

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 799

Short Title: Zoning/Changes to Hist. Preserv. Procedures. (Public)

Sponsors: Representatives Brody and Ager (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Local Government, if favorable, Judiciary II.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION, TO SHORTEN THE TIME PERIOD FOR DECISIONS OF THE HISTORIC PRESERVATION COMMISSION UPON SUBMISSION OF AN APPLICATION FOR A CERTIFICATE OF APPROPRIATENESS, AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-400.7 reads as rewritten:

"§ **160A-400.7. Historic Preservation Commission.**

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks ~~respectively, respectively~~ or (ii) a planning board established pursuant to this ~~Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article.~~ Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 2. G.S. 160A-400.8 reads as rewritten:



"§ 160A-400.8. Powers of the Historic Preservation Commission.

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

- (1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
- (2) Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";
- (3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property 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;
- (4) Restore, preserve and operate historic properties;
- (5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
- (6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;
- (7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board 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;
- (8) Enter, with the consent of the owner, solely in performance of its official duties and only at reasonable times, upon private lands for ~~examination~~ preparation of a renovation report or other report to aid in review of a certificate of appropriateness application, examination, or survey thereof. 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;
- (9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;
- (10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and
- (11) 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 or appropriate."

SECTION 3. G.S. 160A-400.9 reads as rewritten:

"§ 160A-400.9. Certificate of appropriateness required.

...

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed ~~180~~120 days from the date the application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. If an application is not acted upon within the 120-day period, the commission shall issue the certificate of appropriateness. 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.

1 (e) An appeal may be taken to the Board of Adjustment from the commission's action in
2 granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii)
3 shall be taken within times prescribed by the preservation commission by general rule, and (iii)
4 shall be in the nature of certiorari. A member of the Board of Adjustment shall not vote on a
5 matter under appeal pursuant to this subsection if that member is also a member of the
6 commission or its equivalent. Any appeal from the Board of Adjustment's decision in any such
7 case shall be heard by the superior court of the county in which the municipality is located.

8 (e1) Notwithstanding subsection (e) of this section, in lieu of an appeal to superior court,
9 the party appealing the decision of the Board of Adjustment may submit the dispute to binding
10 arbitration. The appealing party shall provide written notice to the Board of Adjustment within
11 30 days of the decision. Unless a different method of arbitration is agreed upon by the parties, a
12 single arbitrator shall be chosen by the parties, and the appealing party may choose to
13 consolidate all disputed issues into a single claim. The cost of the arbitration proceeding shall
14 be borne equally by the parties. The American Arbitration Association rules shall apply to the
15 arbitration unless the parties agree otherwise. The arbitrator shall consider, at a minimum, the
16 entire record of proceedings with the commission and the Board of Adjustment, the degree to
17 which the decision deviates from the rules of procedure and principles and guidelines of the
18 commission pursuant to G.S. 160A-400.6, and the good faith of the parties. In any subsequent
19 action to enforce the arbitrator's decision, the prevailing party shall be entitled to reasonable
20 attorneys' fees and court costs.

21 (f) All of the provisions of this Part are hereby made applicable to construction,
22 alteration, moving and demolition by the State of North Carolina, its political subdivisions,
23 agencies and instrumentalities, provided however they shall not apply to interiors of buildings
24 or structures owned by the State of North Carolina. The State and its agencies shall have a right
25 of appeal to the North Carolina Historical Commission or any successor agency assuming its
26 responsibilities under G.S. 121-12(a) from any decision of a local preservation commission.
27 The commission shall render its decision within 30 days from the date that the notice of appeal
28 by the State is received by it. The current edition of the Secretary of the Interior's Standards for
29 Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles
30 and guidelines used in reviewing applications of the State for certificates of appropriateness.
31 The decision of the commission shall be final and binding upon both the State and the
32 preservation commission."

33 **SECTION 4.** G.S. 160A-400.14 reads as rewritten:

34 "**§ 160A-400.14. Delay in demolition of landmarks and buildings within historic district.**

35 (a) An application for a certificate of appropriateness authorizing the relocation,
36 demolition or destruction of a designated landmark or a building, structure or site within the
37 district may not be denied except as provided in subsection (c). However, the effective date of
38 such a certificate may be delayed for a period of up to ~~365~~270 days from the date of approval.
39 The maximum period of delay authorized by this section shall be reduced by the commission
40 where it finds that the owner would suffer extreme hardship or be permanently deprived of all
41 beneficial use of or return from such property by virtue of the delay. During such period the
42 preservation commission shall negotiate with the owner and with any other parties in an effort
43 to find a means of preserving the building or site. If the preservation commission finds that a
44 building or site within a district has no special significance or value toward maintaining the
45 character of the district, it shall waive all or part of such period and authorize earlier
46 demolition, or removal.

47 If the commission or planning board has voted to recommend designation of a property as a
48 landmark or designation of an area as a district, and final designation has not been made by the
49 local governing board, the demolition or destruction of any building, site, or structure located
50 on the property of the proposed landmark or in the proposed district may be delayed by the

1 commission or planning board for a period of up to ~~180~~60 days or until the local governing
2 board takes final action on the designation, whichever occurs first.

3 (b) The governing board of any municipality may enact an ordinance to prevent the
4 demolition by neglect of any designated landmark or any building or structure within an
5 established historic district. Such ordinance shall provide appropriate safeguards to protect
6 property owners from undue economic hardship.

7 (c) An application for a certificate of appropriateness authorizing the demolition or
8 destruction of a building, site, or structure determined by the State Historic Preservation Officer
9 as having statewide significance as defined in the criteria of the National Register of Historic
10 Places may be denied except where the commission finds that the owner would suffer extreme
11 hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

12"

13 **SECTION 5.** Part 3C of Article 19 of Chapter 160A of the General Statutes is
14 amended by adding a new section to read:

15 **"§ 160A-400.16. Renovation report by Historic Preservation Commission.**

16 (a) For the purposes of this section, the term "renovation report" is defined as an
17 informational report issued by a historic preservation commission or its designee that includes,
18 at a minimum, all of the following:

19 (1) An identification and listing of all exterior features as defined in
20 G.S. 160A-400.9 for particular buildings or structures (i) located on a
21 particular parcel situated within a historic district or (ii) designated as a
22 historic landmark.

23 (2) A reference to all applicable sections of locally adopted principles and
24 guidelines not inconsistent with this Part and relevant to alteration or
25 restoration of the exterior features identified and listed pursuant to
26 subdivision (1) of this subsection.

27 (3) A listing of materials or substitute materials appropriate for use in alteration
28 or restoration of the exterior features identified and listed pursuant to
29 subdivision (1) of this subsection.

30 A renovation report shall not include stand-alone new construction, demolition or the
31 moving of a structure on the subject parcel.

32 (b) An owner or a potential purchaser with the owner's consent may request a
33 renovation report from the commission. In preparing the report, the commission shall examine
34 the parcel or structure in collaboration with the requesting party and shall prepare and issue the
35 report within 60 days of request. The commission may contract with a third party to prepare the
36 report and may establish and charge a reasonable fee to the party requesting the report, not to
37 exceed the actual cost of preparing the renovation report.

38 (c) A renovation report issued by the commission pursuant to this section shall be valid
39 for a period of one year after issuance and is fully transferrable. A completed renovation report
40 shall be considered by the commission and its administrative staff during review for a
41 certificate of appropriateness, including for minor works, issued pursuant to this Part for the
42 parcel or structure for which the renovation report was prepared."

43 **SECTION 6.** This act becomes effective October 1, 2015, and applies to
44 applications for certificates of appropriateness submitted on or after that date.