
Coates' Canons Blog: Demolition and Code Enforcement Involving Historic Districts and Landmarks

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You know the old Jones house down on 4th Street in the town's historic district, don't you? Well, it's a real shame that it is in such bad shape. I remember when that house was right at the center of a very charming neighborhood. Now? Well, I hear that there is a realty company that now owns it. Na, I don't think they have much interest in restoring it. They'd probably love to tear it down and put up something new. That lot is probably worth something. Can the town stop them, you say? Well, what do you think?

I think that, as usual, the answer will depend on the circumstances. But the answer should not be as complicated and involved as it is, particularly since such situations occur over and over in this state.

(1) I've heard that the town's historic preservation commission has to approve changes to buildings within a local historic district, and landmarks as well. Doesn't the commission have a say in whether such a property is demolished?

The town's governing board may provide for a local historic preservation program in the zoning ordinance or unified development ordinance, designate local historic districts and landmarks, and appoint members of a historic preservation commission. After adopting design guidelines, the preservation commission is authorized to require that a certificate of appropriateness be granted by the commission for work done on any exterior feature of a landmark or structure located within a historic district. A certificate of appropriateness (COA) from the commission is required in order to erect, construct, alter, restore, move, or demolish features of these structures.



(2) If property is located in a local historic district or has been designated a landmark, does the historic preservation commission have the right to postpone the demolition of a building?

Yes, as a general rule the commission is authorized to delay the effective date of a certificate of appropriateness for a period of up to 365 days from the date it is approved (G.S. 160A-400.14(a)). The delay period allows the commission to negotiate with the owner and other parties so that the property may be preserved.

There are, however, several exceptions to the demolition-delay rule. The delay period may be reduced if the commission

finds that because of the delay in demolition the owner would suffer extreme hardship or be “permanently deprived of all beneficial use or return from such property.” Furthermore, if property within a historic district has “no special significance or value toward maintaining the character of the district” (i.e., is not a contributing structure), then the commission must waive all or part of the delay period and allow earlier demolition or removal. In contrast, if the State Historic Preservation Officer determines that a landmark or property within a local historic district has “statewide significance,” then a certificate of appropriateness to demolish may be denied outright, unless the owner would suffer extreme hardship or be permanently deprived of all beneficial use.

The preservation commission appears to enjoy flexibility, then, when it comes to determining when and how demolition of historic property will be delayed, although that flexibility may be as much a curse as a blessing. Keep in mind that the authority described above involves balancing the interests of historic preservation with the economic interests of the property owner. It does not involve consideration of the interests of code enforcement.



(3) You mention code enforcement. I have heard of both local minimum housing codes and the power to condemn buildings. Aren't they pretty much one in the same? Isn't it true that a local government housing or building inspector can issue an order requiring a building to be removed or demolished under either approach?

It is true that both minimum housing orders and building condemnation orders may direct the owner to remove or demolish the building. But the circumstances for doing so differ. The minimum housing inspector is concerned with whether a dwelling is “unfit for human habitation.” An order directing removal or demolition is based on a determination that it is economically infeasible for the building to be repaired. The order need not be based on a threat to the general public. In contrast the condition of a building eligible for condemnation is more serious. A condemnable house is dangerous and constitutes a threat to the safety of the general public. Action may be taken to remove the threat regardless of the economic feasibility of repair.

In weighing the interests of historic preservation and code enforcement, the law treats housing code demolition orders and condemnation demolition orders differently. Read on.

(4) Suppose that the Jones house has attracted the attention of the inspector that enforces the local minimum housing code. He determines that the house is “unfit for human habitation” and that it is economically infeasible to repair or improve the building. As a result, he orders the owner to remove or demolish the building. Does that mean the owner is off the hook and that the inspector's order necessarily supersedes the demolition delay provisions mentioned above?

Not so fast. Since the Jones house is in a local historic district, a special provision of G.S. 160A-443(3)b. comes into play. (The provision does not apply to landmarks outside of historic districts.) If the preservation commission gets wind of the housing inspector's order and acts before the removal or demolition is carried out, it may hold a public hearing on the question of whether the property should be preserved. It must then determine (1) whether the house is of “particular significance or value in maintaining the character of the district,” and (2) whether the house has not “been condemned as unsafe.” If it finds that both propositions are true, then the housing inspector is authorized (but not compelled) to change

the enforcement order “to require that that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).”

If the housing inspector chooses to amend the housing-code order as provided above, the effect will typically be to close the building and to allow the demolition-delay period of G.S. 160A-400.14(a) to run its course.

(5) Doesn't this place considerable power in the hands of the minimum housing code inspector?

It does. If the preservation commission is unaware that a historic property is to be demolished under a housing code order, it cannot follow the procedures outlined above. Even if the commission makes the necessary findings, the housing inspector can choose to ignore them or to decide that the interests of code enforcement demand more immediate demolition action. If the owner is eager to demolish the building, the inspector may be more influenced to stick with the original demolition order.

(6) O.K., let's assume that the owner of the Jones house wants to demolish it, but it has not been condemned as unsafe. Can we review how the demolition delay provisions of G.S. 160A-400.14(a) work together with the housing code enforcement provisions of G.S. 160A-443(3)b.?

These are the rules of thumb:

(a) If the house has no particular or special significance to the district and is subject to no housing inspector's demolition order, then the effective date of any certificate of appropriateness issued by the preservation commission to demolish the house may be delayed for one year.

(b) If the dwelling has no particular or special significance but is under a housing inspector's condemnation order to demolish, then the inspector's demolition order is enforceable immediately.

(c) If the house is of particular or special significance but is under a housing inspector's demolition order, then the inspector's order can be changed to require the dwelling to be vacated and closed during a one-year period during which demolition is postponed.

(d) If the house is of particular or special significance to the historic district and is not under a housing inspector's demolition order, then the preservation commission must take some appropriate action to reduce the one-year period of demolition delay.

(7) Wait a minute. In order for the housing inspector to alter the demolition order, the preservation commission must conclude that the dwelling “has not been condemned as unsafe.” How can the housing inspector issue a demolition order without condemning the building as unsafe?

Review the answer to question #3 above. A careful reading of G.S. 160A-443(3)b. and other statutes makes clear that the drafters of this subpart did not equate minimum housing demolition orders (the dwelling is unfit for human habitation) with a condemnation order (the building is unsafe). Otherwise the reference to buildings “condemned as unsafe” in subpart G.S. 160A-443(3)b. would be superfluous. Instead it is likely that the reference is to buildings condemned as unsafe pursuant to G.S. 160A-426 et seq. It is thus important to distinguish between an order adopted under a minimum housing ordinance and an unsafe-building condemnation order.



(8) Are the rules any different if the Jones house has been condemned as unsafe?

They surely are. An often-overlooked provision in the historic preservation statutes (the first sentence of G.S. 160A-400.13) provides as follows:

“Nothing in this Part (the historic preservation enabling statutes) shall be construed . . . to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such (exterior architectural) feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.” (Language in parentheses added.)

Property that has been condemned as unsafe and is subject to a demolition order is exempt from the demolition delay provisions of G.S. 160A-400.14(a), at least in certain circumstances. The key to the exemption above seems to lie in the nature in the condemnation order issued by the building inspector. G.S. 160A-400.13 refers to an order that is required “by the public safety because of an unsafe or dangerous condition.” The emphasis on dangerous conditions and safety seems to presuppose that the building inspector is exercising authority under the unsafe building statutes (G.S. 160A-426 to G.S. 160A-432). If so, the nature of the inspector’s order is crucial.

If a valid order calls for demolition as the only course of action, then the owner’s compliance with the order would appear to preempt or override the demolition delay of G.S. 160A-400.14. The legal defensibility of an order mandating demolition only has been upheld in the North Carolina Court of Appeals case of Coffey v. Town of Waynesville.

Suppose, however, that a condemnation order provides options to the owner. The order might call for the removal of dangerous conditions either by simply repairing certain troublesome features, or by vacating and closing off the dangerous area, or by demolishing the entire structure. Is the demolition delay overridden? The answer is unclear. It is possible to imagine circumstances in which an owner who voluntarily wishes to demolish an entire building might rely on the demolition option to claim that the demolition delay of G.S. 160A-400.14 did not apply. When it comes to condemnation orders there is no administrative board or official that is authorized to balance the governmental interests in protecting historic buildings on the one hand with the governmental interests in conducting effective code enforcement on the other hand.

The legal potency of the first sentence of G.S. 160A-400.13 to supersede a demolition delay may depend on the nature of the condemnation order and the nature of the historic structure. Nonetheless, if the Jones house has been condemned because it is fundamentally dangerous and unsafe and a building inspector has issued a simple demolition order, then the demolition order must be obeyed. The significance of the house for historic preservation purposes and the possible economic hardship that is suffered by the owner are essentially irrelevant.

(9) Would “demolition by neglect” provisions in a local ordinance affect any of this?

G.S. 160A-400.14(b) authorizes ordinance provisions designed to “prevent the demolition by neglect” of any landmark or of any structure within a historic district. (See the provisions in the Rocky Mount ordinance here.) These regulations

address situations in which an owner of a key property for historic preservation purposes fails to maintain it and its condition declines to an extent that it is tantamount to demolition. These provisions impose affirmative maintenance standards on owners. They typically provide remedies for violations that allow orders of abatement. Local governments may thereby make arrangements to take on necessary private preservation work if the owner refuses to do so and to charge the costs to the owner.

These regulations may indirectly bear on the possible conflict between historic preservation and code enforcement interests by helping to prevent the deterioration of properties to such an extent that code enforcement actions are necessary.

. . . So, can the Jones house be saved? It will surely depend on the condition of the house and whether code enforcement procedures have been initiated. But it will also depend on the extent to which historic preservation authorities and code enforcement staff cooperate, share information, and work together to pursue their various objectives.

Links

- canons.sog.unc.edu/wp-content/uploads/2013/11/Historic-preservation-Gboro-Fisher.jpg
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-400.14
- canons.sog.unc.edu/wp-content/uploads/2013/11/Demolition-in-progress.jpg
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-443
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-426
- canons.sog.unc.edu/wp-content/uploads/2013/11/Condemnation-Greensboro-house.jpg
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-400.13
- appellate.nccourts.org/opinions/?c=2&pdf=MjAwMS8wMC01NDUtMS5wZGY=
- www.downtownrockymount.com/documents/DEMOLITION_BY_NEGLECT.pdf