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## Coates' Canons Blog: Historic Preservation Commission Basics

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“The historical heritage of our State is one of our most valued and important assets,” and our cities and counties are authorized to safeguard that heritage and promote the use and conservation of North Carolina’s historic landmarks and districts (G.S. 160A-400.1). Before the local government designates a historic district or landmark, though, it first must create a historic preservation commission to manage that effort. This blog considers the organization and authority of the local historic preservation commission, including an overview of standards and procedures for certificates of appropriateness.

### Organization and Authority

A standard preservation commission must have at least three members with terms of no more than four years. Members must reside within the zoning jurisdiction of the local government (including extraterritorial jurisdiction for municipalities). A majority of members must have “demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields.” This is one of the few instances where the statutes specify expertise for local government board members. When needed, the commission may appoint advisory bodies and committees.

Alternatively, the governing board may choose a different structure for the commission. A local government may establish separate preservation commissions for districts and landmarks, may designate the planning commission or community appearance commission as the preservation commission, or may establish a joint commission with a city (or cities) and county. When the planning commission or community appearance commission serves as the preservation commission, it must still include at least three members with the demonstrated experience in related fields.

The governing board may authorize a preservation commission to carry out any of the following activities within the local government’s zoning jurisdiction:

- i) Inventory historic and significant properties
- ii) Recommend historic designations (and revocations) for districts and landmarks
- iii) Negotiate for, acquire and sell property to promote preservation
- iv) Restore and operate historic properties
- v) Conduct educational programs
- vi) Cooperate and contract with State, federal, and local governments
- vii) Recommend preservation elements of the local comprehensive plan
- viii) Review and act on certificates of appropriateness.

### Certificates of Appropriateness

After a historic district or landmark is established, a landowner may not alter the exterior portions of historic properties

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without obtaining a *certificate of appropriateness* (COA) from the preservation commission. Indeed, building permits and related development permits are withheld until the developer obtains a COA. The State has assigned the critical role of COA decision-making to the local preservation commission.

COAs are required for any erection, alteration, restoration, move, or demolition of an exterior feature of a structure. Structures include buildings, masonry walls, fences, light fixtures, steps and pavement, and other appurtenant features. Above ground utilities and outdoor advertising signs require a COA as well. Exterior features are defined to include, among other things, architectural style, size and scale of buildings, and types and styles of doors and windows. The local governing board, in its discretion, may define exterior features also to include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Generally, COAs are not required for changes to the interior features of a building. COAs are not required for ordinary maintenance or repair that does not change the material or appearance, nor for changes required for public safety and certified by the building inspector. For minor works, the local government may authorize an administrative official to approve COAs pursuant to detailed standards (only the preservation commission may deny a COA, however).

COAs do not regulate use. The owner of property in a historic district may make any use of her property that is not otherwise prohibited by law.

Before a preservation commission may issue or deny any COA, the commission must adopt both (1) principles and guidelines for construction and alterations (design guidelines) and (2) rules of procedure. Those design guidelines and procedures reflect the local architecture and politics, but they must align with the state-established legal framework.

**COA Standards.** A certificate of appropriateness is just what the name denotes—it affirms that the proposed project is appropriate for the historic district or landmark. Indeed, the law states that a preservation commission may not deny a certificate except to prevent a project “which would be incongruous with the special character of the landmark or district.” §160A-400.9(a).

It is worth emphasizing that congruence is based on the district as a whole, not just neighboring properties or relatively uncommon feature within the district. Commissions must determine congruence based on a contextual standard derived “from the total physical environment of the Historic District.” *A–S–P Associates v. City of Raleigh*, 298 N.C. 207 at 222 (1979). The commission may not cherry pick certain properties or features of the district to determine congruity.

The required local design guidelines serve as the general standard for determining congruence. The design guidelines should establish the defining features of the district or landmark, and the commission looks to those guidelines to make its findings of fact regarding congruence. The commission is looking for general compatibility with the guidelines (not necessarily exact conformity). While the congruity standard is general and fairly loose, it is not an invitation for commission members to redesign projects according to the member’s personal style. For more on the role of district guidelines, see this blog by Richard Ducker.

**COA (Quasi-Judicial) Procedures.** When a preservation commission reviews an application for a certificate of appropriateness, it is applying a standard that involves judgment and discretion, so it is a quasi-judicial decision. As such, certain rules apply. The local ordinance and the commission’s required rules of procedure should follow the statutory framework and the judicial rulings for quasi-judicial decisions.

The commission must provide notice, as reasonably required by local ordinance or procedures, to owners of property likely to be materially affected by the certificate of appropriateness. Although, it is not formally required, a good guide for notice is the newly codified notice for other quasi-judicial hearings: posted notice on the site and mailed notice to adjoining property owners, between 10 and 25 days before the meeting. S.L. 2013-126.

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In order to ensure parties' due process rights, members of the commission must not have fixed opinions about the application prior to the hearing;; close family, business, or associational relationships with an affected party; or a financial interest in the outcome. Members of the commission may view the premises and seek advice of the NC Division of Archives and History or other experts, but that evidence and advice should be discussed and reflected in the record. Any *ex parte* communication (communicating with a party outside of the hearing) should be avoided, and disclosed at the hearing if it occurs.

The commission must act upon applications for COAs within a reasonable time, not more than 180 days from the date of the application. A COA for relocation or demolition of a historic property may be delayed up to 365 days—depending on the circumstances—for the commission to negotiate for preservation of the building or site.

The commission must hold an evidentiary hearing so that parties have a right to be heard in a contested case. The statute allows that the commission *may* hold a public hearing (for comments from the general public, not just the parties) when deemed necessary. For more on the distinction between an *evidentiary hearing* and a *public hearing* see this blog by Frayda Bluestein. Regardless of the type of hearing, all meetings of the preservation commission are subject to the NC Open Meetings Law.

During the evidentiary hearing, the commission hears evidence and sworn testimony from the parties. The record should include competent, material and substantial evidence that the proposed project meets the established standard—it is congruent with the district. The commission should provide a written decision, including a determination of any contested facts, to the applicant, property owner, and interested parties that have requested the decision. The commission may apply reasonable conditions to a COA to bring the project in compliance with the standards. An aggrieved party may appeal a commission decision on a COA to the Board of Adjustment. For more on quasi-judicial procedures, see these blogs by David Owens on testimony, opinions, and *ex parte* evidence.

## Conclusion

The state has charged local historic preservation commissions with an important task—to safeguard, promote, and conserve our historical heritage. To that end, those commissions are authorized to research historic sites and districts, plan for preservation, and even acquire property for preservation. Moreover, the state has authorized preservation commissions to ensure the appropriateness of new development in the many historic properties and districts around the state, following the legal procedures and guidelines provided in state and local laws.

## Links

- [www.ncleg.net/gascrpts/Statutes/StatutesTOC.pl?Chapter=0160A](http://www.ncleg.net/gascrpts/Statutes/StatutesTOC.pl?Chapter=0160A)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-400.9.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-400.9.html)
- [canons.sog.unc.edu/?p=2659](http://canons.sog.unc.edu/?p=2659)
- [www.ncleg.net/Sessions/2013/Bills/House/PDF/H276v6.pdf](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H276v6.pdf)
- [canons.sog.unc.edu/?p=5980#more-5980](http://canons.sog.unc.edu/?p=5980#more-5980)
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