

SECTION 9. HISTORIC AND LANDMARK DISTRICT REGULATIONS

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9.1 PURPOSE AND INTENT

These historic and landmark district provisions are established pursuant to the authority contained in Sections 13-7-401 through 13-7-410, Tennessee Code Annotated, to promote the educational, cultural, economic and general welfare of the community by:

- A. Providing a mechanism to identify and preserve the distinctive historic and architectural characteristics of Hendersonville which represent elements of the City's cultural, social, economic, political and architectural history;
- B. Fostering civic pride in the beauty and noble accomplishments of the past as represented in Hendersonville's historic structures and sites;
- C. Protecting and enhancing the attractiveness of the City to home buyers, tourists, visitors and shoppers, and thereby supporting and promoting business, commerce, industry, and providing economic benefit to the City; and
- D. Fostering and encouraging preservation, restoration and rehabilitation of structures, land areas and neighborhoods and thereby preventing future urban blight.

9.2 CREATION, AND ORGANIZATION AND APPOINTMENT OF HISTORIC ZONING COMMISSION

A. Creation

A Historic Zoning Commission is hereby created for Hendersonville, Tennessee, and it shall consist of seven (7) members who shall have been residents of the area of jurisdiction of the City of Hendersonville for not less than three (3) years immediately prior to appointment and who shall continue to be so eligible as long as they serve.

B. Membership

Membership on the Historic Zoning Commission shall be composed of the following members:

1. One (1) member of the Hendersonville Regional Planning Commission.
2. One (1) member representing a local historical or patriotic organization.
3. One (1) architect who is a member, or meets membership requirements, of the American Institute of Architects, if available; if such a qualified architect is unavailable, this position will be filled by another member selected from the community in general.
4. Four (4) members as selected from the community in general.

C. Appointment to the Historic Zoning Commission

Members of the Historic Zoning Commission shall be appointed by the Mayor, subject to confirmation by the Board of Aldermen. Except as herein provided, the members of the Historic Zoning Commission shall serve for a five (5) year term. The members first appointed, shall serve respectively as follows: One (1) member for (1) year, one (1) member for two (2) years, one (1) member for three (3) years, two (2) members for four (4) years and two (2) members for five (5) years. The term of the member nominated from the Regional Planning Commission shall be concurrent with the term on the Planning Commission, and in the event that any other member shall also be a member of the Board of Mayor and Aldermen, the term of such member shall be concurrent with the term of the elected office of the member. All members shall serve without compensation and may be removed from membership by the Mayor. Vacancies on the Historic Zoning Commission shall be filled for the unexpired term of those members whose position has become vacant in the manner herein provided for the appointment of such member; vacancies shall be filled within sixty (60) days.

D. Election of Officers, Rules and Meetings

The Historic Zoning Commission shall elect from its members its own chairman and other officers deemed appropriate to carry out its purpose. The commission shall adopt rules of order and establish regular meeting dates. At least four (4) members of the commission shall constitute a quorum for the transaction of its business. The concurring vote of a majority of the commission shall constitute final action of the commission on any matter before it.

E. Conflict of Interest

Any member of the Historic Zoning Commission who shall have a direct or indirect interest in any property which is subject matter of or is affected by a decision of said commission shall be governed by the provisions of Section 12-4-101, Tennessee Code Annotated.

9.3 POWERS, FUNCTIONS AND DUTIES

Subject to state law and the procedures prescribed hereunder, the Hendersonville Historic Zoning Commission shall have and may exercise the following powers, functions and duties:

- A. To create and to recommend the adoption of legislation which will facilitate establishment of special historic and landmark districts wherein the demolition of any building or other structure now located or to be located will be subject to special provisions as set forth herein and as further specified in Section 13-7-402, Tennessee Code Annotated.
- B. To conduct a survey of buildings, places or areas within the City of Hendersonville for the purpose of identifying those of historic or cultural significance.
- C. To develop and adopt, prior to the establishment of any historic or landmark district, review guidelines as specified in Subsection 9.4.F (Design Guidelines) which the Historic Zoning Commission will apply in ruling upon the granting or denial of a Certificate of Appropriateness.
- D. To submit and to review all applications designating historic sites or buildings as special historic or landmark districts.
- E. To review and make decisions on any application for a Certificate of Appropriateness.
- F. To determine an appropriate system of markers for designation of historic and landmark districts.
- G. To prepare and publish maps, brochures and other descriptive material about Hendersonville's Historic Landmarks and Districts.
- H. To cooperate with and enlist the assistance of persons, organizations, corporations, foundations and public agencies in matters involving historic preservation, renovation, rehabilitation and property reuse.
- I. To advise and assist owners of landmarks or historic structures on physical and financial aspects of preservation, renovation, rehabilitation and reuse.
- J. To accept gifts, grants and money as may be appropriate for the purposes of this article.
- K. To adopt, publish and make available By-Laws for the conduct of commission meetings.
- L. To exercise such powers as may be delegated it by the Tennessee Historical Commission under the certified Local Government's Historic Preservation Program

to include participation in the review of nominations to National Register of Historic Places, and enforcement of appropriate state and local legislation for designation and protection of historic properties.

- M. To review proposed zoning amendments, applications for conditional use permits or zoning variances and applications for subdivision that affect proposed or designated landmarks and historic districts.
- N. To retain such specialists or consultants or to appoint such citizen advisory committees as may from time to time be required.
- O. To testify before all boards and commissions, including the Planning Commission and the Board of Zoning Appeals, on any matter affecting historically and architecturally significant property, structures and areas.
- P. To confer recognition upon the owners of landmarks or property or structures within historic districts.
- Q. To develop a preservation component in the General Plan of the City and to recommend it to the Planning Commission.
- R. To periodically review the zoning ordinance and to recommend to the Planning Commission and Board of Mayor and Aldermen any amendments appropriate for the protection of landmarks or property and structures located within historic districts.
- S. To establish incentives for an owner to voluntarily comply with historic preservation design guidelines in modifying historic buildings.
- T. To negotiate, subject to Board of Mayor and Aldermen approval, a "First Right of Refusal" to purchase any Landmark site or any other historic site which the Commission believes to be necessary to carry out the purposes of this ordinance.
- U. To undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or to implementation of the purposes of this article.

9.4 CREATION OF HISTORIC AND LANDMARK DISTRICTS

A. District Classifications

There are hereby created historic and landmark districts within the corporate limits of the city as a part of this ordinance:

1. The Historic District whose boundaries shall be shown on the official zoning map or special overlays thereto which are made a part of this ordinance and noted by name on said maps, within which no structure shall be demolished unless the action complies with the requirements set forth in this ordinance.

2. The Historic Landmark whose boundaries shall be shown on the official zoning map or special overlays thereto which are made a part of this ordinance and noted by name on said maps, within which no structure shall be demolished unless the action complies with the requirements set forth in this ordinance.

B. Surveys and Research

The Historic Zoning Commission shall undertake an ongoing survey within the corporate limits of the City of Hendersonville to identify neighborhoods, areas, sites, structures and objects that have historic, community, architectural or aesthetic importance, interest or value. Before the Historic Zoning Commission shall accept any nomination of any historic district or landmark, it shall develop a plan for completion of a survey of the entire city.

C. Criteria for Designation of Historic and Landmark Districts

In order for a building, structure, area, site or neighborhood to be considered for nomination as an historic district or landmark such shall be found to meet one (1) or more of the following criteria:

1. That it is associated with an event which has made a significant contribution to local, state or national history;
2. That it includes structures associated with the lives of persons significant in local, state or national history;
3. That it contains structures or groups of structures which embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that poses high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;
4. That it has yielded or may be likely to yield archaeological information important in history or prehistory; or
5. That it is listed in the National Register of Historic Places.

D. Nomination of Historic Districts

Nominations for designation of an historic or landmark district shall be made to the Historic Zoning Commission on a form prepared by it and may be submitted by a member of the Board of Mayor and Aldermen, or by the owner(s) of record of the nominated property or structures. In the event that two (2) or more properties are located within the nominated district, a petition signed by fifty-one (51) percent of the property owners shall be required for nomination.

E. Review and Recommendation

The Historic Zoning Commission shall within sixty (60) days from receipt of a completed nomination in proper form adopt by resolution a recommendation that the nominated historic or landmark district does or does not meet the criteria for nomination set out in Section 9.4.C (Criteria for Designation of Historic and Landmark Districts). The resolution accompanied by a written report shall be forwarded to the Hendersonville Regional Planning Commission for review as specified in Section 9.4.I (Planning Commission Review) and to the Board of Mayor and Aldermen for final action. The report shall contain the following information:

1. Explanation of the significance or lack of significance of the nominated historic or landmark district as it relates to the criteria for designation.
2. Explanation of the integrity or lack of integrity of the nominated district.
3. In the case of a nominated landmark district found to meet the criteria for designation:
 - a. The significant exterior architectural features of the nominated landmark that should be protected;
 - b. The types of construction, alteration, demolition, and removal, other than those requiring a building or demolition permit that should be reviewed for appropriateness pursuant to the provisions of Section 9.5 (Certificate of Appropriateness).
4. In the Case of a nominated historic district found to meet the criteria for designation:
 - a. The types of significant exterior architectural features of the structure within the nominated historic district that should be protected.
 - b. The types of alterations and demolitions that should be reviewed for appropriateness pursuant to the provisions of Section 9.5.
5. Proposed design guidelines required by Section 9.4.F (Design Guidelines) for applying the criteria for review of Certificates of Appropriateness to the nominated landmark or historic district.
6. The relationship of the nominated historic or landmark district to the ongoing effort of the Historic Zoning Commission to identify and nominate all potential areas and structures that meet the criteria for designation.
7. Recommendations as to appropriate permitted uses, special uses, height and area regulations, minimum dwelling size, floor area, sign regulations, and parking

regulations necessary or appropriate to the preservation of the nominated historic or landmark district.

8. A map showing the location of the nominated historic or landmark district.

F. Voluntary Design Guidelines

Prior to the establishment of a historic or landmark district, the Historic Zoning Commission shall adopt for each such proposed district a set of voluntary design guidelines, which it will apply in ruling upon the granting or denial of a certificate of Appropriateness, in order to qualify for incentives as provided for in this Section. Such guidelines shall be consistent with this ordinance and with the requirements for such as established and provided for by Section 13-7-406, Tennessee Code Annotated. The Historic Zoning Commission shall to the maximum feasible extent secure the involvement and participation of owners of property proposed for location within any historic district or landmark in developing such guidelines. These guidelines shall accompany the request for historic district designation and shall be considered conjunctively with such request. These design guidelines shall, at a minimum, consider the following criteria:

1. Height

The height of any proposed alteration or construction should be compatible with the style and character of the landmark and with surrounding structures in an historic district.

2. Proportions of Windows and Doors

The proportions and relationships between doors and windows should be compatible with the architectural style and character of the landmark and with surrounding structures within an historic district.

3. Relationship of Building Masses and Spaces

The relationship of a structure within an historic district to the open space between it and adjoining structures should be compatible.

4. Roof Shape

The design of the roof should be compatible with the architectural style and character of the landmark and surrounding structures in an historic district.

5. Landscaping

Landscaping should be compatible with the architectural character and appearance of the landmark and of surrounding structures and landscapes in historic districts.

6. Scale

The scale of the structure after alteration, construction, or partial demolition should be compatible with its architectural style and character and with surrounding structures in an historic district.

7. Directional Expression

Facades in historic districts should blend with other structures with regard to directional expression. Structures in an historic district should be compatible with the dominant horizontal or vertical expression of surrounding structures. The directional expression of a landmark after alteration, construction, or partial demolition should be compatible with its original architectural style and character.

8. Architectural Details

Architectural details including materials, colors and textures should be treated so as to make a landmark compatible with its original architectural style and character and to preserve and enhance the architectural style or character of an historic or landmark district.

G. Notification of Nomination

The Board of Mayor and Aldermen shall schedule a public hearing on the nomination within thirty (30) days following receipt of a report and recommendation from the Historic Zoning Commission that a nominated historic or landmark district does or does not meet the criteria for designation. Notice of the date, time, place, and purpose of the public hearing and a copy of the completed nomination form shall be sent by regular mail to the owner(s) of record and to the nominators, as well as to property owners adjoining the nominated historic or landmark district at least fifteen (15) days prior to the date of the hearing. Notice shall also be published in a newspaper having general circulation in the City of Hendersonville. The notice shall state the street address and legal description of the boundaries of a nominated district.

H. Public Hearing

Oral or written testimony concerning the significance of the nominated historic or landmark district shall be taken at the public hearing from any person concerning the nomination. The Historic Zoning Commission may present expert testimony or present its own evidence regarding the compliance of the nominated district with the criteria for consideration of a nomination set forth in Section 9.4.C (Criteria for Designation of Historic and Landmark Districts).

The owner or owners of a nominated preservation district shall be allowed reasonable opportunity to present evidence in support of his position and shall be

afforded the right of representation by counsel and reasonable opportunity to cross-examine expert witnesses. The hearing shall be closed upon completion of testimony.

I. Planning Commission Review

Upon receipt of a report prepared by the Historic Zoning Commission in accordance with Section 9.4.E (Review and Recommendation) the Planning Commission shall conduct a review as provided herein. The Commission shall conduct a review as provided herein. The Commission shall review such plan relative to the following:

1. The adopted Major Thoroughfare Plan.
2. Any redevelopment or restoration plans.
3. Utility plans (including need for easements).
4. Impact on or possible modification required in base district zoning.
5. All other matters normally considered in recommending a zoning change, excepting those aspects of the report which pertain specifically and solely to the historic district and as otherwise specified in Section 9.4.E.

J. Action by Board of Mayor and Aldermen

The Board of Mayor and Aldermen shall, within sixty (60) days after receiving the report prepared by the Historic Zoning Commission and the review of the Planning Commission concerning the proposed historic or landmark district, either reject the proposed nomination or designate the district by ordinance. The Board of Mayor and Aldermen shall hold a public hearing and otherwise proceed in the manner specified in Section 4.8 (Zoning Amendment).

A minimum of nine (9) votes of the Board of Mayor and Aldermen shall be required to create a Historic District or Landmark.

K. The Designation Ordinance

Upon designation, the historic or landmark district shall be classified as a "District H – Historic District", and the designation ordinance shall prescribe the significant exterior architectural features; the types of construction, alteration, demolition, and removal, other than those requiring a building or demolition permit that should be reviewed for appropriateness; the design guidelines for applying the criteria for review of appropriateness; permitted uses; special uses; height and area regulations; minimum dwelling size; floor area; sign regulations; and parking regulations. The Official Zoning Map of the City of Hendersonville shall be amended to show the location of the "District H – Historic District".

L. Interim Control

No building permit shall be issued for demolition, or removal of a nominated landmark or of any property or structure within a nominated historic district from the date of the meeting of the Historic Zoning Commission at which a nomination form is first presented until the final disposition of the nomination by the Board of Mayor and Aldermen unless such removal, or demolition is authorized by formal resolution of the Board of Mayor and Aldermen as necessary for public health, welfare or safety. In no event, shall the delay be for more than one hundred-eighty (180) days.

M. Amendment and Rescission of Designation

Designation may be amended or rescinded upon petition to the Historic Zoning Commission and compliance with the same procedure and according to the same criteria set forth herein for designation.

9.5 CERTIFICATE OF APPROPRIATENESS

A Certificate of Appropriateness shall be required before the following actions affecting the exterior architectural appearance of any landmark or other property within an historic district may be undertaken:

- Any removal of a building.
- Any demolition in whole or in part.

To qualify for any incentive which may be provided, a certificate of Appropriateness may be obtained for the following actions affecting the exterior architectural appearance of any landmark or other property within a historic district:

- Any construction or alteration requiring a building permit.
- Any construction or alteration affecting a significant exterior architectural feature as specified in the ordinance designating the historic or landmark district.

A. Application for Certificates of Appropriateness

Every application for a demolition permit of a designated landmark or other property within a designated historic district shall be forwarded by the Codes Department to the Historic Zoning Commission within seven (7) days following receipt of the application by the Codes Department. The Codes Department shall not issue the demolition permit until a Certificate of Appropriateness has been issued by the Historic Zoning Commission. Any applicant may request a meeting with the Historic Zoning Commission before the application is sent by the Codes Department to the Historic Zoning Commission or during the review of the application. Application for review of demolition or removal shall be made on a form available at the office of the commission. The Historic Zoning Commission shall consider the completed

application at its next regular meeting. The Historic Zoning Commission may establish a subcommittee of its members to review routine applications for a Certificate of Appropriateness when delay to the next regular meeting would create an unnecessary inconvenience to the applicant. A certificate of Appropriateness may be issued prior to the next regular meeting upon the signatures of four (4) of the members of the subcommittee.

Any demolition of a landmark structure without first securing a Certificate of Appropriateness shall result in the withholding of building permits for the subject property for a period of five (5) years from the date of demolition.

B. Review and Designation by Historic Zoning Commission

Upon receipt of an application for a Certificate of Appropriateness which in the judgment of the Historic Zoning Commission is sufficiently complete to enable the Commission to make a decision on the request, the Commission shall set a meeting for initial presentation of the application. The Historic Zoning Commission shall within thirty (30) days following the initial meeting at which the application is presented approve, conditionally approve or deny the request. In its review of any application submitted hereinafter the Historic Zoning Commission shall apply all applicable review guidelines which have been established in accordance with Section 9.4.F (Design Guidelines). Any individual or group of property owners from the historic district wherein the use is located for which Certificate of Appropriateness is being requested may appear before the Historic Zoning Commission for purposes of offering evidence or testimony concerning the request and its applicability to the design guidelines established for such district. In making its decision as to the granting of a Certificate of Appropriateness, the Historic Zoning Commission shall consider:

1. The review guidelines established for the district.
2. The testimony and evidence offered by property owners from the historic district wherein the use is located.
3. The general standards for review set forth in Section 9.4.E (Review and Recommendations).

C. Standards for Review

In considering an application for a building or demolition permit or for a Certificate of Appropriateness, the Historic Zoning Commission shall be guided by the following general standards in addition to any design guidelines in the ordinance designating the historic or landmark district.

1. Every reasonable effort shall be made to provide a compatible use for a property that requires a minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.
2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural feature shall be avoided.
3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.
4. Changes that may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure, or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, whenever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplication of features, substantiated by historic, physical, or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.
9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

D. Denial of a Certificate of Appropriateness

A denial of a Certificate of Appropriateness shall require a minimum of five (5) votes of the Historic Zoning Commission and shall be accompanied by a statement of the reasons for the denial. The Historic Zoning Commission shall make

recommendations to the applicant concerning changes, if any, in the proposed action that would cause the commission to reconsider its denial and shall confer with the applicant and attempt to resolve as quickly as possible the differences between the owner and the commission. The applicant may resubmit an amended application or reapply for a building or demolition permit that takes into consideration the recommendations of the Historic Zoning Commission.

9.6 ECONOMIC HARDSHIP

A. Certificate of Economic Hardship

Application for a Certificate of Economic Hardship shall be made on a form prepared by the Historic Zoning Commission. The Historic Zoning Commission shall schedule a public hearing concerning the application and provide notice in the same manner as Section 9.4.G (Notification of Nomination) and any person may testify at the hearing concerning economic hardship in the same manner as provided by Section 9.4.H (Public Hearing).

The Historic Zoning Commission may solicit expert testimony or require that the applicant for a Certificate of Economic Hardship make submissions concerning any or all of the following information before it makes a determination on the application.

1. Estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Historic Zoning Commission for changes necessary for the issuance of a Certificate of Appropriateness.
2. Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; after any changes recommended by the Historic Zoning Commission; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
3. In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
4. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two (2) years.
5. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
6. Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two (2) years.

7. Assessed value of the property according to the two most recent assessments.
8. Real estate taxes for the previous two (2) years.
9. Form of ownership or operation of the property, whether sole proprietorship, for-profit, or not-for-profit corporation, limited partnership, joint venture, or other.

B. Determination of Economic Hardship

The Historic Zoning Commission shall review all the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination whether the denial of a Certificate of Appropriateness has deprived, or will deprive, the owner of the property of reasonable use of, or economic return on, the property. Written notice of the determination shall be provided in the same manner as required by Section 9.5.B (Review and Designation by Historic Zoning Commission).

No construction, alteration, repair, rehabilitation, relocation or demolition of any building structure or other improvement to publicly and privately owned landmarks or to any real estate situated within an historic district, for which the Historic Zoning Commission has been granted the authority to review or to grant or deny a Certificate of Appropriateness, shall be undertaken without first submitting an application for such together with all exterior plans, elevations, and other information necessary to determine the appropriateness of the features to be referred to the Historic Zoning Commission. In the case of applications for demolition, no plans or other information shall be required to be submitted by the applicant.

No permit shall be issued for any of the above noted activities, nor shall any be undertaken whether or not a permit is required until the Historic Zoning Commission shall have issued a Certificate of Appropriateness.

9.7 PREVENTION OF DEMOLITION BY NEGLECT

- A. All structures located within a historic or landmark district which contribute architecturally or historically to the character and importance of the district and all landmarks shall be preserved against decay and deterioration and kept free from structural defects by the owner or such other person or persons who may have legal custody and control thereof. The owner or other person having custody and control, in keeping with the City's Housing Code, shall repair any exterior or interior portions of such building , sites, structure, or object which is becoming deteriorated, decayed, or damaged and tending to cause the structure to fall into a state of disrepair.
- B. The Historic Zoning Commission, on its own initiative, may file a petition with the Building Inspector requesting that he proceed under the City's Housing Code to require correction of defects or repairs to a structure covered under subsection A

above, so that such structure shall be preserved and protected in accordance with the purposes of this ordinance.

- C. If any structure covered by subsection A, above, shall have to be demolished as a public safety hazard and the owner of the structure shall have received two (2) or more notices from the Building Inspector of building neglect in violation of this ordinance and other City Ordinances, no application for a permit for a project on the property may be considered for a period of two (2) years from the date of demolition of the structure. Additionally, no permit for a curb cut needed for the operation of a surface parking lot shall be granted by any city office during this period.

9.8 APPEALS FROM DECISION OF THE HISTORIC ZONING COMMISSION

Appeals from any decision of the Historic Zoning Commission may be taken to a court of competent jurisdiction as provided by law.

Nothing in this article shall be interpreted as giving the commission any authority to consider, review, examine or control the use of property classified as an historic landmark or landmark district. Use shall be controlled solely by the zoning controlling such property prior to its classification as an historic or landmark district or as may be rezoned by subsequent amendments.