



# **GUILFORD COUNTY PLANNING AND DEVELOPMENT**

## **HISTORIC PRESERVATION COMMISSION AGENDA**

Carolyn Q. Coleman Conference Room  
First Floor, Old Guilford County Courthouse  
301 W. Market St., Greensboro, N.C. 27401

**August 19, 2025**

### **Regular Meeting**

**6:00 PM**

- I. Roll Call**
- II. Agenda Amendments**
- III. Approval of Minutes: July 15, 2025**
- IV. Rules and Procedures**
- V. Old Business**
  - A. Landmark Interior Designations**
  - B. Education and Outreach**
  - C. HPC Expansion or Seat Reallocation**
  - D. Potential America 250 NC Activities**
- VI. New Business**
  - A. Update to Rules of Procedures**
- VII. Other Business**
  - A. Landmark Review Project**
- VIII. Adjournment**

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**GUILFORD COUNTY  
HISTORIC PRESERVATION COMMISSION**

**Meeting Minutes  
Regular Meeting – May 20, 2025 at 6:00 p.m.  
Carolyn Q. Coleman Conference Room  
First Floor, Old Guilford County Courthouse  
301 W. Market St., Greensboro, N.C. 27401**

**I. Roll Call**

Chair Sean Dowell called the meeting to order at 6:00 p.m.

Troy Moss called the roll:

**Present:** Sean Dowell, Chair; David Horth; David Millsaps; Cory Rayborn; Abigaile Pittman; Jerry Nix; Keisha Hadden; Louis Gallien; Haley Moloney

**Absent:** Terry Hammond, Vice-Chair (excused); Christie Lee (unexcused)

The following staff were also present: Leslie Bell, Planning and Development Director; Jason Hardin, Planning and Development Deputy Director; Oliver Bass, Planning and Zoning Manager; and Troy Moss, Planning Technician.

**II. Agenda Amendments**

Mr. Bell asked that New Business be heard before Old Business.

Ms. Pittman moved to amend the agenda to hear New Business before Old Business. The motion was seconded by Mr. Gallien. The Commission voted unanimously in favor of the motion (Ayes: Dowell, Horth, Millsaps, Rayborn, Pittman, Nix, Hadden, Gallien and Moloney. Nays: None.).

**III. Approval of Minutes: May 20, 2025**

Chair Dowell suggested one edit to clarify a portion of the May 20, 2025, minutes. He said that the second sentence of the sixth paragraph on page 6 should be changed to read, "Mr. Bell said that the Board of County Commissioners would have to authorize *this request*."

Mr. Millsaps moved to approve the May 20, 2025, minutes as amended. The motion was seconded by Ms. Moloney. The Commission voted unanimously in favor of the

motion (Ayes: Dowell, Horth, Millsaps, Rayborn, Pittman, Nix, Hadden, Gallien and Moloney. Nays: None.).

#### **IV. Rules and Procedures**

Chair Dowell briefly explained the Rules of Procedure followed by the Commission, adding that a copy of the Rules of Procedure was accessible at the Guilford County website, [www.guilfordcountync.gov](http://www.guilfordcountync.gov). He stated that the agenda included a proposed landmark designation, so the Commission would hear a staff presentation on the proposed designation, review the associated landmark designation report and hear any public comment. After reviewing the proposal, the Commission would deliberate and make a recommendation to the governing board of the jurisdiction in which the property is located.

#### **V. New Business**

##### **A. LANDMARK DESIGNATION CASE #25-06-HPC-00006: 437 ARLINGTON ST., GREENSBORO, N.C. 27406 (GEORGE AND NANCY KESTLER HOUSE)**

Ms. Moloney stated that her relationship with the applicant may pose a conflict of interest. She explained that she is a colleague of the person who proposed the landmark nomination. Chair Dowell asked Ms. Moloney if she had any financial interest in the property? She responded that she did not. She added that she had no knowledge of the project other than knowing that her colleague had worked on the project. Mr. Bell stated that Ms. Moloney had not expressed any financial gain related to the project, so he felt that it would be fine for her to hear the case if the Commission chose to allow it. Mr. Gallien asked whether Ms. Moloney could remain unbiased in reviewing the application? Ms. Moloney said that she could. No other members expressed any concerns regarding Ms. Moloney's participation. Chair Dowell thanked Ms. Moloney for her candor.

Chair Dowell opened the public hearing at 6:13 p.m.

Mr. Bell stated that the subject property is located at 437 Arlington St. (Guilford County Tax Parcel #1074 in Morehead/Gilmer Township), approximately 300 feet north of the intersection of Arlington St. and East Gate City Blvd., and comprises approximately 0.44 acres. The property is known as the George and Nancy Kestler House. This is a request to designate the subject property

as a local historic landmark. He stated that the applicant would now come forward with their information.

Samantha Stewart, Gate City Preservation, 211 Tate Street, stated that she wrote the landmark report for the property. The house has a rich historical history and is a beautiful architectural gem in downtown Greensboro. The current owners, Beloved Community Center Inc., are also an important resource in the city. The George and Nancy Kestler House is proposed for landmark designation status because of its architecture. She said she was happy to answer any questions. The house is rare in that it is much older than many other similar buildings that were once standing in this area of Shieldstown. A lot of those have been demolished. The house has retained much of its integrity of setting and place. A lot of the design features have also been maintained.

Chair Dowell pointed out that the landmark report mentioned that the house was “possibly” designed by architect Lyndon Swaim. He asked what this meant? Ms. Stewart said the architect was thought to have designed the house next door, and he was one of few architects working in the area who designed houses of this scale. However, she did not find documentation explicitly confirming that he was the architect.

Chair Dowell asked if the property had any current form of historic designation? Ms. Stewart said the property owners were interested in pursuing individual listing on the National Register. The owners have long-term vision of rehabilitating this property and using it as a space for the community, but she did not address this in the landmark report.

Ms. Moloney asked if there was a plan for rehabilitation of the property? Ms. Stewart said that achieving local historic landmark designation was a first step toward rehabilitating the property. Mr. Gallien said he thought consideration of landmark designation should be limited to the current state of the structure rather than taking into account potential future rehabilitation projects. Ms. Stewart stated that the house had a high degree of architectural integrity, although the condition of the home was poor. If the property were designated as a local historic landmark, any future rehabilitation would need to take place in accordance with the Secretary of the Interior’s Standards for Rehabilitation.

Mr. Nix pointed out that the property was purchased by the current owner in 1995. He said he was concerned that little maintenance had been done on the

property since that time. Joyce Hobson Johnson, 2115 Murrayhill Road, one of the founding members of Beloved Community Center Inc., said she was present at the meeting with the current executive director, some board members, staff, community members, friends and colleagues. She said they all have great interest in the property becoming recognized as a local historic landmark. There have been ongoing restoration efforts, but she acknowledged that there was peeling paint. Some windows had been restored. There have been improvements to the heating and cooling systems and the floors have seen some work. They have been in touch with some organizations that have an interest in helping out with the restoration.

Chair Dowell asked about the interior of the property and the condition of the roof? Ms. Johnson said that some interior restoration work had been performed. She added that the present request was to designate the exterior rather than the interior of the home. She also confirmed that the property was in a stable condition with new roofing having been installed relatively recently.

Ms. Pittman asked about the sturdiness of the stairs on the rear of the home? Ms. Johnson said she had not personally used the stairs recently, but they had been previously stabilized.

Mr. Nix asked when the interior photos submitted with the application dated from? Ms. Stewart said they were likely from the 1990s. Mr. Nix said that it appeared from the photos that much of the interior features were original. He asked why the application was requesting to designate only the exterior and not the interior? Ms. Johnson replied that they wanted to make the property functional. She said her perception was that designating the interior of the property would restrict the use of the interior for their purposes. Mr. Nix expressed his desire that the interior of the property be designated in order to prevent its deterioration. Ms. Johnson said some members of her organization would be open to designating the interior of the property, but she would need to consult the board of directors.

Ms. Moloney noted that the most recent addition to the home was constructed in 1958 and said that, according to the National Park Service, all of the additions would be considered historic.

Responding to Ms. Pittman's previous question about the rear stairs, Terence Muhammad, 200 West Market Street, said that the staircase was stable, based on his use of the structure. He said the house had not been previously



rehabilitated because restoration of the home was not part of the owner's original mission. At first, the Beloved Community Center just sought to utilize the home, but after some time the house deteriorated to a point where it could no longer be used. He emphasized the house's historical context and importance to the historic fabric of downtown Greensboro. He said it was the owner's intent to maintain the integrity of the house in order to raise the value of the home, but they also wanted the flexibility to use or modernize the building for their own purposes.

Jeff Thigpen, 5105 Leary Court, said he thought there had been a lot of good conversation. He likes that there is a community present and that they love the house out of a vision of valuing the dignity, worth and potential of everyone. He hopes the Commission will make this designation in such a way that people can not only care for the structure and maintain the beautiful interior, but also use the home in a way that brings different parts of the community together.

Mr. Gallien moved to close the public hearing, seconded by Mr. Horth. The Commission voted unanimously in favor of the motion (Ayes: Dowell, Horth, Millsaps, Rayborn, Pittman, Nix, Hadden, Gallien and Moloney. Nays: None.).

Chair Dowell asked if staff had any other information to add? Mr. Bell stated that staff did not have anything to add, as the report was very thorough.

Chair Dowell reiterated that the property was not on the National Register and was seeking local historic landmark designation prior to pursuing listing on the National Register. The house is one of the few Italianate homes located in Guilford County. The present request was to designate the exterior of the home and property. Noted features include the cornerstone, which reads, "G.W. Kesler – 1876." The property was located in one of the early suburbs of Greensboro. There is a local historic landmark next door, the William Fields House.

Mr. Hardin noted that the landmark report had been sent to the State Historic Preservation Office (SHPO) for comment, and the report had been revised by the applicant to incorporate the comments.

Mr. Gallien moved that the Commission approve the landmark designation as requested, seconded by Mr. Millsaps. The Commission voted unanimously in favor of the motion (Ayes: Dowell, Horth, Millsaps, Rayborn, Pittman, Nix, Hadden, Gallien and Moloney. Nays: None). [approx. 1h 7m]

Mr. Millsaps said his response to seeing the house was to ask, what about the house allowed it to survive despite the changes to the area? He said that, as a remodeler, the greatest fear is to have a wonderful property like this and whatever is on the inside came from Lowe's.

Mr. Gallien stated that he was involved with helping to preserve the nearby William Fields House. He lamented that the Fields House did not have the kind of purpose that he believed the Beloved Community Center would bring to this house. He is convinced that the Beloved Community Center can be trusted to take care of the house.

Ms. Moloney said she thought the property owners had done a good job preserving the house. She noted the house's peeling paint could give the appearance of being in worse condition than it actually was. However, the windows had been properly boarded up and the roof had been maintained. Preserving this house would maintain the historic streetscape of one of the oldest neighborhoods in Greensboro. The existence of several homes in the immediate vicinity that have stood the test of time speaks to the importance of preservation in the community.

Mr. Rayborn noted the importance of preserving historic properties that are contiguous or in close proximity to one another.

Ms. Hadden pointed out the age of the property. There are few preserved houses as old as this one.

Ms. Pittman emphasized the importance of the structure to the community.

Chair Dowell stated that it appears that the Commission feels that the architecture is special, as well as the age, location and cultural context.

Ms. Moloney suggested adding a recommendation that the property owner consider designating some elements of the interior.

Mr. Nix said the home was one of only fifteen remaining properties in Greensboro that was built before 1880. He also noted how few Italianate houses are left in Greensboro. Retaining both the William Fields house as well as this house would go toward maintaining the historic context of the street. By having those two neighboring houses together and maintaining them there,

that gives an impression of what that street looked like historically. He said it was unique for the interior features to have remained intact, and he stressed the importance of designating interior features in order to ensure their preservation. He added that designating interior features would not preclude the owners from modernizing the home to improve accessibility, for example. He said he would support designating the exterior of the home and the lot, but he also encouraged the property owners to consider requesting interior designation.

Ms. Moloney stated that, in some cases, designating the interior can allow greater flexibility in meeting accessibility and code requirements. Mr. Millsaps added that interior designation does not mean that the entire interior needs to remain exactly as it is, but rather it is about preserving specific historic elements.

Ms. Moloney asked the applicant how they would like to move forward in terms of potentially designating interior elements? Ms. Stewart replied that the property owners were seeking a vote on the proposed exterior and lot designation at this meeting. She said she would then discuss designating character-defining interior elements with the property owner and could potentially submit an amended designation request at a later date. Ms. Moloney said she had seen situations in the past where boards had formally recommended that the property owner designate interior elements.

Chair Dowell asked staff what the best way to move forward would be? Mr. Bell said it would be up to the Commission, but that it would be cleanest if all designated features were included together.

Mr. Gallien moved to amend his prior motion to reflect that the Guilford County Historic Preservation Commission recommends approval of Landmark Designation Case #25-06-HPC-00006 for the subject property, identified as the George and Nancy Kestler House, located at 437 Arlington Street, being Guilford County Tax Parcel #1074, comprising approximately 0.44 acres and owned by Beloved Community Center of Greensboro Inc., based upon the property's special significance in terms of its (1) architectural importance – the home is one of relatively few remaining Italianate homes in the county; (2) historical importance – the home is one of only fifteen surviving homes dating from 1880 or earlier; (3) cultural importance; (4) association with the notable Kestler family; (5) historical context – the home is adjacent to a designated local historic landmark, the William Fields House, and the preservation of both

properties contributes to maintaining the historical fabric of the neighborhood; and (6) established regular maintenance. The property has integrity of design, setting, workmanship, materials, feeling and association. The designation will include the entire exterior of the home and the lot. The motion was seconded by Ms. Moloney. The Commission voted unanimously in favor of the motion (Ayes: Dowell, Horth, Millsaps, Rayborn, Pittman, Nix, Hadden, Gallien and Moloney. Nays: None.).

There was discussion about making a recommendation that the property owners and applicant consider requesting designation of interior features at a later date. However, a formal recommendation was not made.

Mr. Horth was excused from the remainder of the meeting at 7:32 p.m.

## **VI. Old Business**

### **A. Landmark Property Letters – Update**

Mr. Moss informed the Commission that letters had been sent out to all owners of landmark properties within Guilford County. The letters contained general information about the meaning of local historic landmark designation, as well as the need for approval for proposed work on historic properties.

### **B. GIS Map Corrections – Update**

Mr. Moss said the landmark properties layer on the County's GIS Data Viewer had been updated to reflect accurate information for each landmark.

Chair Dowell invited the Commission members to peruse the information on the GIS Data Viewer and to report any issues to staff.

### **C. Accessing Landmark Files – Update**

Mr. Moss explained that he had organized the County's digital landmark files, and could provide the files to the Commission in the form of a temporary cloud storage link while staff researches more long-term solutions. Chair Dowell indicated his opinion that that would be a workable solution.

Chair Dowell asked each of the Commission members to research the landmark properties within their respective geographic areas.

**D. Scanning Landmark Books – Update**

Mr. Moss let the Commission know that staff had scanned the *Landmark Properties of Guilford County, North Carolina* book that had been discussed at a previous meeting. The scanned book had been provided to each Commission member by email. He also mentioned that staff was looking into purchasing two additional books that had previously been mentioned, *Greensboro: An Architectural Record* and *An Inventory of Historic Architecture: Greensboro, NC*.

**E. Identifying Digitized Photos**

Mr. Moss said that staff needed to coordinate with current and past staff members and Commission members to identify a series of photos that had been digitized from slide carousels.

Chair Dowell suggested including these photos when sharing the landmark files with the Commission members, so all members could assist in identification.

**F. Proposed Changes to the F. M. Smith House in Gibsonville**

Mr. Moss explained that staff had been in touch with the property owner about a potential Certificate of Appropriateness application for this property. However, a completed application had not been received by staff, so the matter had not yet been scheduled to appear before the Commission.

**G. Landmark Interior Designations**

Mr. Bell pointed out that there was some information in the Commission members' packets about this item. Historically, the entire interiors of some properties have been designated, but state statute only allows designation of specific interior features of significance, and only when consent has been given by the owner. There needs to be some discussion about how to move forward. For example, a letter could be sent to landmark property owners asking them to amend their landmark designations to include specific interior features. Mr. Bell asked about how many landmark properties this would impact? Chair Dowell said that each Commission member could research this as part of their investigations into existing landmark properties.

Mr. Nix said that specific interior features were not described for the first approximately ninety landmark designations.

#### **H. Potential America 250 NC Activities**

Mr. Bell stated that on June 18, the Board of Commissioners adopted a resolution in support of the Guilford County America 250 NC Committee. The Greensboro Area Convention and Visitors Bureau is the designated agency that will be leading these activities, and the name of the contact person is Sarah Lanse. There may be activities that the Commission is interested in participating in.

Mr. Gallien suggested forming a subcommittee to work on planning and budgeting for educational activities. He said there would be further discussion at the next meeting.

#### **I. HPC Expansion**

Mr. Bell said that the original ordinance that created the Commission called for eleven members, with Guilford County appointing four, Greensboro appointing three, High Point appointing two, Gibsonville appointing one and Jamestown appointing one. The original intent may have been to reflect the relative sizes or populations of these jurisdictions, but those factors change over time. One option is to expand the number of seats on the Commission. Another option would be to modify the proportion of representation for each jurisdiction.

Mr. Gallien raised the idea of a merged City-County Historic Preservation Commission.

Mr. Nix pointed out that jurisdictions like Burlington were expanding into eastern Guilford County.

Mr. Bell mentioned that the intent of the ordinance was unclear as to whether the Commission members appointed by each jurisdiction were also meant to represent that jurisdiction.

#### **J. Other**

Mr. Nix pointed out a potential violation at the William Fields House. Chair Dowell also mentioned that he had emailed staff a list of potential violations.

**VII. Adjournment**

There being no further business before the Commission, the meeting was adjourned at 8:42 p.m.

**The next regular meeting of the Guilford County Historic Preservation Commission is scheduled for August 19, 2025, at 6:00 p.m.**

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**§ 160D-947. Certificate of appropriateness required.**

(a) Certificate Required. - After the designation of a landmark or a historic 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 the landmark or within the district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The local government shall require such a certificate to be issued by the commission prior to the issuance of a building permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness is required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" 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, 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" mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in subsection (b) of this section, the commission has no jurisdiction over interior arrangement. 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 in the district that would be incongruous with the special character of the landmark or district. In making decisions on certificates of appropriateness, the commission shall apply the rules and standards adopted pursuant to subsection (c) of this section.

(b) Interior Spaces. - Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces is 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. The consent of an owner for interior review binds future owners and/or successors in if the consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Rules and Standards. - Prior to any action to enforce a landmark or historic district regulation, the commission shall (i) prepare and adopt rules of procedure and (ii) prepare and adopt principles and standards not inconsistent with this Part to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition. The landmark or historic district regulation may provide, subject to prior adoption by the preservation commission of detailed standards, for staff review and approval as an administrative decision of applications for a certificate of appropriateness for minor work or activity as defined by the regulation; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission. Other than these administrative decisions on minor works, decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 160D-406.

(d) Time for Review. - All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the regulation or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) Appeals. -

- (1) Appeals of administrative decisions allowed by regulation may be made to the commission.
- (2) All decisions of the commission in granting or denying a certificate of appropriateness may, if so provided in the regulation, be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment.
- (3) Appeals from the board of adjustment may be made pursuant to G.S. 160D-1402.
- (4) If the regulation does not provide for an appeal to the board of adjustment, appeals of decisions on certificates of appropriateness may be made to the superior court as provided in G.S. 160D-1402.
- (5) Petitions for judicial review shall be taken within times prescribed for appeal of quasi-judicial decisions in G.S. 160D-1405. Appeals in any such case shall be heard by the superior court of the county in which the local government is located.

(f) Public Buildings. - All of the provisions of this Part are hereby made applicable to construction, alteration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, and instrumentalities, provided, however, they do not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies may appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The North Carolina Historical Commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the North Carolina Historical Commission is final and binding upon both the State and the preservation commission. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 24, 51(a), (b), (d).)

## Coates' Canons NC Local Government Law

### Certificates of Appropriateness and Quasi-Judicial Procedures

**Published: 05/28/25**

**Author: Adam Lovelady**

A core responsibility of the local historic preservation commission is to review and decide on certificates of appropriateness (COAs) to prevent development and changes “that would be incongruous with the special character of the landmark or district” (G.S. 160D-947). A COA decision requires the commission to take historic design standards and apply them to a specific property or development. Such decision-making is quasi-judicial, and as such, COA decisions must follow the statutory procedural requirements and ensure the due process rights of all parties with legal standing in the case.

This blog explores the scope of COA decisions and the procedural requirements for these quasi-judicial decisions.

#### What projects need a Certificate of Appropriateness?

In general, a major change to a locally designated historic landmark or to a property within a locally designated historic district requires the owner to obtain a certificate of appropriateness. COAs are required for most changes to the exterior of the building or site; **there are limited situations when COAs are necessary for interior work**. If a building permit is required, the COA must be issued prior to issuance of building permit. Even if no building permit is required for a project, a COA might be required (G.S. 160D-947).

Public buildings are subject to COA review, though the process and standards may be different depending on whether the public building is owned by the state or another public body. For minor works, state law allows for administrative review by staff rather than review by the full preservation commission. Ordinary maintenance and action to address safety concerns are exempt from COA review.

Now, consider each of those topics in a bit more detail.

## **“Exterior Features”**

State law requires COAs for changes to exterior features and provides a broad scope for “changes” and broad definition of “exterior features.”

“[N]o 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 the landmark or within the district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission.”

(G.S. 160D-947).

“Exterior features” are defined to 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, 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” mean the style, material, size, and location of all such signs. Such “exterior features” may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.”

(G.S. 160D-947).

## **Limited Applicability to Interior Features**

Generally, COAs do not cover interior spaces. There are limited exceptions for landmarks for which “[t]he landmark designation shall specify the interior features to be reviewed and the

specific nature of the commission’s jurisdiction over the interior.” This regulatory reach to interior spaces only applies 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” (G.S. 160D-947).

## **Administrative Review for Minor Works**

Not every change to a historic property must go to the full preservation commission for review. Run-of-the-mill changes may be defined as “minor works” and reviewed by administrative staff. Such minor works must be clearly identified in the applicable preservation regulation. Examples include minor exterior work that does not change the design, material, or appearance, such as redecking a porch with similar materials; storm windows and storm doors; rear yard decks; and similar changes.

Decisions about minor works must be based on detailed design standards adopted by the preservation commission. Staff may approve a COA for a minor work, but any denial must go to the preservation commission for formal action (G.S. 160D-947).

## **Exemption for Ordinary Maintenance, Unsafe Situations, and Emergency Utility Work**

A local government may not require a COA for ordinary maintenance or necessary actions to resolve a dangerous situation. A local government may not “prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark that does not involve a change in design, material, or appearance thereof.” Additionally, the local government may not “prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition” (G.S. 160D-947).

Above-ground utility structures—such as power poles—get special treatment. Maintenance of above-ground utilities is exempt from COA approval, and in the case of an emergency above-ground utilities may be immediately restored without COA approval (G.S. 160D-947).

## **Public Buildings**

Local historic regulations apply to the “construction, alteration, moving, and demolition by the

State of North Carolina, its political subdivisions, agencies, and instrumentalities.” But there are subtle changes in the process and standards.

Buildings owned by the State of North Carolina and its agencies are not subject to local design standards; rather, they are reviewed based on the Secretary of the Interior’s Standards. Appeals of COA decisions for State and agency buildings go to the North Carolina Historical Commission, and that decision is final and binding (G.S. 160D-947(f)).

With regard to regulating the interiors of buildings, G.S. 160D-947(b) indicates that the local preservation commission may have regulatory authority over “specific interior features of architectural, artistic, or historical significance in *publicly owned* landmarks.” G.S. 160D-947(f), however, states local COA review “do[es] not apply to interiors of buildings or structures *owned by the State of North Carolina*.” With that, interiors of state buildings are not subject to local review, but interiors of other publicly owned buildings potentially may be.

## **Demolition Delay**

In general, a request for a certificate of appropriateness for demolition may not be denied but may be delayed.

For properties within a district, the commission may delay the effective date of the COA for up to 365 days (G.S. 160D-949). For locally designated landmarks, the commission *shall* delay the effective date for a COA for demolition for 365 days (G.S. 160D-945). Such delay period must be reduced when “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.” For *proposed* landmarks or districts, demolition may be delayed up to 180 days (G.S. 160D-949).

During a delay the preservation commission may negotiate for the preservation of the property.

There are limited circumstances in which a demolition COA may be denied. That is for “a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places” (G.S. 160D-949).

Beyond the authority to slow down active demolitions, local governments have authority to adopt regulations to prevent demolition by neglect (G.S. 160D-949).

## **Quasi-Judicial Decision-Making**



Determinations about certificates of appropriateness are not simple, objective determinations—they require evidence from interested parties, analysis of design standards and specific projects, and judgment from the decision-makers. As such, COA decisions must follow the statutory procedural requirements for quasi-judicial decisions and ensure the due process rights of all parties with legal standing.

“[D]ecisions on certificates of appropriateness are quasi-judicial and shall follow the procedures of G.S. 160D-406.” Those requirements include:

- Clear Guiding Standards
- Notice
- Impartial Decision-Makers
- Evidentiary Hearing
- Decision Based on Evidence and Standards
- Right to Appeal

## **Clear Guiding Standards**

After a city or county establishes a historic district or historic landmark, the local historic preservation commission is authorized to prevent certain changes that “would be incongruous with the special character of the landmark or district.” But what is that special character? And what is incongruous with it?

The North Carolina Supreme Court explains the incongruity standard to be “a contextual standard.”

A contextual standard is one which derives its meaning from the objectively determinable, interrelated conditions and characteristics of the subject to which the standard is to be applied. In this instance the standard of “incongruity” must derive its meaning, if any, from the total physical environment of the Historic District. That is to say, the conditions and characteristics of the Historic District’s physical environment must be sufficiently distinctive and identifiable to provide reasonable guidance to the Historic District Commission in applying the “incongruity” standard.

A-S-P Associates v. City of Raleigh, 298 N.C. 207, 222, 258 S.E.2d 444, 454 (1979)(citation

omitted).

The special character of the landmark or district is not left to speculation or guessing. It is not conjured up at the time of COA review. A determination of congruity is guided by the details of the ordinance designating the historic landmark or district and by the required design standards.

“Prior to any action to enforce a landmark or historic district regulation, the commission shall . . . prepare and adopt principles and standards . . . to guide the commission in determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition” (160D-947(c)). Moreover, “[i]n making decisions on certificates of appropriateness, the commission shall apply the rules and standards adopted pursuant to subsection (c) of this section” (G.S. 160D-947)(a).

Design standards commonly include elements such as architectural styles of the landmark or district; building details such as siding, roofing, windows and doors, and porches; site details such as fences and walls; expectations for building additions; and expectations for new construction.

## **Notice**

Notice for quasi-judicial evidentiary hearings is specified at G.S. 160D-406. Notice must be mailed to the applicant, the owner of the property (if different from the applicant), the owners of property abutting the subject property, and any other individuals entitled to notice pursuant to the local rules. Mailed notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the evidentiary hearing.

In addition to mailed notice, the local government must post notice on the site (or adjacent right-of-way) 10-25 days prior to the evidentiary hearing.

State law sets the minimum notice requirements. Local rules may call for additional notice such as newspaper notice or mailed notice to owners of property within a certain distance. The local government must adhere to any additional notice requirements it has set for itself.

## **Impartial Decision Maker**

In quasi-judicial decisions, decision-makers must be neutral, third-party arbiters. Indeed, individuals with legal standing in the matter have constitutional rights to an impartial decision maker. To that end, G.S. 160D-109 sets forth some conflicts of interest that are impermissible

violations of due process rights. These include:

- a member having a fixed opinion prior to hearing the matter that is not susceptible to change,
- undisclosed ex parte communications,
- a close familial, business, or other associational relationship with an affected person,
- or a financial interest in the outcome of the matter.

If a commissioner has a conflict of interest, they must recuse themselves and not participate in the hearing or decision. If there is an objection to a commissioner's participation, the remainder of the board votes on their participation.

## **Evidentiary Hearing**

As with any quasi-judicial decision, a decision on a certificate of appropriateness "shall be based upon competent, material, and substantial evidence in the record." Some of the record is compiled upfront, including the application materials, technical analysis, staff reports. But the full record is established through an evidentiary hearing.

An *evidentiary* hearing is different from a general, *public* hearing. The formal process and the legal requirements are heightened. Witnesses are sworn in; evidence is admitted (and may be objected to); witnesses must provide factual testimony (not personal opinion); and for technical matters, qualified experts are required.

The applicant, local government, and other parties with formal legal standing have the right to participate (an opportunity to be heard). Other individuals from the public may participate as witnesses, but not to make legal claims such as objecting to evidence, cross-examining witnesses, or challenging a commissioner for conflicts of interest.

## **Decision Based on Standards and Evidence**

The incongruity standard does not grant the preservation commission "untrammeled authority to compel individual property owners in the Historic District to comply with whatever arbitrary or subjective views the members of the Commission might have as to how property in the district should be maintained or developed." *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 221, 258 S.E.2d 444, 453 (1979). A decision to grant or deny a COA must be framed within the design standards and based on evidence in the record.

North Carolina courts have ruled that when a preservation commission decision departs from the

framework of historic standards and guidelines, that decision is arbitrary and will not stand. In *Sanchez v. Town of Beaufort*, for example, the court disapprovingly noted that the “height requirement was not reached on the basis of any particular determining principle. Rather, each [commission] member reached what he or she considered an appropriate height based on their own personal preferences.” 211 N.C. App. 574, 581, 710 S.E.2d 350, 355 (2011).

The Court of Appeals quoted commissioners discussing the height requirement in loose terms, unmoored from the applicable standards. One commissioner argued that the project could be redesigned to reduce five feet in height. When the chair asked for the basis for the five feet, the commissioner offered:

Well five feet (5') would be if you had a . . . This is his determination, with a ten foot (10') ceiling downstairs, and a nine foot (9') ceiling upstairs, if you had eight foot (8') ceilings, that's three feet (3'). . . . And then, if the duct work was to be relocated, that's two more feet. So that would be five feet (5') without a lot of material changes. *Now it could be a different number, but I'm just throwing that out.*

211 N.C. App. 574, 581, 710 S.E.2d 350, 355 (2011)(emphasis added by court).

Another commissioner made his own calculations for how the project could be redesigned. A third commissioner stated simply that “twenty five feet (25') is a reasonable height.” When the commission voted on the height limit one commissioner “explicitly admitted that none of the [commission] guidelines were used to determine that height.”

The court was clear: “Since the twenty-four foot height requirement was established by each member of the [commission] without the use of any determining principle from the [design] guidelines, it was clearly arbitrary.” *Sanchez v. Town of Beaufort*, 211 N.C. App. 574, 582, 710 S.E.2d 350, 355 (2011).

In order to avoid arbitrary decision-making that could be overturned by the courts, the preservation commission must ground its review and decision-making in the applicable design standards.

Procedurally, the historic preservation commission must make a decision based on the standards

and evidence “within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed” (G.S. 160D-947)(d). The written decision must “reflect the board’s determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board” (G.S. 160D-406).

## Right to Appeal

Parties with standing have a right to appeal a preservation decision. Appeals must be filed within 30 days, but the particulars depend on the local rules and the decision being appealed, as noted at G.S. 160D-947:

- Administrative decisions on minor work are appealed to the preservation commission.
- COA decisions are appealed to superior court in the nature of certiorari, the same as other quasi-judicial decisions.
- The local ordinance may provide for COA decisions to be appealed to the board of adjustment before it goes to superior court. In that case the board of adjustment follows procedures for an appeal in the nature of certiorari.
- For buildings of the State and its agencies, appeals are taken to the North Carolina Historical Commission.

## Conclusion

Making decisions on certificates of appropriateness is a core responsibility for the local historic preservation commission. This work requires the commission to apply broader design standards to a specific property or project. Such decision-making requires evidence and judgment—and it requires the commission to follow quasi-judicial procedures to protect the due process rights of the parties with legal standing.

For more information on local preservation, check out these related blogs on [Preservation Commission Basics](#) and [Designating Local Historic Landmarks and Districts](#).

*This blog post is published and posted online by the School of Government for educational purposes. For more information, visit the School's website at [www.sog.unc.edu](http://www.sog.unc.edu).*

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# **Guilford County**

## **Historic Preservation Commission**

### **Rules of Procedure**

**Revised and readopted by the HPC on August 20, 2024**  
**Accepted by the Board of Commissioners on November 7, 2024**

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# **GUILFORD COUNTY HISTORIC PRESERVATION COMMISSION RULES OF PROCEDURE**

## **SECTION 1. PURPOSE OF THE RULES OF PROCEDURE AND DUTIES OF THE HISTORIC PRESERVATION COMMISSION**

### **1.1. Purpose of the Rules of Procedure**

To establish procedures for organizing and conducting the business of the Historic Preservation Commission in executing its duties and responsibilities.

### **1.2. Duties of the Historic Preservation Commission**

There is hereby created, pursuant to G.S. § 160D-303 a Guilford County Historic Preservation Commission (hereinafter referred to as HPC). The powers and duties of the HPC shall be those listed in Article 2 - Administration, Section 2.6 of the Guilford County Unified Development Ordinance (hereinafter referred to as UDO).

### **1.3. Jurisdiction**

The HPC's jurisdiction for approval of Certificates of Appropriateness within designated Historic Districts shall be delineated on the official zoning map.

## **SECTION 2. GENERAL GOVERNING STATUTES, ORDINANCES AND RULES**

The HPC is governed by the applicable provisions of the NC General Statutes 160D, Article 19; the current UDO and all amendments thereto; other relevant policies established by the Guilford County Board of Commissioners (hereinafter referred to as *BOC*); and by these Rules to the extent that they do not conflict with the law. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable, and in which they are not inconsistent with applicable law and these rules. Additionally, the Guilford County Historic Preservation Commission shall operate in accordance with the Guilford County Board of Commissioners' Resolution Establishing Policy and Procedures for Appointments [to County Boards, Commissions, Committees and Councils], as well as by any other resolutions of the Board of County Commissioners relating to historic preservation in Guilford County. Furthermore, the HPC may also consult the most recent edition of *Suggested Procedural Rules for Local Appointed Boards*, published by the University of North Carolina School of Government. In instances where the HPC conducts quasi-judicial proceedings (i.e., Certificates of Appropriateness), the HPC will operate according to provisions of North Carolina General Statute 160D-406.

All Board members shall become thoroughly familiar with the provisions of the statutes concerning historic preservation.

## **SECTION 3. ORGANIZATION OF THE HISTORIC PRESERVATION COMMISSION**

### **3.1. MEMBERSHIP**

The HPC shall be made up of eleven (11) members (collectively, “members”).

#### **3.1.1. Residency, Appointment and Qualification of Members**

All members shall be residents of the County and shall be appointed by the Guilford County BOC. Members representing Town or City jurisdictions shall be recommended by the pertinent governing body and appointed by the BOC. Members shall be trained in the fields of architecture; history; planning; archaeology or a related discipline; or have demonstrated experience or interest in preservation of historic structures.

#### **Quorum**

A majority of the membership of the HPC constitutes a quorum. Vacant (i.e. unappointed) seats shall not be considered for purposes of determining a majority of the membership. Appointed seats which are filled but for whom members are absent shall be counted in the total number of commission members for calculation of a quorum. A quorum of the HPC shall consist of a majority of the set membership, excluding vacant seats, but not excluding absentees. A quorum must be present for the HPC to take any official action. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he or she shall be counted as present for the purposes of determining whether a quorum is present.

### **3.2. TERM OF OFFICE**

Members’ four (4)-year terms of office are set by the BOC and the City and Town councils of participating jurisdictions. Members may be appointed to fill an unexpired term of a previous member. Member terms should be staggered such that a similar number of members are appointed or reappointed each year. The terms of all members shall not expire at the same time. Terms are limited to two (2) consecutive four (4)-year terms; except, however, consecutive terms exceeding two (2) may be served if the incumbent is re-appointed by the BOC to represent a different jurisdiction. Additionally, the BOC may waive the two (2)-term limit at its discretion.

### **3.3. OFFICERS**

#### **3.3.1. Election of Officers**

December meeting in each calendar year. Should the regularly scheduled meeting not be held for any reason, then the next regularly scheduled meeting shall include the election of officers as an agenda item in accordance with these Rules of Procedure. The HPC shall elect one of its members to serve as Chair and preside over the meetings and one member to serve as Vice Chair. The candidate for each office receiving a majority vote of the HPC members present shall be declared elected. Vacancies in these offices may be filled for the unexpired terms only. Voting may be done by acclamation (if only one member is

nominated), show of hands, voice, or secret ballot and a majority vote.

### **3.3.2. Chair**

The Chair shall be elected by the HPC from among its members and shall have the following duties:

1. The Chair shall serve and preside over the Commission's meetings for a term of one year, beginning as of the first meeting of January, and may be re-elected.
2. The Chair shall decide all matters of order and procedure, subject to these rules, unless directed otherwise by a majority of the Commission in session at the time.
3. The Chair shall appoint any committees deemed necessary by a majority vote of the Commission to investigate any matter before the Commission.
4. On all Quasi-Judicial matters (e.g., Certificates of Appropriateness), the Chair or any member acting as Chair is authorized to administer oaths to witnesses in any matter coming before the Commission. Additionally, the Commission through the Chair, or in the Chair's absence, anyone acting as Chair, may subpoena witnesses and compel the production of evidence. The Chair shall issue requested subpoenas he/she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to question or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Commission.
5. The Chair shall perform such other duties as may be directed by a majority of the Commission.
6. In the absence of the Chair, the Vice Chair shall preside. In the absence of both the Chair and Vice Chair, the members present shall elect a temporary Chair.
7. The Chair shall have the same voting privileges as any other member.

### **3.3.3. Vice Chair**

The Vice-Chair shall be elected by the HPC from among its members and shall have the following duties:

1. The Vice-Chair shall serve for a term of one year, beginning as of the first meeting of January, and may be re-elected.
2. The Vice-Chair shall preside in the absence of the Chair, fill any unexpired term of the Chair, and assume all duties and responsibilities delegated by the Chair.
3. In the event the office of Chair becomes vacant, the Vice-Chair shall serve the

unexpired term of the Chair and a Vice-Chair shall be elected to serve the unexpired term of the former Vice-Chair as provided in Section 3.7.1 herein.

4. The Vice-Chair shall perform such other duties as may be directed by a majority of the Commission.

### **3.4. STAFF ASSISTANCE**

#### **3.4.1. Secretary**

The Planning Director shall serve as Secretary to the HPC and may designate a Planning Department staff member for that purpose. The Secretary, subject to the direction of the Chair, shall have the following duties:

1. The Secretary shall keep all minutes and records of the HPC, provide notice of the regular and special meetings to members, and any other such duties normally carried out by the Secretary. The minutes shall show the record of all-important facts pertaining to every meeting and hearing, every resolution acted upon by the Commission, and all votes of Commission members upon any resolution or upon the final determination of any question, indicating the names of members abstaining from voting.
2. The Secretary shall conduct all correspondence of the Commission, and generally supervise the clerical work of the Commission and its *ad hoc* committees.
3. The Secretary shall not be eligible to vote.
4. On all quasi-judicial (e.g., Certificates of Appropriateness) matters, the Secretary to the HPC may also administer oaths to all witnesses.

#### **3.4.2. Additional Staff Support**

The Director or designee shall provide professional and technical support to the HPC, which may include preparation of meeting materials, presentations, recommendations, conducting official correspondence, and other staff support as requested by the HPC and determined appropriate by the Director or designee.

### **3.5. SPECIAL COMMITTEES**

Special committees may be established by a majority vote of the HPC to assist in studying specific issues. Special committee members shall be appointed by the Chair or a designated member. Special committees may contain persons who are not members of the HPC. The HPC may not delegate its official powers and duties to a special committee.

### **3.6. ATTENDANCE**

Persons accepting appointment to the HPC have made a commitment to serve the citizens of Guilford County. Applicants coming before the HPC deserve a full complement of members to be present to review and recommend/decide matters. Consistent attendance at meetings of the HPC is expected.

#### **3.6.1. Reporting Absences**

Any member who anticipates not being able to attend a meeting of the HPC must contact the Secretary upon receipt of the agenda (or earlier, if possible) and indicate the reason for the absence. In the event of an unforeseen emergency or illness, notification to the Secretary shall be given as early as is feasible.

#### **3.5.2 Excused Absences**

Excused Absences due to sickness, death in the family, or other emergencies of a similar nature, as well as unexpected/unplanned work-related obligations, shall be regarded as excused absences and shall not affect the member's status on the HPC so long as the member the Board Chair and/or the County Staff liaison to the HPC in advance. Failure to inform the Board Chair or staff liaison as described herein shall result in an unexcused absence unless extenuating circumstances prevent the advance notice. In the event of a long-term illness or other situation resulting in a prolonged absence, the member may be replaced by the BOC.

#### **3.5.3 Attendance Requirement**

A member who misses three (3) consecutive regular meetings 33% or more of the regular meetings held in a fiscal year due to unapproved absences loses status as a voting member until reinstated by the BOC and may be replaced by the BOC. Attendance records shall be periodically reviewed by the Director, who shall inform the member of any noncompliance with the attendance requirement.

#### **3.5.4 Absence of Officers**

In the absence of both the Chair and Vice Chair, the HPC membership in attendance shall vote to determine an acting Chair for the meeting.

### **3.7. VACANCIES**

#### **3.7.1. Filling Vacancies**

A vacancy in the office of Chair shall be filled by the Vice Chair, succeeding to the office for the remainder of the unexpired one-year term of the Chair. A vacancy in the office of Vice Chair shall be filled by election of a new Vice Chair from the membership for the remainder of the one-year unexpired term of the Vice Chair. Member vacancies shall be filled by a new member appointed by the governing body to fill the remainder of the unexpired term.

### **3.7.2. Member Continuing Service Beyond Term**

Members completing a term of office, who have not been reappointed and for whose seat a new appointment has not been made by the governing body, may continue to serve until reappointment or a new appointment is made.

## **3.8. RESIGNATIONS AND REMOVAL**

### **3.8.1. Resignation**

**A.** HPC members who choose to resign before the expiration of their term must notify the Director or designee in writing (letter or email). This notice shall include the date upon which the resignation is effective, which should be at least thirty (30) days from the date of the notice.

**B.** If a member of the HPC relocates their residence outside of the County, the relocation constitutes a resignation effective upon the date of the move.

**C.** The Director shall promptly inform the County Clerk of any vacancy on the HPC.

### **3.8.2. Removal**

**A.** HPC members may be removed by the Guilford County Board of Commissioners for cause, including but not limited to documented violation of these Rules.

**B.** The HPC may, by unanimous vote of the other members, recommend that a member be removed for cause and a replacement be appointed by the BOC. Such a recommendation shall be communicated in writing by the Director to Guilford County Board of Commissioners, and to the HPC member in question.

## **SECTION 4. MEETING STRUCTURE**

### **4.1. OPEN MEETINGS**

It is the public policy of North Carolina that the hearings, deliberations, and actions of public bodies that administer the legislative, policymaking, quasi-judicial, administrative and advisory functions of political subdivisions conducting the people's business be conducted openly. Therefore, all official meetings of the HPC, with very few exceptions that are allowed by state law, shall be open to the public, and any person is entitled to attend. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting. An official meeting means a gathering together at any time or place, or the simultaneous communication by conference telephone or other electronic means, of a majority of the members of the HPC for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business that is within the jurisdiction, real or apparent, of the HPC.



## **4.2. REGULAR MEETINGS**

### **4.2.1. Date, Time, and Place**

Regular meetings of the HPC will typically be held on the third Tuesday of each month at 6:00 p.m. Regular meetings may be established at an alternate time and date at the discretion of the HPC, as approved by the Chair, due to holidays or other reasons. The meetings shall be held in a location within the County as properly and legally advertised.

### **4.2.2. Meeting Schedule**

Regular meetings for the calendar year shall be made available to the public in paper or electronic format and posted on the Department's website. Changes in the regular meeting schedule shall follow the notice requirements of North Carolina law.

### **4.2.3. Meeting Notice**

Notices of meetings shall be provided in accordance with the notice requirements of current North Carolina law.

## **4.3. SPECIAL MEETINGS**

A special meeting of the HPC may be called at any time by the Chair or by a majority of the membership. Notice of the date, time and place of the special meeting, along with the purpose of the meeting, shall be provided by the Director to each member at least forty-eight (48) hours in advance of the meeting. Only those items of business specified in the Notice may be transacted at the special meeting. The Notice must be posted on the Planning & Development Department website and shall comply with all other applicable notice requirements of North Carolina law.

## **4.4. CONTINUED MEETINGS**

Any regular or special meeting may be continued or postponed to another specific date, time and place without additional public notice by a majority vote of the HPC, in accordance with the deferral and continuance provisions of the Unified Development Ordinance, as applicable, and these Rules.

## **4.5. CANCELLATION OF MEETINGS**

Whenever there is no business for the HPC, the Director or designee may recommend that the Chair cancel a meeting with the presence of good cause, including a known lack of a quorum. Notice shall be given by the Director or designee at least twenty-four (24) hours before the meeting is scheduled to take place to all members and the press, applicants and other interested persons. In the case of severe weather, notice of cancellation shall be given at the earliest practical time.

## **4.6. AGENDAS AND MEETING ORDER OF BUSINESS**

### **4.6.1 Agendas**

Meeting Agendas and appropriate materials and reports shall be prepared by the Director

and distributed to all members. No business may be considered by the HPC unless such item properly appears on the Agenda. A matter of business not subject to public notice requirements may be discussed as a non-agenda item if the HPC approves for consideration.

#### **4.6.2 Meeting Order of Business**

- Call to Order
- Roll Call
- Agenda Amendments
- Approval of Minutes of Previous Meeting(s)
- Chair's Remarks and Instructions
- Old Business (continued cases; items previously discussed for which action was held or delayed; or work session items)
- New Business
- Announcements
- Adjournment

The order of the Agenda may be changed if there is no objection by any of the members.

### **4.7 HEARINGS**

#### **4.7.1 Application Submittal**

In accordance with the Unified Development Ordinance, the Director or designee shall establish specific submittal requirements and review schedules for applications heard by the HPC.

#### **4.7.2 Attendance by Applicant**

The Director or designee shall notify the applicant of the date, place and time of the hearing in accordance with the public notification requirements of the Unified Development Ordinance. The applicant, or a knowledgeable representative delegated to and authorized by the applicant in writing, is expected to attend the hearing to support the application. This attendee should be capable of addressing issues and answering questions. If no one is present to represent the application, the HPC may, in its discretion, continue the hearing to its next regular meeting. Should a property owner be an LLC or incorporated business entity, they shall be represented by an attorney authorized to practice law in the State of North Carolina.

#### **4.7.3 Type of Hearing**

The HPC follows a [legislative hearing process for Landmark Designations](#). The HPC follows a quasi-judicial, evidentiary hearing process for formal review of Certificates of Appropriateness, which requires all testimony to be sworn, and which requires the HPC to conclude certain findings of fact before approving a Certificate of Appropriateness.

#### **4.7.4 Hearing Procedure for Certificates of Appropriateness**

The HPC shall conduct its hearings for formal review of Certificates of Appropriateness in accordance with the quasi-judicial, evidentiary hearing procedures of the Unified Development Ordinance outlined below:

- Chair announces the item from the Agenda
- Swear-in or affirm witnesses
- Hear staff presentation and recommendation
- Hear applicant testimony
- Hear testimony from the public (for and against the application)
- Rebuttal/cross-examination of proponents/opponents
- Summary of the evidence by the Chair or by such persons appointed by the Chair
- Closing of testimony from the public by the Chair
- HPC asks questions of staff, applicant, persons who have testified
- Deliberation and decision

#### **4.7.5 Evidence**

**A.** In considering applications, witnesses may be called, and factual evidence may be submitted; however, the HPC is not bound by all the rules of evidence followed in judicial proceedings. Evidence upon which decisions are based should be material (directly related to the matter and likely to influence the decision), substantial (of real value, worth or importance) and competent (having legal capacity or qualification).

**B.** The HPC may, in its discretion, view the premises and obtain facts concerning any application before arriving at a decision. All decisions of the HPC shall be supported by appropriate Findings of Fact. Findings of Fact may not be based on hearsay evidence. Hearsay is a statement not made at the hearing that the proponent seeks to have admitted as evidence of the truth of the matter asserted in that statement.

**C.** The HPC, in order to make a defensible decision, should not rely on the opinion testimony of laymen to support a finding that requires information from those with expertise in the matter.

#### **4.8 PUBLIC TESTIMONY**

The Chair may limit repetitive testimony on any item and may restrict anyone from making inappropriate or malicious remarks or remarks not pertinent to the matter under consideration.

#### **4.9. ADVISORY REVIEW BY HISTORIC PRESERVATION COMMISSION**

For larger or more complex projects, such as new construction or certain accessory structures, an Advisory Review by the HPC is offered. The purpose of an Advisory Review is to provide helpful feedback to the applicant early in the design process.

There is no fee for this review. Projects that would benefit from an Advisory Review include but are not limited to:

- construction of an addition
- construction of accessory structure greater than 120 sq. ft. or 2 stories
- new construction
- relocation of a structure
- alternatives to original materials

#### **4.9.1 Scheduling an Advisory Review**

Advisory Reviews are held at the end of a regularly scheduled HPC public meeting which begin at 6:00 p.m. and occur on the third Tuesday of every month. An Advisory Review request form and required materials must be submitted according to the same application submittal deadlines as for formal Certificate of Appropriateness applications. Advisory Review submittals are advertised along with the regular HPC public meeting agenda.

#### **4.9.2 Completing an Advisory Review**

An Advisory Review request form must be completed, signed and submitted with drawings depicting a minimum of overall dimensions and design to the conceptual level (preferably printable at 8.5" x 11"). The Secretary may request that the following materials be included:

- site plan indicating proposed building footprint and setbacks with dimensions if known;
- photographs of the proposed site for any relocation of a structure including available historic photos and aerials;
- photographs of each façade of an existing structure; labeled with name of property, situs address, and viewpoint keyed to the site plan;
- elevation drawings of new construction/changed façades as needed with *at least overall* dimensions (drawings depicting three-dimensional views and physical models are optional);
- specifications and/or samples for materials, architectural details, and elements such as windows and doors (for applications to relocate a structure, provide information on proposed revisions to the structure that would result from the relocation); and
- while not required, a 3-D or modeling study of a streetscape if infill construction is proposed in a Historic District is helpful in the HPC's review.

#### **4.9.3 Advisory Review Public Meeting**

Although it is the goal of the HPC to provide comments that will help to result in a project that will be approved, comments provided during the Advisory Review are non-binding, and the final decision of the HPC shall not be based on these comments. The informal review format is as follows:

- Staff will make a brief presentation (5 minutes) identifying aspects of the project that should be addressed by the HPC.
- Applicant will make a presentation (5 minutes) describing the project.
- The HPC will provide general guidance regarding applicable Review Standards and the Secretary of Interior's Standards related to the project presented and provide reasons to the applicant.
- The HPC Chair will summarize aspects that were identified as not meeting applicable Review Standards and the Secretary of Interior's Standards.

## **SECTION 5. CONDUCTING BUSINESS**

### **5.1. GENERAL EXPECTATIONS OF MEMBERS**

- Be generally familiar with the laws and ordinances relating to the work of the HPC, and with these Rules of Procedure;
- Be prepared for meetings by examining the information provided in the meeting packet, consulting staff with questions, and independently visiting each site to observe from right-of-way. At no point should a majority of the HPC convene for the purpose of HPC related business unless such convening has been properly noticed in accordance with open meetings laws;
- Ask questions as appropriate during the hearing and actively participate in deliberations;
- Consider all information on each matter as presented to the HPC to make an informed decision; and
- Make a decision in a fair, ethical, consistent and non-arbitrary manner.

### **5.2. GENERAL CONDUCT OF MEMBERS**

When quasi-judicial decisions (e.g., Certificates of Appropriateness) are being considered, Commission members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself/herself, the remaining members shall by majority vote rule on the objection. Members of the Commission shall request to be recused from discussion, citing a conflict consistent with G.S. 160D-109(b) or 160D-109(d) when the Commission is sitting as a quasi-judicial Commission. Upon such a request, the Commission shall vote on the recusal. Members of the HPC participating in a hearing and making a decision or a recommendation are expected to act in accordance with the following:

#### **5.2.1. No Prejudice**

Members shall consider the application/request without prejudice.

#### **5.2.2. No Commitment Prior to Review**

Members shall take no public position on an application or on any proposed condition prior to the meeting at which the application is heard.

#### **5.2.3. No Deliberation or Formulation of Decision Prior to Meeting**

Members shall refrain from deliberation with other members or formulation of a judgment or decision prior to the meeting at which the application is heard.

#### **5.2.4. No Ex-Parte Communication**

No HPC member shall, in any manner, discuss any Certificate of Appropriateness application with the applicant, other HPC members, or any other parties prior to the HPC's deliberations on the matter during the hearing. The HPC's quasi-judicial procedures are designed to ensure that all information and discussions regarding the matter under consideration take place during the HPC's evidentiary hearing, so that all parties hear the same testimony at the same time, and so that persons giving testimony can be questioned in person by the HPC and by opposing parties. Any communication regarding a pending application that does occur outside of the hearing must be fully disclosed by the member or members involved before the start of the appropriate hearing. Members may, however, seek or receive explanatory information or clarification pertaining to the application from the Director or designee prior to the hearing. Any such explanation or clarification shall be provided by the Director or designee to *all* members.

#### **5.2.5. Acknowledgement of Relationship or Association with an Applicant or Other Party**

Members shall, prior to or at the beginning of the public hearing, disclose any past or present close familial [spouse, parent, child, brother, sister, grandparent, or grandchild (and step, half, and in-law relationships)], business or associational relationship with an applicant or other party to the matter when any of the following circumstances occur:

- A.** When the member is the applicant before the HPC;
- B.** When the member owns property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or
- C.** When the member has a financial interest in the subject property or improvements to be undertaken thereon.

#### **5.3. VIOLATION OF DUE PROCESS / CONFLICT OF INTEREST**

- A member shall not participate in or vote on any matter that has a substantial and readily identifiable financial impact on the member, nor participate in or vote on any matter in a way that would violate the applicant's or an affected person's constitutional right to an impartial decision-maker.

- A member should not convey an opinion about a quasi-judicial decision by the HPC to any person or agency, including the press, until all appeal rights have expired.
- Members should consult the Director or designee regarding situations that may be considered an actual or perceived conflict of interest. If a member has a conflict of interest regarding any matter before the HPC, the member should inform the Director or designee as soon as possible in advance of the meeting to allow time for an alternate member to be contacted to participate as the regular member's replacement if necessary.

### **5.3.1. Recusal (Excuse from Participation)**

No Commission member shall take part in any hearings, consideration, determination or vote concerning a property in which the Commission member or a close relative (spouse, parent, child, brother, sister, grandparent, or grandchild, including the step, half, and in-law relationships):

- A.** Is the applicant before the Commission;
- B.** Owns property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or
- C.** Has a financial interest in the subject property or improvements to be undertaken thereon.

In addition, a Commission member may request a vote of the Commission excusing the member from taking part in any hearing, consideration, determination or vote concerning a property in which a business associate or employer of the Commission member:

- A.** Is the applicant before the Commission or;
- B.** Owns property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or
- C.** Has a financial interest in the subject property or improvements to be undertaken thereon.

When a Commission member concludes that a matter before the Commission involves or could involve a conflict of interest on his or her part or his or her voting might not be in the public interest, he/she should promptly inform the Commission Chair. The Commission member shall physically vacate his or her seat during consideration of the matter, refrain from any discussion or comment on the particular case, and abstains from voting.

## **5.4. MOTIONS**

The HPC shall proceed in all matters by motion. Any member, including the Chair, may make or second a motion. A motion may be amended by any member, subject to the agreement of the member who made the motion. A motion may be withdrawn by the member making the motion at any time before a vote. Unless withdrawn, all seconded motions must be voted upon. A motion that does not receive a second fails automatically and is not voted upon.

### **5.4.1. Substantive and Substitute Motions**

Substantive motions are non-procedural motions that result in final disposition of the matter under consideration. The HPC motions are:

- Approval as submitted (no changes to the application)
- Approval as amended (with specific conditions or additions stated)
- Denial

All substantive motions are debatable and require a majority vote of members present to approve. While a substantive motion is pending, meaning that it has been seconded but not voted upon, a substitute motion regarding the same issue may be introduced. If seconded, the substitute motion shall be voted upon first. If the substitute motion is approved, the original motion is automatically deemed denied. If the substitute motion fails, then the original motion is voted upon, or another substitute motion can be made. Only one substitute motion can be under consideration at a time.

### **5.4.2 Procedural Motions**

Procedural motions in the collective provide a structure for conducting the business of the HPC and promote propriety of behavior. Below are procedural motions that may be utilized in meetings of the HPC:

- Approval of minutes
- Postpone consideration (to a date and time certain, with reasons stated)
- Take a recess (a short break)
- Call the question (to end discussion among HPC members)
- Refer to committee (where an appropriate committee exists)
- Re-open public testimony (after the Chair has closed it)
- Reconsider (re-open a case decided at the same meeting)
- Adjourn
- Excuse from participation (recuse) (voluntary - exclusion from participation in a matter)
- Remove from participation (involuntary - when an objection to participation is raised by another HPC member or a party to the matter and is found to be valid by the HPC)
- To consider an item not on the meeting agenda (if not subject to evidentiary notice requirements)
- To change the order of agenda items (when the Chair does not have unanimous consent).



All procedural motions are open to discussion with the exception of a motion to recess, adjourn or call the question, which are all voted on immediately. All motions require a majority vote of the members present.

## **5.5. DELIBERATION**

When a motion is introduced and seconded, the Chair should state the motion for the purpose of clarity and understanding, and then open the floor for discussion by the HPC members. The member who introduced the motion is entitled to speak first, and all members should be given the opportunity to speak. Any member may move to call the question when it appears that deliberations are concluded, or there is an impasse. A majority vote will then end deliberations. A vote is then taken on the original motion.

## **5.6. DECISIONS**

Provided a quorum is present, all decisions of the HPC shall be made by a majority of the members present.

### **5.6.1. Qualification to Vote**

No HPC member shall vote on any matter before the HPC unless that member shall have attended the previous deliberations on such matter or shall otherwise have the approval of the Chair to vote on such matter. The Chair's approval shall be contingent on the assurance by the member that the member has read or reviewed all material distributed to the HPC related to the matter, including any material presented by the applicant during the previous deliberations and the minutes of any meeting at which the matter was discussed.

### **5.6.2. Voting**

Forms of decisions:

- A.** No member attending the presentation and hearing on a matter shall be excused from voting except for cause by majority vote of the HPC.
- B.** A failure to vote by a member who is physically present at the hearing, or who has withdrawn without having been excused or recused by the HPC, shall be recorded as an affirmative vote.
- C.** A tie vote constitutes disapproval of the motion.
- D.** The method of voting shall be decided upon by the Chair, and may be by show of hands, "yes" or "no", or roll call. Any member may motion for a roll call vote on a matter, which shall require a majority vote to conduct.

### **5.6.3. Certificate of Appropriateness Decisions**

Certificate of Appropriateness (COA) decisions shall be certified and filed by the Director or designee and communicated to the applicant in writing within ten (10) business days of the decision. Decisions regarding COA applications must be based on whether the proposed activity is congruous with the special character of the historic district or historic landmark. Notification shall include any instructions or conditions relative to the action taken.

- A.** If an application for a COA is approved, the Secretary shall transmit to the applicant a COA in memo form clearly describing the nature of the work which has been approved. Also, a copy of the COA shall be provided to the City or Town permits/inspections department and notification given to the County Tax Supervisor.
- B.** For properties within historic districts, the Secretary shall attach a placard form of a COA to be displayed on the property.
- C.** If an application or Certificate of Appropriateness is denied, a copy of the minutes of the meeting and written reasons for denial shall be made available to the applicant.

### **5.6.4 Expiration of Decisions**

A COA shall expire and become null and void if construction, any approved change, relocation, or demolition has not commenced for projects approved by the COA within 1 year (365 days) of its issuance.

## **SECTION 6. RECORD KEEPING**

The minutes of all meetings and other records of the HPC shall be maintained by the Secretary or other designee of the Director. Minutes of meetings shall be prepared by the Secretary or designee and should be transmitted to the HPC prior to the next regular meeting. Minutes are not official until approved by the HPC, at which time they become the official public record of the HPC's actions.

### **6.1. MINUTE CONTENTS**

Minutes shall include the following:

- Date, time and place of the meeting
- Names of members in attendance and names of absent members
- Names of staff members in attendance
- Names and addresses of owner(s), agent(s), applicant(s) and others that spoke on each matter
- A summary of evidence presented to the HPC on each matter
- A summary of the discussion on each matter
- The wording of each motion or resolution, including which members made the member seconded the motion; and
- All votes of the HPC.

All application records and supporting materials are to be retained electronically by the Director in accordance with North Carolina records retention rules.

## **SECTION 7. REHEARING OF DENIED APPLICATIONS**

The HPC has no legal authority or jurisdiction to hear the same matter a second time. Therefore, if an applicant desires to submit a second application regarding a previously denied request, the applicant must first appear before the HPC to present evidence that there has been a substantial change in the application, relevant ordinance provisions, evidence or material site conditions in the matter that presents new issues, hence allowing a second application to be heard as an entirely new proceeding. If the HPC determines no substantial change exists, it shall deny a rehearing on the matter. If the HPC determines that there has been a substantial change, it shall thereupon treat a subsequent application in the same manner as any other application.

## **SECTION 8. MODIFICATIONS TO APPLICATIONS**

An approved or pending application for a COA may be modified by a written request from the applicant to the HPC. Such a request shall include a description of the proposed change and shall be accompanied by elevations, plans or other drawings, where necessary. If the HPC finds that the modification constitutes a substantial change which might affect surrounding property owners, it shall notify affected property owners following the procedures set out in Section 4 of these Rules before taking action on the modification. The HPC shall thereupon treat the request in the same manner as any other application as outlined in Section 4 of these Rules.

## **SECTION 9. APPEALS**

An appeal from an HPC decision shall be taken to the Board of Adjustment. Appeals may be requested by any aggrieved party. An appeal shall be requested in accordance with procedures outlined in the UDO thirty (30) days from receipt of the written notice of determination of the HPC. An appeal shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of Guilford County.

## **SECTION 10. AMENDMENT OF THE RULES OF PROCEDURE**

These Rules of Procedure may be amended, within the limits allowed by law, at any time by an affirmative vote of the majority of current members of the Historic Preservation Commission, excluding any vacancies, provided that such amendment is presented in writing at a regular or special meeting.

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