

AN ORDINANCE TO ESTABLISH THE WAKE COUNTY HISTORIC PRESERVATION COMMISSION

Approved 5/4/92; Amended 11/16/92; Amended 9/20/93; Amended 5/15/95;
Amended 5/17/99

Purpose

Historic Preservation Commission

Historic Landmarks

Historic Districts

Certificate of Appropriateness

Conflict with Other Laws

1.0 Purpose

The historical heritage of Wake County is a valuable and important asset. By listing and regulating historic districts and landmarks, and acquiring historic properties, Wake County seeks:

- (1) To safeguard the heritage of the County, including its municipalities, by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and
- (2) To promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the County and State as a whole.

2.0 Historic Preservation Commission

2.1 Creation and Appointment

There is hereby established, by authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes, a joint historic preservation commission to be known as the Wake County Historic Preservation Commission or "Commission." The Commission shall consist of at least 9 members but no more than twelve members appointed by the Board of Commissioners of Wake County. All members must reside in Wake County within the jurisdiction of the Commission, which shall include the area wherein the county and municipalities which adopt this ordinance have authority for planning and regulation of development.

In making appointments to the Commission, the Board of Commissioners shall strive to appoint one member from each of the seven Board of Commissioners districts. The need for district representation shall be balanced with the availability of and need for specific expertise on the Commission.

In establishing the Commission and making appointments to it, the Board of Commissioners shall seek the advice of local governing bodies, or such State or

local historical agencies, societies, or organizations as it may deem necessary. The Commission may appoint advisory bodies and committees as appropriate.

2.2 Qualification of Members

A majority of the members of the commission shall have demonstrated special interest, experience or education in history, architecture, archaeology, or related fields.

2.3 Terms

Commission members shall serve overlapping terms of two years, and until their successors have been appointed. Initially, the Board of Commissioners shall appoint six members to a term of one year and appoint five members to a full term of two years. Thereafter, the Board of Commissioners shall appoint members to two year terms. Any vacancy during the unexpired term of a member of the Commission shall be filled in accordance with Wake County policy.

2.4 Rules of Procedure

The Commission shall adopt rules of procedure necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. The rules of procedure adopted by the Commission shall at least provide for the selection of officers of the Commission, the time and place of its regular meetings and the calling of special meetings, the procedures for the conduct of public hearings, the conduct of voting, the forms to be used in applying for and issuing or denying certificates of appropriateness, and a list of minor works for which Commission staff may issue Certificates of Appropriateness.

2.5 Powers and Duties

The Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this ordinance and the N.C. General Statutes, including but not limited to the following:

(a) Undertake an inventory of properties of historical, prehistorical, architectural, archaeological, and/or cultural significance.

(b) Recommend to the local governing body with which the County has entered an agreement, individual buildings, structures, sites, areas, or objects within its zoning jurisdiction to be designated by ordinance as "historic landmarks," and areas within its zoning jurisdiction to be designated by ordinance as "historic districts."

(c) Recommend to the local governing body that designation of any area as a historic district or part thereof, or of any building, structure, site, area, or object as a historic landmark, be revoked or removed for cause.

(d) Review and act upon proposals for alteration or demolition of designated landmarks and for alteration, demolition, or new construction within historic districts, pursuant to this ordinance.

(e) Report violations of this ordinance, or other ordinances affecting historic landmarks and properties within historic districts, to the local official responsible

for enforcing the ordinance.

(f) Act as, establish, or designate a group, body, or committee to give advice to owners of historic landmarks or property within a historic district concerning the treatment of the historical and visual characteristics of their property, such as color schemes, gardens and landscape features, minor decorative elements, and for the informal review of major additions and new construction.

(g) Conduct an educational program on historic landmarks and districts within the county.

(h) Publish information, or otherwise inform the public about any matters pertinent to its purview, duties, organization, procedures, responsibilities, functions, or requirements.

(i) Cooperate with state, federal and local governments in pursuing the purposes of this ordinance. The local governing body or the Commission when authorized by the appropriate local governing body may contract with the State, or the United States of America, or any agency of either, or with any other organization, provided the terms are not inconsistent with state or federal law.

(j) Communicate with other boards or commissions in Wake County or with agencies of the County or other governmental units to offer or request assistance, aid, guidance, or advice concerning matters under its purview or of mutual interest.

(k) Prepare and recommend the official adoption of a historic preservation element as part of the County's comprehensive plan and a municipality's comprehensive plan, at the request of the local governing body.

(l) Accept funds to be used for preservation purposes that are granted to the Commission by private individuals, organizations, and local governing bodies.

(m) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any historic landmarks, land to which historic buildings or structures may be moved, or properties located within historic districts; hold, manage, preserve, restore and improve the interest; and exchange or dispose of the interest by public or private sale, lease, or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by a local governing body shall be acquired in the name of the local government unless otherwise provided by the local governing body.

(n) Restore, preserve and operate such historic properties.

(o) Enter, at reasonable times, upon private lands and make examinations or surveys as necessary to the performance of its official duties. However, no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.

(p) Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary and appropriate.

(q) Take steps, during the period of postponement of demolition or alteration of any historic landmark or property within a historic district, to ascertain what the

local governing body can or may do to preserve such property, including consultation with private civic groups, interested private citizens, and other public boards or agencies, and including investigation of potential acquisition by the local governing body when the preservation of a given historic property is clearly in the interest of the general welfare of the community and such property is of certain historic and architectural significance.

(r) Propose to the local governing body changes to this or any other ordinance, and propose new ordinances or laws relating to historic landmarks and districts or relating to a total program for the protection and/or development of the historic resources of Wake County, the municipalities therein, and their environs.

(s) Organize itself and conduct its business, including any meetings or hearings necessary to carry out the purposes of this ordinance.

3.0 Historic Landmarks

3.1 Adoption of an Ordinance of Designation

Upon compliance with the procedures set out in Section 3.4, the local governing body may adopt and, from time to time, amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include information which shall:

(a) List the name or names of the owner or owners of the property;

(b) Describe each property designated in the ordinance, including the approximate area of the property so designated;

(c) Describe those elements of the property that are integral to its historical, prehistorical, architectural, archaeological, and/or cultural significance;

(d) Provide for each designated historic landmark, a suitable sign or plaque indicating that the landmark has been so designated; and

(e) Any other information the local governing body deems necessary within the authority of this ordinance and the general statutes.

3.2 Criteria for Designation

In order for any building, structure, site, area, or object to be designated in an ordinance as a historic landmark, the Commission must find that the property is of special significance in terms of its history, prehistory, architecture, archaeology and/or cultural importance, and that it possesses integrity of design, setting, workmanship, materials, feeling and/or association.

3.3 Inventory

The Commission shall use an inventory of buildings, structures, sites, areas, or objects of historical, prehistorical, architectural, and archaeological significance in the county as a guide to the identification, assessment, and designation of historic landmarks. The Commission shall update the inventory from time to time.

3.4 Required Procedures for Designation

A local governing body may not adopt or amend an ordinance designating a historic building, structure, site, area, or object, or acquire any landmark, until the steps prescribed by this ordinance and its subsections have been taken, including rules of procedure and guidelines for the altering, restoring, moving, or demolishing properties designated as historic. Designation procedures may be initiated by the Commission or at the request of a property owner.

3.4.1 Designation Reports

The Commission shall make, or cause to be made, an investigation and report that includes all the information contained in this Section. Applications prepared by owners will be judged by the same criteria as those prepared by the Commission.

- (a) The name of the property to be considered for designation - both common and historic names, if they can be determined;
- (b) The name and address of the current property owner;
- (c) The location of the property proposed to be designated historic, including the street address and Wake County tax map and parcel numbers or the parcel identification number;
- (d) The date of construction and of any later alterations, if any;
- (e) An assessment of the significance of the site or structure pursuant to Section 3.2;
- (f) An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant features are proposed to be designated, the report shall contain a description of those features;
- (g) A historical discussion of the site or structure within its type, period and locality;
- (h) A photograph that clearly depicts the property proposed to be designated and supplementary photographs showing facades, details and siting; and
- (i) A map showing the location of the property, including any outbuildings and appurtenant features.

3.4.2 Review by the Department of Cultural Resources

A report accepted by the Commission shall be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History or its successor agency, for comments pursuant to G.S. 160A-400.6, as amended from time to time. The Department of Cultural Resources or its successor agency, acting through the State Historic Preservation Officer, shall, either upon request of the Department or at the initiative of the Commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this ordinance.

3.4.3 Consideration of the Report

Once the designation report has been prepared, either by the Commission or by the owner, and is deemed by the Commission staff to meet the provisions of subsection 3.4.1, the Commission shall consider the report. The Commission may accept it, amend it, reject it, or recommend further study.

Prior to final action on a designation report, the Commission shall indicate the extent to which the landmark meets the criteria for designation in Section 3.2.

The Commission should consider any comments received in writing from the Department of Cultural Resources or its successor agency. If the Department does not submit its written comments or recommendations in connection with any proposed designation within thirty (30) days following receipt of the report, the Commission and the local governing body shall be relieved of any responsibility to consider such comments. After the expiration of the thirty (30) day comment period given the Division of Archives and History, the Commission may recommend to the local governing body that the property be designated as a historic landmark.

3.4.4 Submission to the Governing Body

The Commission shall forward its recommendation to the local governing body. The Commission shall submit a copy of the designation report, any written comments received from the Department of Cultural Resources, and, if the recommendation is for approval, a proposed ordinance of designation, to the local governing body.

3.4.5 Public Hearing

When a proposed ordinance of designation is submitted, the Commission and the local governing body shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

3.4.6 Adoption of a Designation Ordinance

Following the required public hearing, the local governing body shall consider the designation report, the Commission's recommendation, the Department of Cultural Resource's comments, and the comments made at the public hearing, and may adopt the ordinance as proposed, adopt the ordinance with amendments or reject the ordinance.

3.5 Actions Subsequent to Approval

Upon adoption of the ordinance:

(a) Commission staff shall send the owner(s) of the landmark, as identified by current tax records, written notice of such designation within thirty (30) days of adoption of the ordinance by certified mail, return receipt requested.

(b) The Commission shall file one copy of the ordinance and any subsequent amendments thereto, in the office of the Register of Deeds of Wake County. The Register of Deeds shall index each historic landmark according to the name of the owner in the grantee and grantor indexes. The Commission shall pay a fee for filing and indexing.

(c) In the case of a landmark lying within the zoning jurisdiction of a municipality, a second copy of the ordinance shall be kept on file in the office of the municipal clerk and be made available for public inspection at any reasonable time. A copy shall also be given to the municipality's Inspections Director.

(d) All tax maps maintained by Wake County shall clearly indicate the designation of a building, structure, site, area, or object as a historic landmark for as long as the designation remains in effect.

(e) The Commission staff shall notify the tax assessor of Wake County of the landmark designation. The assessor shall consider the designation and any recorded restriction on the landmark in appraising it for tax purposes.

3.6 Denied Applications

If the local governing body denies a designation report, a copy of the minutes of the meeting at which such a decision to deny the report was made, shall be mailed to the owner of the property proposed for designation.

4.0 Historic Districts

4.1 Adoption of an Ordinance of Designation

No historic district may exist without an ordinance designating it as such. Upon compliance with the procedures contained in Section 4.4, the local governing body within its jurisdiction, may adopt and from time to time amend or repeal an ordinance designating one or more historic districts.

4.2 Criteria for Designation

In order for any area to be designated in an ordinance as a historic district, the Commission must find that the area is of special significance in terms of its history, prehistory, architecture, archaeology and/or cultural importance, and that it possesses integrity of design, setting, workmanship, materials, feeling and/or association.

4.3 Inventory

The Commission shall use an inventory of buildings, structures, sites, areas, or objects of historical, prehistorical, architectural, and archaeological significance in the county as a guide for the identification, assessment, and designation of historic districts. The Commission shall update the inventory from time to time.

4.4 Required Procedures for Designation

A local governing body may not adopt or amend an ordinance designating a historic district, nor may the local governing body or the Commission accept any district until the steps prescribed by this Section have been taken.

4.4.1 Designation Report

The Commission shall prepare or review an investigation and report describing the significance of the buildings, structure, features, sites, or surroundings included in any such proposed district, and the description of the boundaries of such district. Such report shall be referred to the local governing body or the

local planning agency for its review and comment according to procedures set forth in the zoning ordinance of the corresponding jurisdiction.

4.4.2 Review by the Department of Cultural Resources

All designation reports shall be submitted to the North Carolina Department of Cultural Resources by the Commission. The Department of Cultural Resources or its successor agency, acting through the State Historic Preservation Officer, shall, either upon request of the Department or at the initiative of the Commission, be given an opportunity to review and comment upon the substance and effect of the designation of any district.

If the Department does not submit its written comments or recommendations in connection with any proposed designation within thirty (30) days following receipt of the report, the Commission and the local governing body shall be relieved of any responsibility to consider such comments. After the expiration of the thirty (30) day comment period given the Division of Archives and History, the Commission may recommend to the local governing body that the area be designated as a historic district.

4.4.3 Review by other Groups

The local governing body may also, in its discretion, refer the designation report and proposed boundaries to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance.

4.4.4 Adoption of a Designation Ordinance

On receipt of these reports and recommendations, the local governing body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

4.5 Revisions to Districts

With respect to any changes in the boundaries of an adopted historic district subsequent to its initial establishment, the requirements and procedures contained in Section 4.0 shall apply.

5.0 Certificate of Appropriateness

5.1 Required

From and after the designation of a historic landmark or district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Commission. In adopting an ordinance establishing a historic district, the local governing body shall provide that no building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures shall be issued unless the Commission has first issued a Certificate of Appropriateness authorizing the construction, alteration, moving, or demolition. Any building permit or such other permit not issued in conformity with this section shall be invalid. In approving a Certificate of Appropriateness, the Commission may attach reasonable

conditions necessary to carry out the purposes of this ordinance. A Certificate of Appropriateness shall be required whether or not a building permit is required.

For purposes of this ordinance, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building or other structure, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall mean the style, material, size, and location of all such signs. In adopting an ordinance establishing a historic district, the local governing body may provide that "exterior features" also include historic signs, color, and significant landscape, archaeological, and natural features of the area. The Commission shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features which would be incongruous with the special character of the landmark or district.

5.2 Review Guidelines

Prior to the designation of any historic landmark or district, the Commission shall prepare and adopt guidelines, not inconsistent with Part 3B Article 19 of Chapter 160A of the N.C. General Statutes for altering, restoring, moving, or demolishing of property designated as historic. It is the intention of these guidelines to ensure, insofar as possible, that changes in designated landmarks or properties located within designated districts shall be in harmony with the reasons for designation.

5.3 Limitations on Interior Review

Notwithstanding this ordinance, jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks, and of privately owned historic landmarks for which consent for interior review has been given by the owner. If an owner's consent for interior review has been filed in the office of the Wake County Register of Deeds and indexed according to the name of the owner of the property in the grantee and grantor indexes, such consent shall bind future owners and/or successors in title. The ordinance establishing the historic designation shall specify the interior features to be reviewed and the specific nature of the Commission's jurisdiction over those features.

5.4 Certain Changes Not Prohibited

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or property located within a district that does not involve a change in design, material, or outer appearance thereof. Nor shall this ordinance be construed to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature when a building inspector or similar official certifies to the Commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations. Nothing in this ordinance shall be construed to prevent the maintenance of or, in the event of an emergency, immediate restoration of any existing above-ground utility structure without approval by the Commission.

5.5 Administrative Approval for Minor Works Allowed

The Commission staff may issue a Certificate of Appropriateness for minor works, as listed in the Commission's Rules of Procedure. Minor works shall include and are defined as those exterior changes that do not involve substantial alterations, additions, or removals that could impair the integrity of the property and/or district as a whole.

No application for a minor works Certificate of Appropriateness may be denied without formal action by the Commission.

5.6 Delay in Demolition of Designated Properties

Except as provided below, the Commission may not deny an application for a Certificate of Appropriateness authorizing the demolition of a designated historic landmark or property located within a district. However, the Commission may delay the effective date of such a certificate for a period of up to 365 days from the date of approval. The Commission may reduce the period of delay where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property, as provided in subsection 2.5(q).

The Commission may deny an application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Office to have statewide significance, as defined in the criteria of the National Register of Historic Places, unless the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

If the Commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing body, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Commission for a period of up to 180 days or until the local governing body takes action on the designation, whichever occurs first. Should the governing body approve the designation prior to the expiration of the 180 day delay period, an application for a certificate of appropriateness for demolition must then be filed; however, the maximum delay period of 365 days shall be reduced by the period of delay while the designation was pending.

5.7 Demolition by Neglect

Demolition by neglect of any designated historic landmark or property located within a district shall constitute a violation of this ordinance. The local governing body may take appropriate actions to prevent demolition by neglect, provided such actions include appropriate safeguards to protect the property owner from undue economic hardship.

5.8 Required Procedures

5.8.1 Submittal of Application

An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the Commission staff. Applications for Certificates of

Appropriateness shall be considered by the Commission at its next regularly scheduled meeting, provided they have been filed, complete in form and content, at least 10 working days before the meeting; otherwise consideration shall be deferred until the following meeting.

5.8.2 Contents of Application

The Commission shall, by uniform rule in its Rules of Procedure, require information as is reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until the required information is included. An incomplete application shall not be accepted.

Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

5.8.3 Notification of Affected Property Owners

Before considering an application for a Certificate of Appropriateness, the Commission shall notify by mail the owners of any adjacent property. The mailed notices are for the convenience of the property owners and occupants and any defect or their omission therein shall not impair the validity of issuing a Certificate of Appropriateness, or any following action.

5.8.4 Hearing

When considering an application, the Commission shall give the applicant and owners of any property likely to be materially affected by the application, an opportunity to be heard.

5.8.5 Commission Action on Application

When considering the application, the Commission shall apply the review guidelines required by Section 6.0, and shall, before final action of the application, make findings of fact indicating the extent to which the application is or is not in compliance with the review criteria.

The Commission's action on the application shall be approval, approval with modifications, deferral, or disapproval.

5.8.6 Reasons for Commission's Actions to Appear in Minutes

The Commission shall cause to be entered into the minutes of its meeting the reasons for its actions, whether it be approval, approval with modifications, deferral or denial. The minutes shall also contain a summary of any citation to the evidence, testimony, studies, or other authority upon which it based its decision.

5.8.7 Time Limits

If the Commission fails to take final action upon any application within ninety (90) days after the complete application is submitted to the Commission staff, the application shall be deemed to be approved as submitted. This time period may be extended upon mutual agreement between the Commission and the applicant.

A Certificate of Appropriateness shall expire six months after the date of issuance, or in the case of a demolition Certificate of Appropriateness, the effective date, if the work authorized by the certificate has not been commenced. If the work has been discontinued for a period of twelve months after commencement, the permit shall immediately expire.

5.8.8 Submission of New Application

If the Commission denies a Certificate of Appropriateness, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

5.8.9 Appeals of the Commission's Decision

An appeal may be made to the Board of Adjustment of the corresponding jurisdiction regarding the Commission's action in approving or denying any application for a Certificate of Appropriateness. Written notice of intent to appeal must be sent to the Commission, postmarked within twenty (20) days following the Commission's decision, unless oral notice of appeal is made to the Commission during the meeting at which the decision is rendered. Appeals must be filed with the Board of Adjustment of the corresponding jurisdiction within 60 days following the Commission's decision. Appeals shall be in the nature of certiorari. The Board of Adjustment's decision in any such case may be appealed to the superior court of Wake County.

5.9 Ordinance to Apply to Publicly Owned Buildings and Structures

Designated historic buildings, structures, sites, areas, or objects owned by State of North Carolina or any of its political subdivisions, agencies, or instrumentalities shall be subject to the regulations imposed by this ordinance, in accordance with North Carolina General Statute 160A-400.9(f).

5.10 Remedies

In case any building, structure, site, area, or object designated a historic landmark or any property located within a historic district is about to be demolished as the result of deliberate neglect or otherwise, materially altered, remodeled, or removed, except in compliance with this ordinance, the local governing body, the Commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, material alteration, remodeling, or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such historic property.

6.0 Conflict with Other Laws

Whenever the provisions of this ordinance are in conflict with any other statute, charter provision, ordinance or regulation of the local governing body, the more restrictive ordinance or regulation shall govern.