event that the Community Development Director determines that the issuance of a certificate of no negative effect is not appropriate, the owner may apply for a certificate of appropriateness from the HPC.

**C. Certificate of appropriateness for a minor development.**

1. The review and decision on the issuance of a certificate of appropriateness for minor development shall begin with a determination by the Community Development Director that the proposed project constitutes a minor development. Minor development work includes:

- a. Expansion or erection of a structure wherein the increase of the floor area of the structure is two hundred and fifty (250) square feet or less or
- b. Alterations to a building façade, windows, doors, roof planes or material, exterior wall materials, dormer porch, exterior staircase, balcony or ornamental trim when three (3) or fewer elements are affected and the work does not qualify for a certificate of no negative effect or
- c. Erection or installation of a combination or multiples of awning, canopies, mechanical equipment, fencing, signs, accessory features and other attachments to designated properties such that the cumulative impact does not allow for the issuance of a certificate of no negative effect or
- d. Alterations that are made to nonhistoric portions of a designated historic property that do not qualify for a certificate of no negative effect or
- e. The erection of street furniture, signs, public art and other visible improvements within designated historic districts of a magnitude or in numbers such that the cumulative impact does not allow for the issuance of a certificate of no negative effect.

The Community Development Director may determine that an application for work on a designated historic property involving multiple categories of minor development may result in the cumulative impact such that it is considered a major development. In such cases, the applicant shall apply for a major development review in accordance with Subsection 26.415.07.D.

2. An application for minor development shall include the following:
  - a. The general application information required in Section 26.304.030.
  - b. Scaled elevations and/or drawings of the proposed work and its relationship to the designated historic buildings, structures, sites and features within its vicinity.
  - c. An accurate representation of all building materials and finishes to be used in the development.
  - d. Photographs and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
  - e. Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
3. The procedures for the review of minor development projects are as follows:
  - a. The Community Development Director will review the application materials and if they are determined to be complete, schedule a public hearing before the HPC. The subject property shall be posted pursuant to Paragraph 26.304.060.E.3.b.

- b. Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
- c. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
- d. The HPC decision shall be final unless appealed by the applicant or a landowner within three hundred (300) feet of the subject property in accordance with the procedures set forth in Chapter 26.316.

**D. Certificate of appropriateness for major development.**

- 1. The review and decision on the issuance of a certificate of appropriateness for major development shall begin with a determination by the Community Development Director that the proposed project constitutes a major development. A major development includes one or more of the following activities:
  - a. The construction of a new structure within a historic district; and/or
  - b. Alterations to more than three (3) elements of a building façade including its windows, doors, roof planes or materials, exterior wall material, dormers, porches, exterior staircase, balcony or ornamental trim; and/or
  - c. The expansion of a building increasing the floor area by more than two hundred and fifty (250) square feet; and/or
  - d. Any new development that has not been determined to be minor development.
- 2. The procedures for the review of major development projects include a two-step process requiring approval by the HPC of a conceptual development plan and then a final development plan. If a major development project involves additional City Land Use approvals, the Community Development Director may consolidate or modify the review process accordingly, pursuant to Subsection 26.304.060.B.
- 3. Conceptual development plan review.
  - a. An application for a conceptual development plan shall include the following:
    - (1) The general application information required in Section 26.304.030.

- (2) A site plan and survey showing property boundaries, the location and orientation of existing and proposed improvements and predominant site characteristics.
  - (3) Scaled drawings of all proposed structure(s) or addition(s) depicting their form, including their height, massing, scale, proportions and roof plan; and the primary features of all elevations.
  - (4) Preliminary selection of primary building materials to be used in construction represented by samples and/or photographs.
  - (5) Supplemental materials to provide a visual description of the context surrounding the designated historic property or historic district including at least one (1) of the following: diagrams, maps, photographs, models or streetscape elevations.
  - (6) Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
- b. The procedures for the review of conceptual development plans for major development projects are as follows:
- (1) The Community Development Director shall review the application materials submitted for conceptual or final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
  - (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
  - (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.
- c. The effect of approval of a conceptual development plan is as follows:
- (1) Approval of a conceptual development plan shall not constitute final approval of a major development project or permission to proceed with the development. Such authorization shall only constitute authorization to proceed with the preparation of an application for a final development plan.
  - (2) Approval of a conceptual development plan shall be binding upon HPC in regards to the location and form of the envelope of the structure(s) and/or addition(s) as

depicted in the conceptual plan application including its height, scale, massing and proportions. No changes will be made to this aspect of the proposed development by the HPC as part of their review of the final development plan unless agreed to by the applicant. If the applicant chooses to make substantial amendments to the conceptual design after it has been approved, a new conceptual development plan hearing shall be required.

- (3) Unless otherwise specified in the resolution granting conceptual development plan approval, a development application for a final development plan shall be submitted within one (1) year of the date of approval of a conceptual development plan. Failure to file such an application within this time period shall render null and void the approval of the conceptual development plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a conceptual development plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

#### 4. Final development plan review.

- a. An application for a final development plan shall include:

- (1) The general application information required in Section 26.304.030.
- (2) Final drawings of all proposed structures(s) and/or addition(s) included as part of the development at 1/4" = 1.0' scale.
- (3) An accurate representation of all major building materials to be used in the development, depicted through samples or photographs.
- (4) A statement, including narrative text or graphics, indicating how the final development plan conforms to representations made or stipulations placed as a condition of the approval of the conceptual development plan.

- b. The procedures for the review of final development plans for major development projects are as follows:

- (1) The Community Development Director shall review the application materials submitted for final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Paragraphs 26.304.060.E.3.a, b and c.
- (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence

presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.

- (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
- (4) A resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.130 and no permit will be issued for construction of the project until the thirty (30) day "call up" period by City Council has expired.
- (5) Before an application for a building permit can be submitted, a final set of plans reflecting any or all required changes by the HPC or City Council must be on file with the City. Any conditions of approval or outstanding issues which must be addressed in the field or at a later time shall be noted on the plans.

**E. Amendments, insubstantial and substantial.** There are two processes for amending plans approved pursuant to a development order and an associated certificate of appropriateness. All requests for amendments, insubstantial or substantial, must be in writing and accompanied by drawing(s) and elevations as specified below.

1. Insubstantial amendments.

a. Insubstantial amendments are minor modifications to HPC approved plans that:

- (1) Address circumstances discovered in the course of construction that could not have been reasonably anticipated during the approval process or
- (2) Are necessary for conformance with building safety or accessibility codes and do not materially change the approved plans or
- (3) Approve specific building materials, finishes, design of ornamental trim and other such detail not provided in the HPC approved plans or
- (4) Change the shape, location or material of a building element or feature but maintains the same quality and approximate appearance of that found in the approved plans.

b. The Community Development Director may authorize insubstantial amendments to approved plans.

c. Monitoring committees established by the HPC, composed of up to two (2) members of the Commission and the Historic Preservation Officer or assign, may also authorize insubstantial amendments.



- d. Decisions of the Community Development Director or monitoring committee are binding. The Community Development Director or monitoring committee may determine that the proposed changes qualify as a substantial amendment and remand the matter to the HPC.
  - e. Disapproval of a request for an insubstantial amendment may be appealed to the HPC to be considered in accordance with the procedures for substantial amendments.
  - f. Approval of insubstantial amendments of plans will be reported to the HPC at their regularly scheduled meetings.
2. Substantial amendments.
- a. All changes to approved plans that materially modify the location, size, shape, materials, design, detailing or appearance of the building elements as originally depicted must be approved by the HPC as a substantial amendment.
  - b. An application for a substantial amendment shall include the following materials, as determined appropriate by the Community Development Director:
    - (1) A revised site plan.
    - (2) Revised scaled elevations and drawings.
    - (3) Representations of building materials and finishes.
    - (4) Photographs and other exhibits to illustrate the proposed changes.
  - c. The Community Development Director shall review the application materials submitted for approval of a substantial amendment and waive any submittals not considered necessary for consideration. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled.
  - d. Notice for the review of an application for a substantial amendment will include publication, posting and mailing pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
  - e. Staff shall review the submittal material and prepare a report that analyzes the extent of the changes relative to the approved plans and how the proposed revisions affect the project's conformance with the design guidelines and other applicable Land Use Codes. This report will be transmitted to the HPC with relevant information on the proposed revisions and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation.
  - f. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines. The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. (Ord. No. 1-2002, § 7 [part]; Ord. 43, 2004, § 3)