

Agenda

HISTORIC DISTRICT COMMISSION

Special training session

5:00 p.m. October 26, 2023

Board Meeting Room of Town Hall Annex, 105 E. Corbin St.



Public charge: The Hillsborough Historic District Commission pledges to the community of Hillsborough its respect. The commission asks members of the public to conduct themselves in a respectful, courteous manner with the commission members and with fellow community members. At any time should any member of the commission or community fail to observe this public charge, the chair or the chair's designee will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the chair or the chair's designee will recess the meeting until such time that a genuine commitment to this public charge can be observed.

1. Call to order, roll call, and confirmation of quorum

2. Commission's mission statement

To identify, protect, and preserve Hillsborough's architectural resources and to educate the public about those resources and preservation in general. The Hillsborough Historic District presents a visual history of Hillsborough's development from the 1700s to the 1960s. In 1973, the town chose to respect that history through the passage of the preservation ordinance creating the historic district.

3. Discussion topics

- A. Defining "historic," "period of significance," "contributing," and "product of time and place"
- B. Public comment and determining standing
- C. Conflicts of interest and communication outside of meetings
- D. Roles/responsibilities of members, chair, and staff
- E. Citing design standards
- F. Defining "compatibility" and "congruency"

4. Other discussion/questions

5. Adjournment

Interpreter services or special sound equipment for compliance with the American with Disabilities Act is available on request. If you are disabled and need assistance with reasonable accommodations, call the Town Clerk's Office at 919-296-9443 a minimum of one business day in advance of the meeting.

3A. Defining “historic,” “period of significance,” “contributing,” and “product of time and place”

- A property or exterior feature that is 50 years of age or older is considered “historic.”
- “The period of significance” for the local historic district is 50 years.
- “Contributing” is only defined for the larger National Register district. Note the following: “a property’s contributing status in regard to the National Register of Historic Places is relevant to the tax credit program and has no bearing on commission review.” Staff’s interpretation is that the 50-year threshold is considered “contributing” for the local district.
- “Product of time and place” is evaluated case by case. “Historic” properties and details are given greater weight by the commission and staff (i. e., historic wooden windows on the second floor of a commercial structure on Churton Street would be given greater weight than fiberglass windows on a 2000s addition).
- Further information:
 - Highlighted sections of the design standards

HISTORIC DESIGNATION AND DESIGN REVIEW

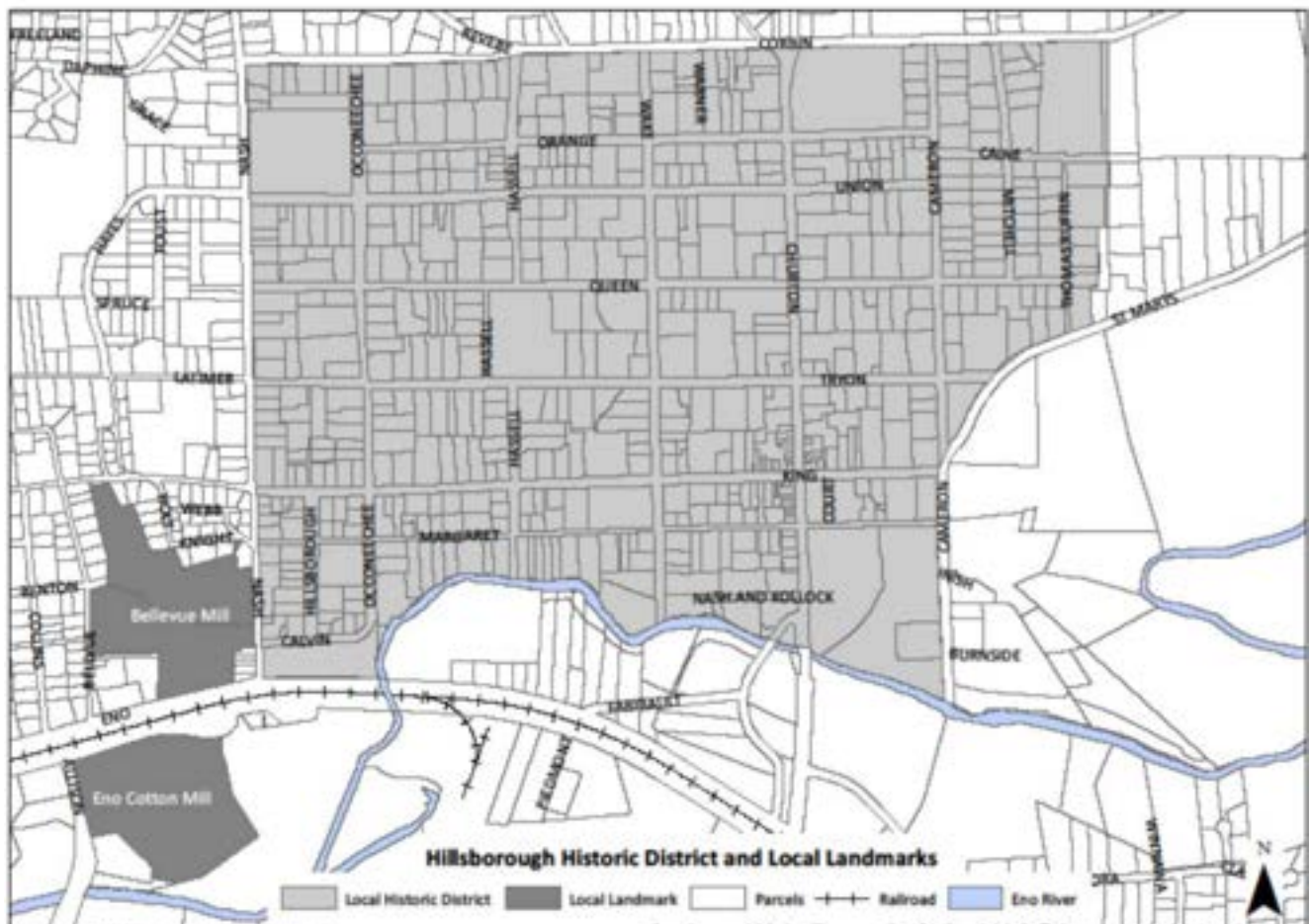
State enabling legislation allows local governments in North Carolina to create a historic preservation commission and designate local historic districts and landmarks. A local designation should not be confused with listing in the National Register of Historic Places, although some properties may carry both designations. **The National Register and local designation are completely separate programs with different requirements and benefits.**

Local Historic Designation

The Town of Hillsborough established the Historic District Commission in 1973 and designated Hillsborough Historic District as a local historic district. Bellevue Manufacturing Company and Eno Cotton Mill were later designated as local landmarks. The Hillsborough Unified Development Ordinance legally establishes overlay zoning for the district and landmarks, which are subject to design review by the commission. The commission uses the design standards to guide the review of work completed within the historic district. **Designated local landmarks outside the historic district are held to the *Secretary of the Interior's Standards for Rehabilitation*.**

Local historic designations like Hillsborough's are not established to prevent change but rather to ensure that future changes to properties are consistent with the historic and architectural character of the properties and/or historic district. Property owners are not required to make changes to their properties in the historic district beyond compliance with local building code. However, when property owners decide to make exterior changes to their properties in the historic district, such work is subject to additional historic district regulations.

Work requiring review and approval by the Historic District Commission is limited to exterior features. The commission does not review interior work, routine minor repairs, and maintenance of the building's exterior that do no change its appearance or materials. Specifically, the commission reviews any proposed exterior changes to buildings, new construction and additions, significant changes to the site or setting, and relocation or demolition of properties within the historic district.



Map created 5/2016 by Hillsborough Planning Department

Data provided by Orange County Land Records

National Register of Historic Places

The National Register of Historic Places is the nation’s official list of places deemed worthy of preservation due to their architectural and/or historical significance. The honorary designation is bestowed on historic properties and districts to recognize their historic value and to encourage continued stewardship by property owners.

The Hillsborough Historic District is listed in the register. The boundaries for the National Register district are larger than the boundaries for the local historic district. Bellevue Manufacturing Company and Eno Cotton Mill are also individually listed in the National Register of Historic Places as individual properties.

While a property or district may be listed in the National Register, only a local designation places design review restrictions on property owners. Properties listed in the National Register are only subject to review by the Historic District Commission if they are within the local historic district boundaries or if they are designated as local landmarks.

A National Register designation does not restrict property owners in any way, but it does offer the benefits of several federal and state programs, including tax credits for rehabilitation.

Historic Rehabilitation Tax Credits

Owners of contributing properties within the National Register’s listed Hillsborough Historic District, Eno Cotton Mill and Bellevue Manufacturing Company may be eligible to participate in the federal and state historic rehabilitation tax credit programs.

The federal tax credit is equal to 20% of qualified rehabilitation expenditures and is limited to income-producing properties. The state historic tax credit is equal to 15 to 25% of qualified rehabilitation expenditures for income-producing properties and 15% for owner-occupied residential properties. The North Carolina State Historic Preservation Office and the National Park Service administer these programs.

To be eligible for the programs, a property must be individually listed on the National Register of Historic Places or must contribute to a historic district listed on the National Register. Projects must meet a “substantial rehabilitation” test to qualify for each of the programs. All work on both the interior and exterior of the property

must meet the *Secretary of the Interior’s Standards for Rehabilitation* and be reviewed and approved by the State Historic Preservation Office and the National Park Service for compliance.

The period of significance for a National Register district, which is identified in the nomination, is when the properties were associated with important events, activities, or persons or when they attained the characteristics that qualify them for the listing. The period of significance for the National Register-listed Hillsborough Historic District spans ca. 1754 to 1963. A property there is considered historic and a contributing resource if it was built during the period of significance and possesses sufficient physical integrity to convey its history and/or architectural significance during that period. Many contributing properties have experienced some degree of alteration from their historic appearance, including window and roof material replacement, porch enclosure, or covering of exterior materials and features. Despite alterations, these properties are still considered contributing because they retain sufficient historic fabric.

A non-contributing property was built after the historic district’s period of significance or has been so altered that it no longer conveys its historic significance.



The Colonial Inn at 153 W. King St. was rehabilitated in 2020 using historic tax credits after standing vacant for almost 20 years.

MORE INFORMATION

[State Historic Rehabilitation Tax Credits](#)
[North Carolina’s State Historic Preservation Office](#)

[Federal Historic Rehabilitation Tax Credits](#)
[National Park Service](#)

HISTORIC DISTRICT COMMISSION

The Historic District Commission was established by the Hillsborough Board of Commissioners in 1973. Its mission is to identify, protect, and preserve Hillsborough's historic architectural resources and to educate the public about those resources and historic preservation in general. The commission is appointed by the Board of Commissioners and is assisted in its responsibilities by the town planning staff. Commission members are Hillsborough residents who have demonstrated special interest, experience, or education in architecture, history, archaeology, or other preservation-related fields.

Based upon staff support and the established commission, Hillsborough qualifies for the Certified Local Government Program, a federal program jointly administered by the National Park Service and State Historic Preservation Office. The program status benefits Hillsborough in several ways including eligibility for preservation-related grant opportunities. The town maintains its status through staff and member participation in annual training sessions of the State Historic Preservation Office.

The Historic District Commission serves as both an advisory body to the Board of Commissioners and as a quasi-judicial body that makes decisions about any proposed exterior changes, additions, demolitions, or relocations of historic resources on properties within the historic district, as well as new construction in the district. A quasi-judicial commission is one that hears evidence, determines relevant facts, and then interprets and applies the law.

MISSION:

To identify, protect, and preserve Hillsborough's architectural resources and to educate the public about those resources and preservation in general.

WORK REQUIRING REVIEW:

- Exterior Alterations
- Changes in Exterior Building Materials
- New Construction
- Significant Site Changes
- Relocation or Demolition

EQUITY STATEMENT:

The Hillsborough Historic District strives to preserve a unique sense of place through the built environment in a manner that conveys a full understanding and appreciation for our long and diverse history. Promoting a more inclusive narrative of the people and events that shaped our community recognizes the cultural, architectural, and historic significance of the district. Hillsborough is committed to advancing social equity in the historic district by preserving diversity in the building stock and uses, as well as by assisting property owners by making fair and equitable decisions to support maintenance and ownership of their historic properties. Town staff and the Historic District Commission will not discriminate against any resident, property owner, or applicant on the basis of race, color, religion, sex, gender identification or non-identification, national origin, age, disability, marital status, or political affiliation.

NAVIGATING THE HISTORIC DISTRICT COMMISSION REVIEW PROCESS

The design review process provides a system for the required approval of proposed exterior changes in a timely manner before the work is begun. The Historic District Commission reviews the proposed changes to determine if they are consistent with the character of Hillsborough's historic district and thus appropriate to undertake. Property owners are advised to contact commission staff early in the planning stages to obtain the Design Standards and an application for a Certificate of Appropriateness. Staff supports equity within the historic district by providing assistance and guidance to property owners in planning for their projects and in navigating the review process.

A complete application typically includes the Certificate of Appropriateness application, fee, scaled site plans and elevation drawings to illustrate existing and proposed conditions, a detailed materials list, a narrative of the proposal, renderings, photographs, and material samples. Since projects vary in complexity and scale, staff will advise property owners on information and drawings necessary for the proposed change and for deeming the application complete. The commission reviews complete applications at its monthly meetings.

Approved applications are issued Certificates of Appropriateness. For proposed work requiring a building or zoning permit, the certificate must be obtained before a permit can be issued. Sometimes the certificate is required even when a permit is not required. Application forms for the certificate can be obtained from the Hillsborough Planning and Economic Development Division and from the [town website](#).

Historic vs. Non-Historic

The period of significance for the local historic district continues into the recent past to encompass the evolution of the district and to include changes that took place at least 50 years ago. A property is considered historic in the local historic district if it is 50 years old or older. Additionally, any exterior addition or feature constructed at least 50 years prior to the current date is considered historic.

All exterior work and new construction in the Hillsborough Historic District requires a Certificate of Appropriateness regardless of whether the property is classified as historic or non-historic. The Historic District Commission reviews non-historic properties as products of their time, allowing alterations and materials compatible

with both the design of the building and the character of the surrounding historic district.

A property's contributing status in regard to the National Register of Historic Places is relevant to the tax credit program and has no bearing on commission review.

Ordinary Maintenance and Repair and Minor Works

All exterior work and new construction in the Hillsborough Historic District or to a locally designated landmark requires a Certificate of Appropriateness regardless of whether a building permit is required. To expedite the review process, some less substantial exterior work items are categorized as "minor works" and are reviewed by the commission staff, eliminating the need for commission review unless staff feels the proposed work warrants full review. Certain limited actions of regular maintenance or of a temporary nature are exempted from obtaining a certificate but still require a proposal and staff review. Contact the commission staff to determine what exterior changes are classified as ordinary maintenance and repair and minor works. The nominal fee for minor works review by staff can be found on the [town website](#).

Ordinary Maintenance and Repair: Certain limited actions of ordinary maintenance or those of temporary nature are exempt from obtaining a Certificate of Appropriateness. Proposals should be submitted to staff for review to verify the work qualifies for exemption.

Minor Works: These are works of a minor nature that typically do not require commission approval unless referred by staff. Minor works may be approved through issuance of a minor works permit by the zoning officer if the proposed work meets certain criteria and is appropriate to the historic district or landmark as determined by staff. All requests deemed not approvable by staff under the minor works review shall be referred to the commission for review.

Major Works: These are exterior works of a substantial nature and new construction that require review.

The table on the following pages provides an abbreviated list of [Ordinary Maintenance and Repair and Minor Works](#) projects. The full list of projects and all applicable criteria to qualify as ordinary maintenance and repair or minor work is included in the appendices.

3B. Public comment and determining standing

- Limited to members of the public who have expert testimony or factual evidence directly related to the application.
- Other public comments may be permissible but shall not be used to render the Commission's decision.
- A time limit may be placed on speakers other than the applicant.
- Only witnesses with legal standing may participate in cross examination.
- Further information:
 - Highlighted Rules of Procedure
 - UNC School of Government materials
 - New Bern example

5.5 Conduct of meetings. All meetings shall be open to the public. The public may attend, but public comment shall be limited to those members of the public who have expert testimony or factual evidence directly related to an application on the agenda. Other public comments are permissible at the discretion of the Chair but shall not be used to render the Commission's decision on an agenda item. At the discretion of the Chair, a time limit may be placed on speakers other than the applicant to afford each citizen an equitable opportunity to speak in favor of, or in opposition to, an application. The order of business for regular meetings shall generally be as follows unless otherwise modified: (1) Call to order; (2) Roll call; (3) Confirmation of a quorum; (4) Mission statement; (5) Agenda changes; (6) Minutes review and approval; (7) Old business items; (8) New business items; (9) Election of officers (if applicable); (10) Updates; and (11) Adjournment.

<https://canons.sog.unc.edu/2012/02/can-i-be-heard-who-gets-to-speak-at-a-hearing-on-a-quasi-judicial-matter/>



Coates' Canons NC Local Government Law

Can I Be Heard? Who Gets to Speak at a Hearing on a Quasi-judicial Matter?

Published: 02/15/12

Last-Revised: June 13, 2022

Author Name: David Owens

The town council makes decisions on special use permit applications under the Macomb zoning ordinance. The council is in the midst of a hearing on an application from Malcolm Tucker for a special use permit to build a new shopping center. The town planner has summarized the nature of the project and the applicable town standards. Tucker's project planner has testified about all the studies and reports she prepared to show compliance with the town standards. At this point Clara Edwards stands up and asks to be heard. Clara lives on the other side of town, but word is she plans to run for Mayor next time around. In any event, she has lately taken to showing up at most town council meetings and offering her views on whatever is before the council. Tucker, who has a long and acrimonious relationship with Edwards, objects to allowing her to speak. Addressing the council, Tucker says, "Madame Mayor, I submit that Mrs. Edwards has no right to testify about my project. She's not the

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applicant. She doesn't live or own property anywhere near the site. She is just a meddling busybody sticking her nose where it doesn't belong. You and I know she just wants to irritate me and bollix up this process. So, I respectfully request we move along and that you ask Ms. Edwards to take a seat." Should the Mayor grant Malcolm's request or should she let Clara speak on the application?



The law allows, but does not require, the board to allow Mrs. Edwards to testify. In most cities and counties in North Carolina, the board would allow her to speak but would admonish her that she can only present relevant testimony about the application.

At the outset, it is important to note the nature of the proceeding before the town council. Here the council is making a quasi-judicial decision, not a legislative decision. The purpose of the hearing is not to seek citizen comments on the desirability of a policy choice. When the council is considering a special use permit application, the purpose of the hearing is to gather evidence as to whether or not this particular application is consistent with the standards set forth in the ordinance. If the applicant can produce competent, substantial evidence that the standards are met, the applicant is legally entitled to the permit. The council may deny the permit only if there is substantial evidence in the record that the standards would not be met.

If this were a *legislative* matter, such as a proposed rezoning or an amendment to the standards for approval of a special use permit, the council would have to hold a public hearing to solicit public comment on the wisdom of the matter. Any person could offer comments, send in written comments, or even chat with the council members about the matter prior to the hearing. Our statutes have long emphasized the importance of seeking public comments prior to making these legislative decisions. The statutes mandate two published notices of the hearing. If a rezoning is involved, the statutes require mailed notice of the hearing to neighbors and posting the site. The council is also required to submit all proposed zoning amendments to the planning board for review and comment. All of this is designed to solicit broad public input prior to making a legislative decision. Mrs. Edwards (and everybody else) is **not only allowed to give the council a piece of her mind at a hearing on a legislative matter, it would be**

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illegal for the council to act without offering her that opportunity. A council can certainly impose reasonable limits on public comments at legislative hearings, such as reasonable time limits or that comments be germane to the issues presented. But for the most part those presenting comments are free to express their views on the matter. See this [post](#) for more on the procedures required for legislative decisions.

A hearing on a *quasi-judicial* matter is altogether different. With a special use permit or variance, the purpose of the hearing is not to solicit public opinion and comment about proposed policies. The policies have already been set. Instead, the council holds an evidentiary hearing to gather facts regarding whether this application meets the standards. The applicant has a constitutional right to present evidence, to cross-examine witnesses, and to present rebuttal evidence. In addition, persons who would be directly and substantially affected by the decision have a right to participate in the hearing. These persons include immediate neighbors whose property values (or use and enjoyment of their property) would be adversely affected. These persons are effectively also “parties” and have the right to present testimony, cross-examine witnesses, and otherwise participate in the hearing. See this [post](#) for more on who has formal standing to participate as a party. Persons who are not parties to the case do not have a constitutional or statutory right to present evidence to the council.

In fact, since parties to the case have a constitutional right to have the decision based only on properly received material evidence, receipt of irrelevant evidence is problematic unless it is clear that the council has not relied on it in making a decision. Often the presiding officer will give witnesses some latitude in their testimony as most witnesses are not experienced in these procedures and it would be improper to prevent someone from presenting relevant information. Still, it is appropriate to remind witnesses to stick to the relevant facts should they begin to stray too far afield. If irrelevant testimony is presented, the board should make it clear that such evidence was not considered when it makes its factual findings.

The complicating fact here is that local government hearings on quasi-judicial matters are not conducted with the formality of a court proceeding. Most often the staff simply presents a summary of the application and applicable standards, the applicant summarizes its case, and any neighbors present are recognized to make comments on the case. Most of the cross-examination is in the form of questions from council members. At this stage persons are not formally designated as “parties.” The legal standing to participate is rarely raised at this point. Most of the time neither the applicant nor the neighbors are represented by attorneys. [For a detailed report from N.C. cities and counties on their experiences with special use permit hearings, click [here](#).] As a practical matter, the board hearing one of these quasi-judicial matters is more concerned with acquiring quality evidence than identifying

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“parties” and relying on only the parties to present that information. After all, Mrs. Edwards may be a witness who has highly relevant information to present even if she is not herself a “party” to the case or has been called as a witness by one of the parties

While some degree of informality is appropriate, it is important for all involved to remember the purpose of the hearing in a quasi-judicial matter – securing high quality, reliable facts. As Justice Susie Sharp noted in a landmark zoning case involving a city council’s consideration of a special use permit, “Notwithstanding the latitude allowed municipal boards, . . . [the board] can dispense with no essential element of a fair trial.” *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 470-71 (1974). So, should the Mayor allow Mrs. Edwards to speak the hearing on Mr. Tucker’s special use permit application? Prior to 2019 the statutes were silent on this question. But G.S. **160D-406(d)** now says that parties have a right to present evidence and that “Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.”

Assuming Mrs. Edwards lives on the other side of town and has no nearby property that would be affected by this decision, she has no legal right to present evidence at the hearing. She is not a “party” in the case and is unlikely to have legal standing to challenge the decision in court. But given the informality of these proceedings and the legitimate need to get relevant information in the record, those citizens who wish to offer testimony are generally allowed to do so.

To protect the rights of the applicant and those who could be parties, however, it is incumbent on the town to impose limits on Mrs. Edwards and others who testify at these hearings. They should be sworn in as witnesses. They should be limited to offering relevant testimony. It is important that the presiding officer remind persons testifying at these hearing that this is not the time or place to offer policy suggestions, opinions about the wisdom of the existing ordinance, or anything else irrelevant to whether the project under consideration meets the standards in the ordinance. Unless they are formally qualified as expert witnesses, they should be limited to offering factual testimony, not offering opinions. These procedural safeguards protect and balance the interests of citizens in presenting information to the board and the constitutional rights of the parties.

These safeguards run counter to the expectations of many persons. Folks are used to being able to freely speak their minds at the comment period in governmental meetings. It is important then that the presiding officer at an evidentiary hearings clearly explain that the constitutional rights of the parties impose some constraints on the usual expectations of free expression. Some local governments have short pamphlets that explain this; others have the presiding officer explain it at the beginning of each hearing. It may even be appropriate for the presiding officer (or one of the parties) to ask a non-party witness asking to speak about the nature of their proposed testimony to determine whether it may be

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considered by the board. However it is done, it is important that the applicant, the neighbors, the board members, and the public have a common understanding of the rules governing these hearing and that everyone make a good faith effort to observe these basic rules of fairness.

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Coates' Canons NC Local Government Law

Can the neighbor speak? Can the neighbor appeal? Standing and quasi-judicial hearings

Published: 09/27/16

Author Name: Adam Lovelady

A local development board is set to hold a quasi-judicial hearing for a development permit. The neighbor across the street from the proposed project is set to oppose it. She wants to voice her concerns in the quasi-judicial hearing—and appeal to court if necessary. Does the neighbor have a right to participate in the hearing? What about a right to appeal the decision? This blog considers those questions in light of North Carolina caselaw including a recent decision from the state Court of Appeals.

The situation described above is the situation that played out in a dispute over a contemporary house in a Raleigh historic district, the case of *Cherry v. Wiesner* (781 S.E.2d 871 (N.C. Ct. App. 2016), review denied, No. 103P16, 2016 WL 4468152 (N.C. Aug. 18, 2016)). A property owner applied to build a contemporary home in a historic district. After the preservation commission granted the certificate of appropriateness, the neighbor across the street appealed the decision to the board of adjustment. The board of adjustment reversed the decision of the preservation commission. The property owner and the city appealed to superior court claiming, among other things, that the neighbor lacked standing to

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appeal. The superior court agreed that the neighbor lacked standing and affirmed the approval from the preservation commission. Subsequently the N.C. Court of Appeals upheld the superior court decision, and the N.C. Supreme Court denied a request for review.

The *Cherry* case garnered national media coverage focused on the appropriateness of contemporary design and the possibility of enforcement against a nearly-finished house (including Vanity Fair and The New York Times). In the end, though, the court decision did not address substantive questions of congruity or evidence. Rather, the court decision centered on the question of standing: Does the neighbor have a legal right to appeal the decision? The Court of Appeals ruled that in this case the neighbor did not. The neighbor had the opportunity to present information to show standing, but failed to do so.

The holding and additional commentary from the court raise questions for quasi-judicial hearings generally. The discussion below seeks to address several overlapping issues of standing: distinguishing between *participation* and *standing*; determining when a standing determination is needed; when does a party make their case for standing and who decides the issue; and what evidence is needed to show special damages and establish standing.

Note that this discussion is focused on standing in quasi-judicial zoning decisions and appeals from various land use decisions. Participation in public hearings for legislative zoning decisions such as amending the ordinance or rezoning property is a separate discussion. My colleague David Owens has discussed aspects of participation in legislative zoning decisions [here](#).

Participation

It is necessary to separate two related but separate issues: the ability of an individual to participate in a quasi-judicial hearing and the rights of an individual to act as a party with legal standing.

Many different individuals participate in a hearing without standing. Consider a quasi-judicial evidentiary hearing for a conditional use permit. Planning staff introduces the application and provides staff analysis of the project. The staff-person does not have legal standing, but provides important evidence and analysis for the board. The applicant may call a variety of witnesses or experts to testify on their behalf. These individuals do not have individual standing, but provide testimony and argument on behalf of the applicant who clearly does have standing.

Many boards allow interested individuals to provide sworn testimony even though they have not established legal standing. The board is ***not required*** to hear from those individuals without standing, but the board ***may allow*** such individuals to provide competent, relevant, and substantial evidence on

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the matter. Indeed, a board seeking to make the best decision may welcome additional testimony.

Preservation commissions even have statutory authority to seek outside experts (NCGS 160A-400.9(d)). David Owens previously blogged about who gets to speak at a quasi-judicial hearing.

Standing

In contrast to participation, relatively few individuals have legal standing in the quasi-judicial decision. A party with standing is an aggrieved party that would suffer special damages from the outcome of the matter. They are distinct from the general public and enjoy certain due process rights that must be protected.

General Statute 160A-393 outlines the rights and procedures for appealing a quasi-judicial decision. It sets forth the following persons that have standing to appeal. This guidance is also instructive for determining standing in the initial quasi-judicial hearing.

- A person with a legal interest in the subject property (this might include ownership; lease interest; an option or contract to purchase the property; or an interest created by an easement, restriction, or covenant)
- The applicant before the decision-making board
- The city or county when the governing board believes the decision was made in error
- A person who will suffer special damages as a result of the decision
- An association organized to promote the interests of a particular area (such as a homeowners association or community association) so long as at least one member would have standing as an individual and the association was not created in response to the development at issue

When does standing matter?

A party must have due process rights in the proceeding to take certain actions. So, standing matters when an individual wants to assert one of those legal rights. Otherwise the proceedings could infringe on the constitutional due process rights of the individuals who do have standing in the matter.

An individual must have standing to:

- Appeal a staff decision to the board of adjustment
- Appeal a preservation commission decision to the board of adjustment
- Act as a party in the quasi-judicial hearing, including to
 - cross-examine witnesses
 - object to evidence
 - offer rebuttal
 - challenge the impartiality of a decision-maker
- Appeal a quasi-judicial decision to superior court
- Intervene in an appeal to superior court

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Does an individual have to establish standing in order to participate as a witness? As discussed above, the board may allow individuals to participate (and many boards do), but those individuals do not have a right to participate. Indeed, a board could limit participation to only those individuals with standing. Regardless, mere participation in the hearing does not establish formal legal standing in the hearing.

When is standing determined? And by whom?

As for timing, standing should be addressed in advance of the action the individual is seeking.

Oftentimes the question of standing is simple: The individual has standing as the property owner or applicant. Other times standing is not straightforward and the individual must offer evidence to prove standing. An application for an appeal to the board of adjustment should require a statement and substantiation of standing. The board, then, may hear additional evidence and rule upon standing at the start of the hearing. During a quasi-judicial hearing, if a participating individual attempts to act as a party (examples listed above), the board may request evidence for and rule upon standing before the individual asserts those rights.

Standing is a legal question to be determined by the board. Local government staff cannot decide questions of standing (*Morningstar Marinas/Eaton Ferry, LLC v. Warren Cty.*, 368 N.C. 360 (2015)). If a board does not rule formally on the question of standing but allows an individual to proceed as a party, it has implicitly ruled that the party has standing, as found in the *Cherry* decision.

If standing is an issue on appeal to superior court, the court “may, in its discretion, allow the record to be supplemented . . .” (NCGS 160A-393). The court is not required to allow a party to supplement the record, but the court may. In *Cherry*, for example, the neighbor argued that she did not have an opportunity to allege standing before the board of adjustment, and she sought to supplement the record to support her claim of standing. The court found that the neighbor had opportunity to allege standing in her application to appeal before the board of adjustment. The application form provided ample notice and explanation of the requirements for alleging standing. The superior court was not required to permit supplemental evidence, and there was no evidence of abuse of discretion.

Proving special damages

In *Cherry*, the initial application asked the neighbor to explain how she was an aggrieved party. The neighbor stated that she was a resident adjacent to the subject property, that the proposed house was incongruous with the neighborhood, and that the house would harm neighborhood value. The court

<https://canons.sog.unc.edu/2016/09/can-neighbor-speak-can-neighbor-appeal-standing-quasi-judicial-hearings/>

ruled that the evidence was insufficient to establish standing: “[T]hese allegations do not demonstrate special damages distinct to respondent, other than the view from her front porch; rather, respondent alleges a generalized damage to the overall neighborhood.”

So then, what is sufficient to establish standing? North Carolina caselaw has not established a clear rule for this. Rather, each case is a fact specific inquiry based on a set of factors including proximity, property value, and other adverse impacts. The central question is this: Has the party who claims standing shown that their damages are distinct from those damages to the public at large?

Proximity is a factor in standing, but not determinative. As noted in the case *Mangum v. Raleigh Bd. of Adjustment* (362 N.C. 640, 644 (2008)), while proximity “in and of itself, is insufficient to grant standing, it does bear some weight on the issue of whether the complaining party has suffered or will suffer special damages distinct from those damages to the public at large.”

In *Cherry* the neighbor challenging the certificate of appropriateness lived directly across the street. Such proximity was insufficient to convince the court of standing in this dispute over historic district character and congruity of new structures. This case raises a vexing question, beyond the scope or space of this blog, about standing and preservation regulations. If a regulation is rooted in and justified by aesthetics, does not the visual impact of a new project on a neighbor count as an adverse impact sufficient to establish standing?

Property value is a factor in standing, but not determinative. As noted by the *Cherry* court, “[u]sually, special damages include economic damages such as a decrease in property value and other direct adverse effects on the property” But, NC courts have found standing without an allegation of diminution in property value. In the *Mangum* case the neighbors did not directly allege loss of property value but the court still found standing. (The dissent cited prior caselaw as it argued that evidence of diminution in property value is necessary to allege standing.)

Even with an allegation of diminution in property value, that may be insufficient to establish standing. In the *Cherry* case, the court did not allow additional affidavits for the neighbor’s standing argument. The Court of Appeals noted that even if it had allowed the affidavit from an appraiser predicting loss of value, that affidavit was insufficient without identifying some secondary impacts such as traffic, noise, light, odors, runoff, or other potential damages generated by the use of the subject property.

Additional adverse impacts need to be shown by the party alleging standing. As noted in *Lloyd v. Town of Chapel Hill* (127 N.C. App. 347 (1997)), in order to establish standing the individual must do more than state that they live in the vicinity of the subject property and allege that the project will harm

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property values. The party must allege some secondary impacts. These impacts may be key factors in property value loss. The essential element is a credible allegation of harm to the use and enjoyment of a particular property.

In *Mangum*, neighbors challenging a permit for an adult business alleged adverse impacts on their property, including problems related to parking, safety, security, stormwater runoff, littering, and noise. The court accepted those impacts as sufficient to establish standing, even without directly alleging property value damage.

In *Bailey & Associates, Inc. v. Wilmington Bd. of Adjustment* (202 N.C. App. 177 (2010)), neighbors sought to intervene at superior court challenging a property owner's right to develop without adhering to conservation performance standards. Following the reasoning of the *Mangum* decision, the court found that the neighbors had standing based on a combination of proximity and potential injury. The intervenors owned property contiguous to the subject property or in the immediate vicinity; intervenors accessed their property by one road, the same road accessing the subject property; and the proposed increase in density on the subject property would significantly increase traffic, light pollution, noise and other related pollution that would all lead to a pecuniary loss in the value.

Conclusion

A quasi-judicial board may allow an individual to participate as a witness in an evidentiary hearing, and commonly boards do, but the board is not required to allow an individual without standing to participate. If an individual wants to take certain actions and act as a party in the matter, then that individual must establish formal legal standing. For some individuals—such as the property owner or the applicant—standing is straightforward. For other individuals, they must establish standing by showing that they would suffer special damages from the proposed project. Proximity, property value, and other adverse impacts are each factors to determine standing, but none are determinative

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During a design review, commission members shall refrain from expressing any personal opinions, or personal likes or dislikes about a COA application. All questions and comments by commission members should be related to how an application's content relates to the guidelines.

Before a design review begins with an applicant, the HPC chairman shall state to the applicant(s) that any discussions or comments by HPC members during the design review are non-binding and have no connection, impact or influence on the upcoming hearing on the COA application.

Conduct of a Hearing

General Principles

A hearing for a COA application must be conducted as a *quasi-judicial* hearing. The HPC determines if the application meets the standards of the historic guidelines ***based solely on written and oral evidence presented at the hearing***. A quorum of five (5) members is required for the HPC to hold a hearing.

Three necessary and sufficient conditions must always apply to every hearing on a COA application.

1. The applicant and parties with standing (or can demonstrate special damages) must have a fair and open opportunity to be heard.
2. Enough information should be provided with the application in order for the HPC to determine the nature of the changes and if the changes will be incongruous with the historic guidelines.
3. The HPC can deny an application only if it determines that the proposed changes are incongruous with the historic guidelines. Whether a proposed change is desirable or whether it is popular with the public plays no role in the decision.

The commission must do two things in order to make a decision on a COA:

1. It must determine the facts of the case (findings of fact).
2. It must apply the historic guidelines to those facts.

Findings of fact are based on evidence that ***must*** meet three criteria:

- **Competent** supported by legitimate factual data
- **Material** relevant to the issue being decided
- **Substantial** goes beyond speculation and is reasonably acceptable to support a conclusion.

Before a hearing can proceed, the HPC shall determine whether a COA application is complete enough to determine the nature of changes and to make a decision.

The applicant has the burden of producing sufficient evidence for the HPC to conclude that the application is not incongruous with the historic guidelines.

All persons addressing the HPC during a hearing must be sworn in. This is generally done en masse before any COA application is heard. No testimony shall be taken from any individual who has not been sworn in.

The HPC cannot consider comments based on personal likes or dislikes, hearsay, or personal opinion not backed up with facts. All comments and evidence must be tied directly to specific

guidelines. Likewise, HPC members shall refrain from stating personal opinion, personal likes or dislikes, or hearsay during a hearing.

Standing

Standing is the legal justification to participate in a hearing related to a COA application.

Individuals with standing generally include

- the property owner or their representative for a COA application
- an owner of an adjacent property that may be materially affected by the COA
- an association, if 1) they have a prior existence not solely for the purpose of the COA, 2) their interests are germane to the association's purpose, 3) an individual with standing is a current member of the association and has asked the association for assistance.

Applicants and property owners within 100 feet of the property are assumed to have standing. The commission may consider testimony and evidence from these individuals if it determines that it is competent, material, and substantial information and that it can be directly and specifically related to the guidelines.

Testimony and evidence from a property owner beyond 100 feet may be allowed if

- it is not a repetition or duplication of testimony and evidence that has already been presented
- the presenter has competent, material, and substantial information to present that can be directly and specifically related to the guidelines
- the presenter can demonstrate that they may be materially affected by the proposed changes.

Types of Hearings

The HPC can hold two types of hearings on a COA application. A *COA hearing* or a *public hearing*.

COA Hearing

A *COA hearing* is the typical type of hearing on a COA application. Property owners within 100 feet of the property that received notice of the hearing are assumed to have standing to provide testimony.

Public Hearing

A *public hearing* may be called for large projects that may materially affect a large number of property owners beyond 100 feet of the project. Information presented by a party must be competent, material, and substantial information that can be directly and specifically related to the guidelines, it cannot be a repetition or duplication of information already presented, and the party has to clearly state how they may be materially affected by the project.

The HPC must vote to conduct a public hearing on a COA application. There must be proper notification that the HPC is considering a public hearing on a COA application. A public hearing can be held at the next regular meeting or at a specially called meeting.

Chairman's Responsibilities for Conducting a Hearing

The chairman shall preside over a hearing. In the absence of the chairman, the vice-chairman will preside over the hearing. In the absence of the vice-chairman, the commission will determine which member will preside over the hearing.

3C. Conflicts of interest and communication outside of meetings

- A member shall not participate or vote on an application if it would violate the applicant's constitutional rights to an impartial decision maker.
- Four impermissible conflicts of interest:
 - 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
 - A financial interest in the outcome of the matter
- All deliberations must happen in public and be based upon competent, material, and substantial evidence in the record.
- A majority vote is required for any recusals.
- Further information
 - Highlighted Rules of Procedure
 - UNC School of Government materials (primarily pp. 1-3)

Historic District Commission Rules of Procedure

- 4.2 *Vice-Chair.* A vice-chairperson shall be elected by the Commission from among its members in the same manner as the chair. The vice-chair shall serve as acting chair in the absence of the chair, and at such times shall have the same powers and duties as the chair. Should both the chair and the vice-chair be absent, any member may serve as chair with the consent of the majority of those members present.
- 4.3 *Secretary.* A member of the staff designated by the Hillsborough Board of Commissioners or the Zoning Officer shall serve as secretary to the Commission. The secretary, subject to the direction of the chairman of the Commission, shall keep records, conduct all correspondence of the Commission, and generally supervise the clerical work of the Commission. The secretary shall not be eligible to vote upon any matter.
- 4.4 *Elections.* Whenever practical, election of officers shall be held at the first regular meeting in October. The secretary shall make the election of officers a standing agenda item for the first regular meeting in October. The Secretary shall assume the chair for the purpose of administering the election of the chair. The Secretary shall open the floor to nominations for the chair by Board members. Nominees must be present at the organizational meeting in order to be eligible for nomination. The Secretary shall then entertain a motion to close the floor to nominations. After the motion has been seconded, but before the Board acts on the motion, any nominee may decline a nomination. Election of the chair shall be by roll call vote. A majority of the quorum of the Board present at the organizational meeting shall be required for election of the chair. Once a chair has been elected, the newly elected chair of the Board shall assume the duties of the chair and shall proceed immediately to the election of the vice chair. The election of the vice chair shall follow the same procedure as set forth above for the election of the chair.
- 4.5 *Disqualification of a voting member.* Pursuant to G.S. 160D-109 "A member of any board exercising quasi-judicial functions pursuant to this Chapter 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 or herself, the remaining members shall by majority vote rule on the objection." For the purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.
- 4.6 *Qualification to vote.* No Commission member shall vote on any matter deciding an application or a request to reconsider unless that member shall have attended the Commission's previous deliberations on such application, or shall have read the minutes



Coates' Canons NC Local Government Law

Making Quasi-Judicial Decisions

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Imagine, if you will: A long, contentious hearing over a controversial variance request has finally come to a close. The Board took careful steps to follow appropriate procedures related to notice, impartiality, and communication between board members and the public. Now it is time for the Board to deliberate, weigh its evidence, and reach a decision. This post addresses how they do so.

Quasi-judicial decisions (including the controversial variance request mentioned above) center around two things: the standards the Board* must apply and the evidence in the record that relates to those standards.

*I will refer to a board of adjustment in the rest of this post as “the Board” for ease of reference. The body making a quasi-judicial decision in any given jurisdiction could be a board of adjustment or it could be a planning board or governing board that serves as the board of adjustment.

Regardless of the form of the Board, these rules are the same.

Readers familiar with legislative decisions will recognize that these standards make quasi-judicial decisions quite different from legislative ones. Readers not familiar with the types of development regulatory decisions are encouraged to check out [THIS](#) post by Adam Lovelady. Governing boards do not make legislative decisions based on statutory or ordinance standards (in fact, they often set those standards). Instead, governing boards make legislative decisions based on policy reasoning and their political perspectives. On the other hand, quasi-judicial decisions *do* have guiding standards that the local or state government has set through the legislative process. The Board must apply those standards regardless of policy preferences or political pressures.

Oxford Languages defines “quasi-” as “being partly or almost” and defines “judicial” as “of, by, or appropriate to a court or judge.” So a decision that is “quasi-judicial” is one that is partly like a court’s decision. As a result, any Board making a quasi-judicial decision must follow certain procedural rules that protect the rights of the parties, a bit like a court might do. Some of those rules refer to the hearing process. Others refer to the way the Board decides the case once the evidence is in. Below are the key rules about how deliberation should take place, what evidence should be the basis of the Board’s decision, what decisions the Board can make, how they take action to reach their decision, and how the final decision gets formalized.

Deliberations must happen in public.

Once the presentation of evidence is complete, it is time for the Board to review the evidence and discuss how they will decide the matter. A Board is a public body making a public decision about an individual’s property rights. Consequently, North Carolina open meetings laws apply to their deliberations. A bit more on open meetings laws can be found in [THIS](#) blog by Kristina Wilson, and much more can be found in [THIS](#) book by Frayda Bluestein.

Because open meetings laws apply to the Board acting in a quasi-judicial capacity, all of the Board’s debate must happen during open session. There are very limited exceptions for boards to go into closed session and most do not apply to quasi-judicial proceedings. For this reason, the Board may not go into closed session to discuss the case privately.

A Board may continue the quasi-judicial item until a subsequent meeting, but this path is fraught with peril and should only be undertaken very carefully. Specifically, Board members must not engage in any discussion, deliberation, or fact-gathering between meetings. Such activity could violate the due process rights that must be afforded to an applicant or property owner in a quasi-judicial matter.

Another danger with continuance is whether additional evidence can be taken at the next meeting. Here, whether the hearing is closed or not becomes a significant factor. If the Board holds the hearing open from one meeting to the next, it can accept new evidence at the continued hearing. If the Board closes the hearing, on the other hand, it has moved on to the deliberation phase and can accept no new evidence.

The decision must be based on competent, material, and substantial evidence in the record.

“Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.” G.S. 160D-406(j). This concept is included in the statutory rules regarding quasi-judicial procedures and is repeated in just about every case concerning quasi-judicial decision-making. So what counts as “competent, material, and substantial evidence in the record”? What *can* serve as the basis for answering a quasi-judicial question? Let us look at each

First, **competent evidence** is trustworthy, reliable evidence. For documents, the rules are much looser than they would be in a court of law, but a Facebook post from an unknown source or the neighborhood conspiracy theorist might not be competent. When it comes to testimony, the witness should have first-hand knowledge of the matter about which they are speaking. For instance, I know what my neighborhood looks like and in a general sense how often people and cars come by. On the other hand, can I talk about traffic in Waxhaw if I only have heard about it from my cousin's roommate's best friend? Probably not.

Another key point relates to opinion testimony. Much like in an actual court hearing, opinions about what might happen in the future should be given by experts. This is particularly true—and most commonly encountered—when the issue is impact on traffic or property values. Evidence about what a given quasi-judicial proposal *would* have on traffic in the future is a matter of opinion, and that opinion must come from a traffic engineer or similar expert who has analyzed the project. Likewise, evidence about what could happen to property values must come in the form of testimony and a report from an appraiser or similar expert who has appraised the property. For a deeper discussion of who can provide evidence at a quasi-judicial hearing, see [THIS POST](#) by David Owens.

Second, **material evidence** is that which relates to the questions the board has to answer. Regardless of whether the matter is a special use permit, variance, or other quasi-judicial approval, there are certain standards that apply to the decision. Material evidence should relate to those standards or to the land use impacts of the proposal.

This is one place where the process can be challenging for boards that also have to make other types of land use decisions. With quasi-judicial decisions, a Board must leave the politics aside. In special use permit cases, a political decision has already been made that a certain use should be allowed under certain conditions. For variance cases, this decision has been made at the state level. A quasi-judicial hearing is not the time to revisit these policy questions. Even if dozens of people are at the meeting with matching t-shirts and signs, their presence is probably not material evidence. Public opinion can be divided or even firmly against a quasi-judicial proposal, but it is not material to the core decision of whether the evidence matches the applicable standards.

Next, **sufficient evidence** is any evidence that tends to support a finding that the relevant standard is met. What evidence is sufficient, as discussed in more detail in [THIS](#) blog post, depends on the context. Generally, evidence is sufficient if it tends to help a side meet their burden of proof.

The burden of proof in a quasi-judicial matter is a bit like a seesaw. The burden is first on the applicant. Imagine the seesaw board tipped toward away from the applicant. If nothing happens, the seesaw will remain pointing in the other direction and the applicant does not get the approval they seek. However, if the applicant provides enough evidence to make its "*prima facie*" case – if they provide enough evidence that a board *could* find in their favor on *each* of the applicable criteria – the burden shifts to opponents of the proposal. In the seesaw analogy, imagine the applicant piling enough evidence on their end of

the seesaw that it tips in their direction. Once the applicant has made this *prima facie* case and the burden shifts, any opponents of the proposal must pile up some evidence on their side of the seesaw. If they do not provide competent, material, and substantial evidence in response, the Board lacks authority to deny the application. It is only when there is evidence on both ends of this metaphorical seesaw that the Board is called upon to weigh the evidence. Finally, the evidence needs to be **on the record**. The Board should not be gathering or receiving evidence outside of the public evidentiary hearing. The applicant has a legal right (due process again) to respond to evidence presented in their case, so any evidence that might be the basis for the board's decision should be in the documentary record or presented at the evidentiary hearing.

One topic that comes up from time to time regarding evidence on the record is the question of site visits. Some Board members like to see a site for themselves to understand its particular conditions. These are generally permissible, but since they happen outside of the hearing, they must be disclosed to the rest of the Board and to the public. Further, any key findings should be identified so that they can be discussed in the hearing.

Keeping evidence on the record can also be tricky when it comes to *ex parte* communications. These occur when a Board member speaks with someone about the substance of the hearing outside of the hearing. These communications are to be avoided where possible, and disclosed where they cannot be avoided. The decision still must be made on the evidence in the hearing and on the record, but this disclosure allows an applicant to be aware of and to respond to all evidence in the case.

When reviewing evidence and reaching its decision, the board needs to focus on the competent, material, and substantial evidence that was presented to it during the evidentiary hearing and in any earlier documentation provided in the record (e.g., application materials and responses to requests for additional information).

The Board has a few options for how to act.

Once the Board has heard and weighed all of the evidence, what can they do with it? The answer depends on whether the quasi-judicial matter is an appeal of an administrative action or a development approval (such as a special use permit, variance, or certificate of appropriateness). In either situation, however, the Board has a few options available to it.

For **appeals of administrative decisions**, the board deciding an administrative appeal has a great deal of flexibility. In addition to simply affirming or reversing the challenged administrative decision, they can choose to affirm part of the decision but reverse another part, modify the decision appealed from, and make whatever other orders, determinations, etc. that the original decision-maker could make. In other words, the Board can mold the administrative outcome into what the board thought it should have been, at least within the bounds of the original decision-maker's discretion. See N.C. Gen. Stat. § 160D-406(j).

For **development approvals**, the board has three choices: it can approve the application, deny it, or approve it subject to certain conditions. The range of conditions is limited, however – N.C. Gen. Stat. § 160D-705(d) allows “[a]ppropriate conditions” to be placed on a variance approval if those conditions are reasonably related to the variance, and N.C. Gen. Stat. § 160D-705(c) allows a board of adjustment to put “[r]easonable and appropriate conditions and safeguards” on special use permit approvals. Conditions that are reasonable and appropriate tend to be those that relate to the standards the ordinance provides for making the decision or to the land use impacts of the proposed project. For special use permits, N.C. Gen. Stat. § 160D-705(c) specifically prohibits any conditions that are outside the scope of the local government's authority, including taxes, impact fees, regulation of certain residential building design elements, and driveway improvements in excess of NC DOT limitations.

When a condition is not related to the ordinance standards that apply to the application or to the land use impacts of the proposed project, that condition is at risk of being challenged and even reversed by a court. Conditions also must not be out of proportion with the project's impact or outside the scope of the government's authority to impose.

Most quasi-judicial decisions require a simple majority vote; variances require a 4/5 supermajority.

N.C. General Statute 160D-406(i) requires the vote of four-fifths (that is, 80%) of the board to grant a variance, but states that a simple majority is required to decide other quasi-judicial matters. In making these calculations, one does not count members of the board who have conflicts of interest or vacant board positions.

To provide an example, if Boroville has a nine-member board, eight members must vote to approve a variance petition in order to grant it (seven of nine is about 78%, which is just under 4/5, so we need that eighth vote to get over the four-fifths threshold). For other quasi-judicial matters, five votes (five is just over half of nine) are required to decide the question. But what if there is an open seat, and one of the board members has a conflict of interest? Since G.S.

160D-406(i) requires us not to count the board member who is conflicted out or the vacant position, we calculate the number of votes we need out of the (9-2=7) seven remaining. Six out of seven (roughly 85%) would be enough to approve a variance and four would be enough to make any other quasi-judicial decision.

There must be a written decision that explains how the board reached their decision.

Once the requisite proportion of the board has agreed on a result, their decision must be put into writing and finalized. The decision is not final and effective until it has been reduced to writing, approved by the board, and filed with the clerk to the board. Only then does it become effective, and only then does the clock for the timeline to challenge the decision begin to run.

When it comes to drafting the decision document, one of the first questions that might arise is how much detail must be in the written decision. Of course, there is no hard-and-fast rule, but here are a few points to keep in mind:

- One, General Statute 160D-406(j) requires that the decision “reflect the board’s determination of contested facts and their application to the applicable standards.”
- Second, North Carolina courts have maintained, at least since 1974’s *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 202 S.E.2d 129 (1974), that the parties have a right to know the basis of the board’s decision.
- Third, any appeal of the decision will be based on the Board’s record. A reviewing court will look to the decision document and recording of the hearing rather than call Board members to testify. For this reason, it is essential to explain the Board’s reasoning in the decision document. On the other hand, if the document makes clear what the Board decided and why, it should be sufficient in most cases.

Because this document often takes some significant time and energy to assemble, many boards ask the applicant, staff, or their attorney to prepare a draft decision in the form of proposed findings of fact and conclusions of law. In some cases, boards might allow the prevailing party in the matter to draft the decision document. If there is no proposed set of findings and conclusions in advance, the board’s staff or attorney can prepare the document after the meeting. Regardless of how or by whom the decision is drafted, it must accurately reflect the action the board took and its general reasoning. A simple checklist of whether each standard has been met is not sufficient. The decision must include some explanation of *how* each standard is met or not met, whether the decision is to approve, to approve with conditions, or to deny the application.

Once the decision document is complete, the statutes require that it “be approved by the board and signed by the chair or other duly authorized member of the board.” G.S. 160D-406(j). Exactly *how* the board must approve the decision is not specified. Some boards may circulate the decision by email for each member’s approval, while others might vote to approve a final draft of the decision at its next meeting following the vote. While the latter procedure assures that the written decision is approved in a public meeting, it also has the effect of delaying the effective date of the approval – recall that the decision is not effective before it has been finalized and filed. Once the document is approved, it is signed by the board chair (or another authorized member), can be filed with the clerk, and becomes effective.

These points and more related to the requirements for the final decision document are discussed in [THIS](#) David Owens blog post.

Distribution and final steps

Once the written decision has been finalized and filed, the Board must provide copies of the decision to the applicant, landowner, and anyone who has submitted a written (including e-mail) request for a copy. Whoever is providing the notice “shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.” This certification can be important, as it serves as the beginning of the time to file any appeals.

Concluding comments

Although there are several steps to making a quasi-judicial decision and reducing it to a final written document, the operation can be straightforward if taken one step at a time. The vote must happen in a public meeting; the result must be based on competent, material, and substantial evidence in the record; a written document must memorialize the board’s decision; and that decision must be appropriately filed and distributed. Following these general principles will help assure a legal, defensible, and appropriate quasi-judicial decision.

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3D. Roles/responsibilities of members, chair, and staff

- See highlighted Rules of Procedure.
- Attendance policy is not in the Rules of Procedure.
 - The Unified Development Ordinance currently defines quorum as four board members and does not make any provisions for vacancies or recusals.
 - A warning is issued after four missed meetings within one year, and a member is removed after six missed meetings within one year.
- Two example staff reports from elsewhere are included here for reference. Is there anything in those reports that you would like to see? Would the Board be interested in having staff recommendations?
- Further information
 - Highlighted Rules of Procedure
 - Process checklist
 - Staff reports from Raleigh and Salisbury

Historic District Commission Rules of Procedure

1.0 Purpose

To establish procedures for organizing the business of the Hillsborough Historic District Commission, hereafter termed "Commission", and processing applications for Certificate of Appropriateness for (1) Changes in the exterior appearance of existing structures and/or streetscapes: (2) the design of new structures and additions to existing structures: and (3) for demolition of existing structures within the Hillsborough Historic District, hereafter called "District", and to establish procedures for the Commission's review of potential "landmarks" and applications for certificates of appropriateness for such "landmarks".

1.1 *Mission Statement.* To identify, protect, and preserve Hillsborough's architectural resources and to educate the public about those resources and preservation in general. The Hillsborough Historic District presents a visual history of Hillsborough's development from the 1700s to the 1960s. In 1973, the town chose to respect that history through the passage of the preservation ordinance creating the historic district.

1.2 *Public Charge.* The Hillsborough Historic District Commission pledges to the citizens of Hillsborough its respect. The commission asks members of the public to conduct themselves in a respectful, courteous manner with the commission members and with fellow citizens. At any time should any member of the commission or any citizen fail to observe this public charge, the chair or the chair's designee will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the chair or the chair's designee will recess the meeting until such time that a genuine commitment to this public charge can be observed.

2.0 General Rules

The Commission shall be governed by the terms of the Town of Hillsborough Unified Development Ordinance (UDO), the Hillsborough Historic District Design Standards, and by the terms of G.S. 160D-940 through 160D-949, as they may be amended or revised. For procedures not covered by these rules, the Commission shall follow the rules contained in the current edition of Robert's Rules of Order.

3.0 Jurisdiction

The Commission's jurisdiction for requiring Certificates of Appropriateness is mandated by the Town of Hillsborough Historic District Section 4.3.1 of the Unified Development Ordinance ("UDO") in accordance with the Zoning Map. In addition, The Commission's jurisdiction with respect to "landmarks" is established by Section 2.5 and Section 3.12 of the UDO.

4.0 Members, Officers, and Duties

The Commission shall be composed of seven members, whose terms of office are set by the Hillsborough Board of Commissioners

- 4.1 *Chair.* A chairperson shall be elected by the members of the Historic District Commission. The chair shall decide all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Commission in session at a time. The chair shall appoint any committees found necessary to investigate any matters before the Commission.

Historic District Commission Rules of Procedure

- 4.2 *Vice-Chair.* A vice-chairperson shall be elected by the Commission from among its members in the same manner as the chair. The vice-chair shall serve as acting chair in the absence of the chair, and at such times shall have the same powers and duties as the chair. Should both the chair and the vice-chair be absent, any member may serve as chair with the consent of the majority of those members present.
- 4.3 *Secretary.* A member of the staff designated by the Hillsborough Board of Commissioners or the Zoning Officer shall serve as secretary to the Commission. The secretary, subject to the direction of the chairman of the Commission, shall keep records, conduct all correspondence of the Commission, and generally supervise the clerical work of the Commission. The secretary shall not be eligible to vote upon any matter.
- 4.4 *Elections.* Whenever practical, election of officers shall be held at the first regular meeting in October. The secretary shall make the election of officers a standing agenda item for the first regular meeting in October. The Secretary shall assume the chair for the purpose of administering the election of the chair. The Secretary shall open the floor to nominations for the chair by Board members. Nominees must be present at the organizational meeting in order to be eligible for nomination. The Secretary shall then entertain a motion to close the floor to nominations. After the motion has been seconded, but before the Board acts on the motion, any nominee may decline a nomination. Election of the chair shall be by roll call vote. A majority of the quorum of the Board present at the organizational meeting shall be required for election of the chair. Once a chair has been elected, the newly elected chair of the Board shall assume the duties of the chair and shall proceed immediately to the election of the vice chair. The election of the vice chair shall follow the same procedure as set forth above for the election of the chair.
- 4.5 *Disqualification of a voting member.* Pursuant to G.S. 160D-109 "A member of any board exercising quasi-judicial functions pursuant to this Chapter 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 or herself, the remaining members shall by majority vote rule on the objection." For the purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.
- 4.6 *Qualification to vote.* No Commission member shall vote on any matter deciding an application or a request to reconsider unless that member shall have attended the Commission's previous deliberations on such application, or shall have read the minutes

Historic District Commission Rules of Procedure

of the meetings at which the application was discussed and is thoroughly familiar with the facts and details of the proposal.

- 4.7 *General Knowledge.* Each member of the Commission shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the District and the Commission as time and circumstance permit.
- 4.8 *Required Training.* Each member of the Commission shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the District and the Commission as time and circumstance permit. At least two members per fiscal year shall attend required training to meet the Town's Certified Local Government (CLG) training requirements at the direction of staff.
- 4.9 *Vote.* The majority of those members present or a concurring vote of at least three (3) members of the Board, if only 5 or less members are present, shall be necessary in order to decide in favor of the applicant or any matter upon which it is required to pass by this Ordinance. A tie vote on the Findings of Fact does not halt procedure deliberation on an application. A tie vote on a Motion does not constitute a majority of the board members present and therefore the Motion fails.
- 4.10 *Member Conduct.* Membership on the Commission is a privilege in service to the Town of Hillsborough and shall be treated as such. All members of the Commission shall at all times:
- A. Provide leadership to the Commission and the Town of Hillsborough, by personal example, in support of the Commission's mission statement.
 - B. Respect others and not bully, insult, threaten, or attempt to bully, insult, or threaten any member of staff, the Commission, or the General Public.
 - C. Respect the confidentiality of information which you receive as a member by not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and not obstructing third parties' legal rights of access to information.
 - D. Conduct themselves in a manner which will prevent the Commission from being held in disrepute.
 - E. Use their position as a member acting only in the public interest, and not for personal advantage, including financial gain.
 - F. Apply the Commission's Design Standards, where any deviation from the adopted Design Standards shall be based on sound reasoning in accordance with the Commission's mission statement.
 - G. Exercise independent judgement, making decisions only for the public good, and making no decisions that would knowingly jeopardize the Town's Certified Local Government status or put the Town in a legally indefensible position.

Historic District Commission

Rules of Procedure

H. Do nothing that causes the Commission to act unlawfully.

I. Take no action that would be incongruous with the special character of Hillsborough's historic district.

4.11 *Violation of Rules of Procedure.* Members found to be in violation of one or more of the Rules of Procedure outlined in Sections 1.2, 4.5, 4.6, and/or 4.10, shall be, at the discretion of the Planning Director, Mayor, and/or Town Board, subject to either counseling, coaching, probation (with a final opportunity to correct the adverse action), or dismissal from the Commission. The severity of the violation as it relates to carrying out the duties of the Commission, shall determine the appropriate action to be taken by the Town.

4.12 *Reappointment and Resignation of Members.* Members in good standing desiring to serve a second consecutive term on the Commission shall notify staff a minimum of 60 calendar days prior to the expiration date for their current term. Staff will then consult with the Chair and the Planning Director to determine whether a second term will be recommended. Among the factors to be considered in making this determination will be the Member's attendance record, regular participation in discussion at meetings, member conduct at meetings, and whether the Town has other applicants seeking to serve on the Commission. Should a member be recommended for reappointment, he or she will be permitted to serve a second consecutive three-year term in accordance with Town ordinance. Should a member in good standing voluntarily decide not to serve a second term, he or she will be permitted to re-apply after a one-year period lapses between terms. Should a member voluntarily resign prior to completion of his or her term without providing staff proper notice, he or she will be ineligible for reappointment for a period of no less than 1 year following the date of resignation. Finally, should a member not be recommended for reappointment for any reason, he or she may serve the rest of his or her current term, after which a new appointee shall begin his or her service to the Commission.

5.0 Meetings

5.1 *Regular meetings.* Regular meetings of the Commission shall be held on the first Wednesday of each month at 6:30 pm at the Town Annex Board Meeting Room; provided, that meetings may be held at some other convenient place and/or time if directed by the chair, if proper notification is given in advance to both the Commission and the public, and if posted at the scheduled meeting place.

5.2 *Special meetings.* Special meetings of the Commission may be called at any time by the chair. At least 48 hours' notice of time and place of special meetings shall be given by the secretary or chairman to each member of the Commission, and the public as required by NCGS. Evidentiary hearings cannot be conducted without the statute required notice.

5.3 *Cancellation of meetings.* Whenever there is no business for the Commission, the secretary may dispense with a regular meeting by the giving of notice to all members and the public not less than 24 hours prior to the time set for the meetings.

Address	153 W. King St.
Chair introduces application	
Chair opens public hearing	
Check for conflicts of interest or bias on Commission. This may include: <ul style="list-style-type: none"> • Holding a fixed opinion that is not susceptible to change • Undisclosed ex parte communications • A close familial, business, or other associational relationship with an affected person • A financial interest in the outcome 	
Chair swears in staff, applicant, owners, and/or other witnesses	
Staff report introduced as evidence into the record	
Call for applicant testimony	
Call for testimonies in support <ul style="list-style-type: none"> • Limited to members of the public who have expert testimony or factual evidence directly related to the application • Other public comments may be permissible but shall not be used to render the Commission’s decision • A time limit may be placed on speakers other than the applicant 	
Call for testimonies in opposition <ul style="list-style-type: none"> • Subject to same conditions as above 	
Commission questions to applicant and witnesses	
Cross examination by applicant and witnesses <ul style="list-style-type: none"> • Only witnesses with legal standing may cross examine 	
Chair summarizes facts and evidence	
Close public hearing	
Commission deliberation	
Call for Motion of Finding of Fact	
Call for Second	
Any Discussion?	
Call for Vote	
Call for Motion	
Call for Second	
Any discussion?	
Call for Vote	



Historic Preservation Commission
Staff Report

Case #: H-50-2023
Case Staff: Emily Vanek

Owner(s): Sandra Dutson
Applicant(s): Candice Credle
Authorized Agent(s): None

LOCATION

Building: Burright-Womble House
District: West Square Local Historic District
Street: 408 South Ellis Street
Tax Parcel #:

PROPERTY DESCRIPTION

Classification: Contributing
Year Built: 1913
Style: Queen Anne

Project Summary: After-the-fact painting of foundation brick and replacement of front walkway

Photo:



NATIONAL REGISTER NOMINATION DESCRIPTION

Summary:

2023:

This two and one-half-story dwelling is essentially a gable-front-and-wing plan, with an additional front-gable section. The three bay front elevation consists of a three-sided projecting bay, with a single two-over-two window on each side, to the north; a central door; and a single two-over-two, double hung, wood sash window to the south. A hip-roofed porch spans the front elevation, wrapping around the northern front-gable and also wrapping around the south elevation of the house to meet the side-gabled section, where there is a secondary entry door; it is supported by turned posts. On the second story, the northern front-gable has a paired window, while the southern front-gable has a triple window, with smaller upper sash and larger lower sash. Centered within each gable end is a rectangular attic vent. The visible fenestration on the side elevations is single window. Decorative elements on the house include corner trim and a raking cornice in the gable ends; sawn trim brackets on each porch support; corner trim on the northern front-gabled section; bracketed caps with sawtooth trim on each window; and arched, sawn decorative bargeboard on the gables. An interior brick chimney is visible above the roofline. In 1907, the house was occupied by David W. Burrig, a real estate agent, and his wife Katherine, who continued to occupy the property through 1913. In 1915, it was the residence of George L. and Ava Womble, along with their family; George Womble worked as a foreman for Southern Railway.

NRN 1975:

Inventory #16: ca. 1890-1910 Queen Anne. 2 1/2-story frame house; bargeboards and fan-like brackets with spindle frieze. Window surrounds feature decorative lintels with brackets.

CERTIFICATES OF APPROPRIATENESS HISTORY

COA Number	Description
HS-51-2023	Repaint house: body pink, trim white/cream, replace asphalt shingle roof, and replace central AC unit

STAFF FINDINGS:

Staff finds the following element of the project to be incongruous with the character of the West Square Local Historic District:

- 1) The applicant has requested after-the-fact approval to paint the foundation brick. The foundation was previously unpainted and Standard 3.9.1. says it is not appropriate to paint unpainted masonry.

Standard 3.9.1: It is not appropriate to paint unpainted brick and stone, or to paint copper and bronze.

Staff finds the following element of the project to be partially incongruous with the character of the West Square Local Historic District:

- 2) The applicant has requested after-the-fact approval for removing and replacing the front walkway. The walkway led from the front porch to the public sidewalk, but now leads from

the front porch to the driveway. Standard 7.1.5. says to maintain the traditional character of the street yard. In the West Square, and other historic neighborhoods, connection from the public sidewalk to front porches is common and an important element that contributes to the pedestrian-friendly environment and traditional neighborhood character. Concrete is an appropriate material for walkways according to Standard 4.2.10.

Standard 7.1.5: Maintain the traditional character of the street yard.

Standard 4.2.10: Typical walkways and paths are made up of brick, stone, gravel, or similar materials. Materials and techniques that are intended to mimic historic materials are typically not appropriate within the residential districts. The paving material should be appropriate for the structure.

2019 Google Maps



STAFF RECOMMENDATION

Based on the preceding findings, staff recommends that the Commission deny the foundation painting and approve the new walkway for H-50-2023 at the Burright-Womble House located at 408 South Ellis Street (Parcel ID: 007 079), designated within the West Square Local Historic District, subject to the following condition:


- 1) A concrete walkway be reintroduced leading from the front porch steps to the public sidewalk to meet Standard 7.1.5.

Property Map



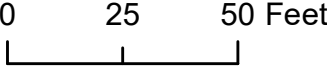
Legend

Rowan County Parcels

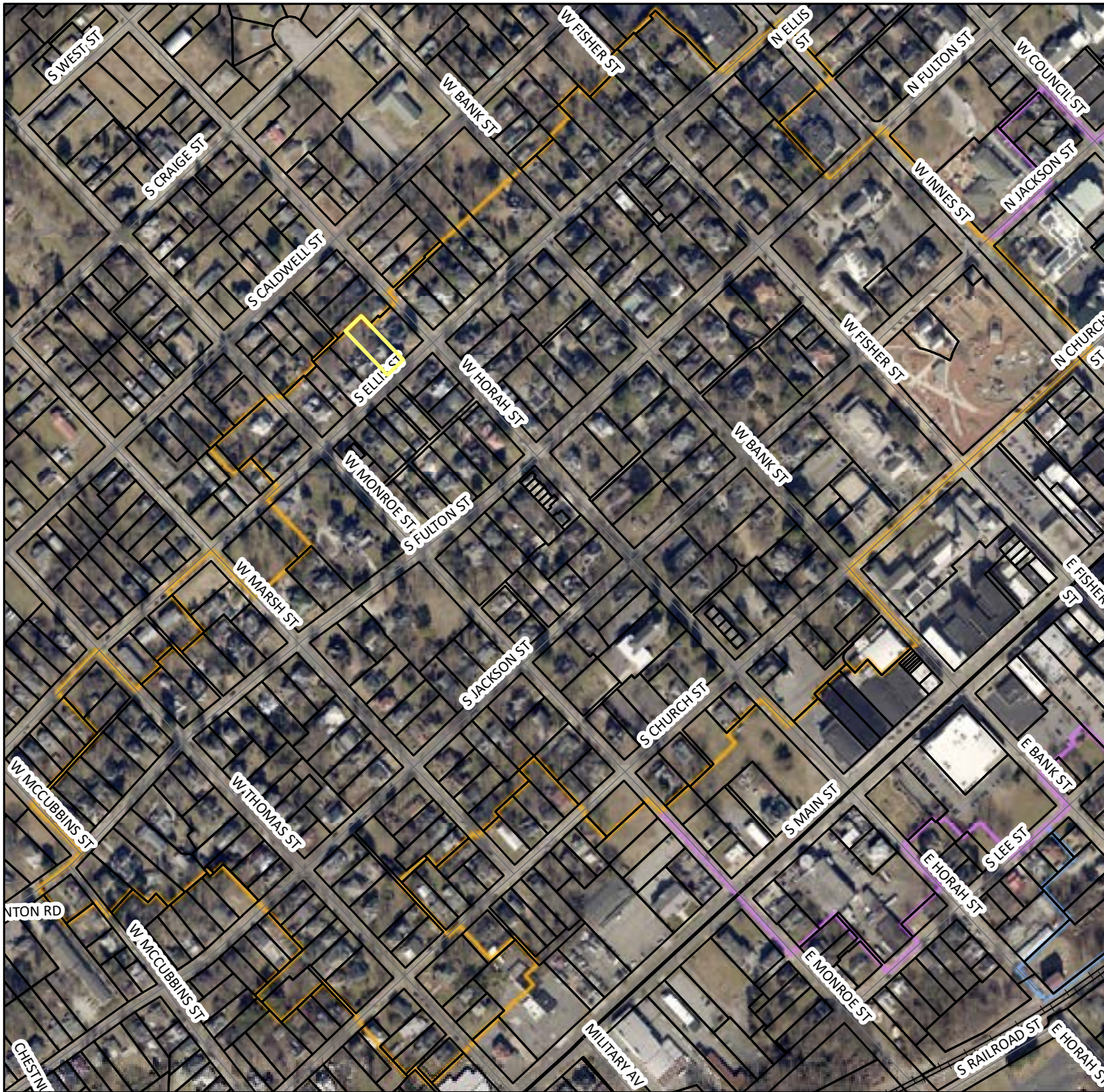
 Rowan County Parcels

Local Historic Districts

 West Square




Property Map



Legend

Rowan County Parcels

 Rowan County Parcels

Local Historic Districts

 Brooklyn South Square

 Downtown

 West Square



0 250 500 Feet

STAFF REPORT
RHDC Certificate of Appropriateness Committee: COA Application

Case Number: COA-0004-2023

Property Address: 1024 DOROTHEA DRIVE

PIN: 1703262864

Zoning: R-10 w/ HOD-G

HOD/Raleigh Historic Landmark: BOYLAN HEIGHTS HISTORIC DISTRICT

Property Owner: TRAVIS AND MELISSA BAILEY

Applicant: TRAVIS BAILEY

Project Contact: JEANNINE MCAULIFFE WITH REDESIGN.BUILD OF NC

Received: 01/11/2023

Complete date + 90 days: 04/30/2023

Meeting Date(s): 1) 02/23/2023 2) 3)

Staff Contact: Erin Morton, erin.morton@raleighnc.gov

Staff Notes

- COAs referenced in the staff report are available for review at request.

Certificate of Appropriateness Request

Construct partially below-grade 572 SF, 1.5-story gable-roofed accessory structure with full-length rear dormer, smooth-faced painted fiber cement horizontal lap siding, painted wood eaves and trim, brick masonry foundation and asphalt shingle and standing seam metal roofs; construct rear masonry site walls, site steps, and patio; relocate and reorient existing rear shed; replace rear wood fence with new to match existing in realigned configuration; replace non-historic windows on main house in kind to the match existing

Application Attachments

- COA application form
- Written description
- *Design Guideline* work references
- Current site photographs
- Existing/proposed site plan drawings
- Existing/proposed elevation drawings
- Full specifications for: fencing,
- Partial specifications for: roofing, foundation, windows, doors, siding, trim, site walls, site steps, patio
- Built area/built mass calculations
- Contextual streetscape photographs and renderings
- Neighborhood photo and map examples
- Existing tree information
- Visual tree protection plan

Property Description

0.21 acres; "...1921 ...One-story Bungalow; jerkin-head roof; attached porch – flat roof." See: [Boylan Heights National Register of Historic Places Inventory – Nomination Form](#), pg. 15.

Standard of Review

The COA Committee shall not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features in the -HOD-G, -HOD-S or for Historic Landmarks, which would be incongruous with the special character of the district or Landmark. See: N.C. Gen. Stat. [§ 160D-947\(a\)](#) and UDO [10.2.15.D.4E](#).

Applicable Guidelines

<i>Sections</i>	<i>Applicable Guidelines</i>	<i>Description of Work</i>
1.3	1.3.1, 1.3.2, 1.3.6, 1.3.7, 1.3.8, 1.3.9	Construct new accessory structure; relocate rear shed; construct rear patio; replace rear wood fence
1.4	1.4.1, 1.4.8	Replace rear wood fence
1.5	1.5.1, 1.5.5, 1.5.6, 1.5.7, 1.5.9	Construct rear patio
1.6	1.6.1, 1.6.5, 1.6.6, 1.6.7, 1.6.8, 1.6.11	Construct new accessory structure; relocate rear shed
2.7	2.7.1, 2.7.7	Replace non-historic windows

See: [Design Guidelines for Raleigh Historic Districts and Landmarks](#) (2017)

Congruity Analysis

Per the Applicable Standards & Submittal Requirements:

1. A 572 SF accessory structure is proposed to be constructed in the rear yard. The rectangular building will have a 22'-0" x 26'-0" footprint. (*Guideline* 1.3.1, 1.3.6, 1.3.7, 1.3.8, 1.6.6, 1.6.7, 1.6.8, & 1.6.11)
2. The accessory structure is proposed to have a side gable roof form facing the neighboring lots. The roof pitch and roofing material will match the existing house. A small window matching the existing house is proposed to be centered in each gable end. (*Guideline* 1.6.6, 1.6.7, 1.6.8 & 1.6.11)
3. A full-length dormer with standing seam metal roofing is proposed on the rear façade. Four vertically-oriented single windows are proportionally spaced across the face of the dormer. (*Guideline* 1.6.7, 1.6.8 & 1.6.11)
4. The overall proposed height of the accessory structure is about 17'-6". A portion of the structure is proposed to be buried below grade. (*Guideline* 1.3.2, 1.3.6, 1.3.7, 1.3.13, 1.6.6 & 1.6.11)
5. A significant amount of grading is proposed within the proposed accessory structure and patio footprint. This is in part to diminish the overall height of the proposed structure as the rear yard rises toward the alleyway. A ground line section showing the proposed grading cut was provided. (*Guideline* 1.3.11 & 1.6.11)

6. Several regulated trees have critical root zones (CRZ) near the work area. One regulated tree is shown to have a critical root zone within the proposed grading area. A visual tree protection plan detailing the material laydown area and construction site access with protective ground cover was provided. (*Guideline 1.3.1, 1.3.2, 1.3.6, 1.3.7*)
7. The accessory structure's roof ridge is proposed to align with the height of the main roof ridge of the existing house. The eaves are proposed to sit higher than the tallest eaves on the main house. (*Guideline 1.6.5, 1.6.6, & 1.6.11*)
8. The RHDC *Design Guidelines* Section 1.6 – Garages and Accessory Structures states: "A number of original garages, carriage houses, storage buildings, and sheds have survived in Raleigh. Like other early site features, they contribute to the historic character of individual sites and a district as a whole. Such secondary structures are always deferential to the principal building in siting, size, and scale."
9. The *Things to Consider As You Plan* portion of the RHDC *Design Guidelines* Section 1.6 – Garages and Accessory Structures states: "In the historic districts the compatibility of a proposed new garage or accessory building should be reviewed in terms of location, orientation, form, scale, size, materials, finish, and details. It is also important to consider the impact of the proposed construction on the existing site and site features."
10. The proportion of built area to open space is proposed to increase by 34% from the original 15% to the proposed 49%. The proportion of built mass to open space is proposed to increase by 14% from the original 14% to the proposed 27%. Full built area and built mass calculations breaking down the existing to proposed conditions were provided. Calculations comparing existing built area/mass to proposed were also provided but are not a relevant measure when considering the congruity of the work request with the historic character of the district. (*Guideline 1.3.8, 1.3.9, & 3.2.8*)
11. Mapped examples of five other nearby properties with similar or greater built areas to the proposed subject property condition were provided. (*Guideline 1.3.2, 1.3.8 & 1.6.6*)
12. Neighborhood examples fronting on this block of Dorothea Drive having accessory structures sited in a similar location were provided. Information regarding whether these structures are historic was not provided. (*Guideline 1.6.6*)
13. A full-glass all-wood painted door is proposed on the front (west) façade of the accessory structure. A 5'-6" wide covered entry is proposed to be centered over the door. The shed roof will have a standing seam metal roof and painted wood support brackets of simple design. (*Guideline 1.6.7 & 1.6.8*)
14. The accessory structure windows are proposed to be single-lite, vertically-orientated windows of a similar proportion but smaller size than the main house. The windows on the west elevation facing the main house are paired and separated with a central mullion. (*Guideline 1.6.7 & 1.6.8*)
15. The accessory structure is proposed to be wrapped in smooth-faced painted fiber cement horizontal lap siding. This material and configuration has regularly been found congruous with the special character of the district when installed on additions or new construction. (*Guideline 1.6.7*)
16. The building's eaves, trim, and window and door surrounds are proposed to be painted wood. (*Guideline 1.6.7*)
17. To transition from the proposed patio to the existing rear yard grade, a pair of stepped masonry walls are proposed on either side of the accessory structure. The south side wall immediately abuts the building, while the offset north side wall will accommodate

a set of built-in site steps. Partial material specifications for the site walls and steps were provided. (*Guideline 1.4.8, 1.5.5, 1.5.6, & 1.5.9*)

18. The existing non-historic rear shed is proposed to be retained and relocated closer to the northeast corner of the lot. The shed will be sited 5'-0" off the side property line and 15'-0" from the rear alley right-of-way. The shed is also proposed to be turned 90 degrees and reoriented to face the main house and interior of the lot. The shed's west-facing façade will align with and abut the new rear fence line. A proposed site plan showing the condition was provided. (*Guideline 1.3.1, 1.3.9, & 1.6.6*)
19. A non-historic rear wood fence with vertical slats is proposed to be removed and replaced in kind. The new fence line will be rectified to more closely follow the established property lines. The fence will be 6'-0" tall except for the west segment at the rear of the driveway, which will be 42" tall with a double gate matching the fence. Photos of the existing fence design to be matched were provided. (*Guideline 1.4.1 & 1.4.8*)
20. The non-original window sash on the main house are proposed to be replaced in kind with new all-wood 1:1 windows and existing trim to remain. Manufacturer's window specifications, including section details, were provided. (*Guideline 2.7.1 & 2.7.7*)

Staff Concerns

Per the Applicable Standards & Submittal Requirements:

1. No evidence of historic accessory structures sited with a similar relationship to the main house in the Boylan Heights Historic District was provided.
2. No historic evidence of other accessory structures of a similar size and scale in the Boylan Heights Historic District was provided. The proposed accessory structure is five bays deep. The side elevation of the building appears to be of a similar size, height, and scale to the massing of the original portion of the main house and may detract from the overall historic character of the principal building. (*Guideline 1.6.6 & 1.6.11*)
3. The topography rises significantly from the street level to the rear alley, making the proposed building appear larger in scale. (*Guideline 1.6.6 & 1.6.11*)
4. The proposed rear dormer aligns with the rear and side walls below, as well as the main roof ridge of the accessory structure. The effect is that of a second story mass broken up by a minimal strip of roof line, rather than a true dormer effect and increases the overall size and scale of the structure. (*Guideline 1.6.11*)
5. Within this district, garages and accessory structures of this size are typically sited near the rear of the lot adjacent to the many alleyways and/or aligned with the end of the driveway. (*Guideline 1.3.2 & 1.6.6*)
6. The proposed building is the size of a two car garage. Historically, garages in Boylan Heights were typically one car in size. One example (date unknown) of an older, larger accessory building is at the rear of 806 W South Street (COA 122-18-MW).
7. Nothing indicates that the tree protection plan was prepared by an expert, such as an ISA-certified arborist or landscape architect. No protective fencing is proposed, nor other protective measures specified for the critical root zone overlapping the area proposed to be graded. (*Guideline 1.3.1, 1.3.7, 1.5.6, & 1.6.11*)
8. Window and door materials and manufacturer's specifications, including dimensioned section detail drawings, were not provided. (*Guideline 1.6.8*)
9. A scaled eave section detail and trim dimensions and profiles were not provided. (*Guideline 1.6.7*)

10. Manufacturer's window and door specifications were not provided. (*Guideline 1.6.8*)
11. Some other final typical material specifications, including asphalt shingle roofing, standing seam metal roofing, site walls, site steps, and patio stone paver specifications, were not provided. (*Guideline 1.5.5 & 1.6.7*)

Potential Conditions

1. That any new post holes or grading work within a tree's critical root zone be dug manually and tree roots larger than 1" caliper that are encountered while digging shall receive a clean final cut using tools designed for the purpose, such as loppers. Roots larger than 2" shall not be cut without consultation and recommendation from an ISA-certified arborist and RHDC staff.
2. That the size and scale of the accessory structure (actual and/or perceived) be reduced to be closer in size to historic garages in the district.
3. That the accessory structure's overall height be kept lower than the height of the existing house's main roof ridge.
4. That the standing seam metal roofs have 15-20" wide flat pans with no striations, maximum 1" tall true vertical ribs, and very low profile ridge caps, if applicable.
5. That the fiber cement siding match the existing house in exposure and profile.
6. That the accessory structure window and door material be either all-wood or aluminum-clad wood.
7. That the masonry site walls and site steps be constructed of red brick masonry or poured concrete to match typical conditions in the district.
8. That the following materials and specifications be submitted to and approved by staff prior to issuance of the blue placard:
 - a. Revised scaled site plan, plan, and elevation drawings, reflecting Condition 2 & 3 above;
 - b. Scaled eave section detail drawing;
 - c. Manufacturer's window specifications, including dimensioned section details;
 - d. Manufacturer's door specifications, including dimensioned section details;
9. That the following materials and specifications be submitted to and approved by staff prior to installation or construction:
 - a. Standing seam roofing specifications, including material, dimensions, profile, and color.
 - b. Trim specifications, including dimension, profile, and color;
 - c. Asphalt shingle roofing specifications, including product and color;
 - d. Final site wall and steps specifications, including material, pattern, and color;
 - e. Mini-split system specifications, including dimensions, mounting height, and color;
 - f. Completed RHDC paint schedule and physical paint samples, if not matching existing house;
 - g. Gutter/downspout locations and specifications, if applicable;
 - h. Exterior lighting specifications, if applicable.

3E. Citing design standards

- Based on the *Secretary of the Interior's Standards for Rehabilitation* but tailored to the special character of Hillsborough.
- 160D-947: standards guide the commission in “determining congruity with the special character of the landmark or district for new construction, alterations, additions, moving, and demolition.”
- UDO Section 3.12.3: “reasonable standards to assist the Commission in its review of design and to guide and limit the discretion of the Commission..”
- Rules of Procedure Section 4.10 (F): “Apply the Commission’s Design Standards, where any deviation of the adopted Design Standards shall be based on sound reasoning in accordance with the Commission’s mission statement.”
- Further information:
 - 160D-947
 - UDO Section 3.12.3
 - Highlighted Rules of Procedure
 - Sample motion

§ 160D-947

(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.

3.12.3 STANDARDS OF EVALUATION

The Commission, in deliberating upon an application for a property located within an Historic District or a local landmark, shall consider, among other things, the general scale, design, arrangement, texture, material, and color of the building, structure, or site in question and the relation of such factors to similar features of buildings in the immediate vicinity or buildings of a similar architectural style or age in the Historic District. The Commission shall not consider the interior arrangement, nor shall it make any requirements except for the purpose of preventing developments which are incongruous to the historic character of the landmark or Historic District.

To provide reasonable standards to assist the Commission in its review of design and to guide and limit the discretion of the Commission, the report entitled "Hillsborough Historic District Guidelines," as adopted by the Town Board, is hereby adopted and incorporated by reference as part of this Ordinance to guide the review of applications for Certificates of Appropriateness for properties located within the historic district.

Designated landmarks located outside an historic district shall be held to the Secretary of the Interior's Standards for Rehabilitation.

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of the meetings at which the application was discussed and is thoroughly familiar with the facts and details of the proposal.

- 4.7 *General Knowledge.* Each member of the Commission shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the District and the Commission as time and circumstance permit.
- 4.8 *Required Training.* Each member of the Commission shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the District and the Commission as time and circumstance permit. At least two members per fiscal year shall attend required training to meet the Town's Certified Local Government (CLG) training requirements at the direction of staff.
- 4.9 *Vote.* The majority of those members present or a concurring vote of at least three (3) members of the Board, if only 5 or less members are present, shall be necessary in order to decide in favor of the applicant or any matter upon which it is required to pass by this Ordinance. A tie vote on the Findings of Fact does not halt procedure deliberation on an application. A tie vote on a Motion does not constitute a majority of the board members present and therefore the Motion fails.
- 4.10 *Member Conduct.* Membership on the Commission is a privilege in service to the Town of Hillsborough and shall be treated as such. All members of the Commission shall at all times:
- A. Provide leadership to the Commission and the Town of Hillsborough, by personal example, in support of the Commission's mission statement.
 - B. Respect others and not bully, insult, threaten, or attempt to bully, insult, or threaten any member of staff, the Commission, or the General Public.
 - C. Respect the confidentiality of information which you receive as a member by not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and not obstructing third parties' legal rights of access to information.
 - D. Conduct themselves in a manner which will prevent the Commission from being held in disrepute.
 - E. Use their position as a member acting only in the public interest, and not for personal advantage, including financial gain.
 - F. Apply the Commission's Design Standards, where any deviation from the adopted Design Standards shall be based on sound reasoning in accordance with the Commission's mission statement.
 - G. Exercise independent judgement, making decisions only for the public good, and making no decisions that would knowingly jeopardize the Town's Certified Local Government status or put the Town in a legally indefensible position.

Sample Motions

Findings of Fact

I move that we find as a fact that the insert name application is/is not in keeping with the overall character of the Historic District and complies/does not comply with all relevant standards of evaluation, based on our discussion of the application and the Standards of Evaluation in Section 3.12.3 of the Unified Development Ordinance...

Because the plans are consistent with Design Guidelines:
(Specify relevant guidelines)...

Approval/ Disapproval

I move to approve/ deny the application as submitted/ as modified/ with the following conditions...

(Specify conditions or modifications)

3F. Defining “compatibility” and “congruency”

- How do we define “compatibility” and “congruency” not in terms of materials defined in the matrix but rather design modifications and whether they are compatible with a certain style/period?
- To what extent should "precedence" of past approvals be considered in this evaluation?
- “The commission shall take no action ... 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.”
- Adopted standards outline the “special character,” and the board must make decisions based on an identifiable standard.
- Related materials:
 - UNC School of Government reading
 - COA decision-making worksheet



Coates' Canons NC Local Government Law

What is the "special character" of the historic district?

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Author Name: Adam Lovelady

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 the special character? And what is incongruous with it? This blog reviews applicable laws and cases to outline the procedural requirements for establishing the special character (through formal report, ordinance description, and design guidelines) and subsequently determining whether a particular change is incongruous (through a quasi-judicial evidentiary hearing). As defined in the statute, "[h]istoric districts established pursuant to this [law] shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association." G.S. § 160A-400.3. Cities and counties can establish historic districts and historic landmarks for defined areas and properties. Once a local government has designated a property as a historic district or landmark, the property owner must seek a certificate of appropriateness (COA) from the local historic preservation commission in order to make certain changes to the property. A COA is required for any construction, alteration, moving, or demolition of any exterior feature of a designated property.

The preservation commission's authority for COAs is limited: The commission shall take no action under the preservation authority except to prevent development that "would be incongruous with the special character of the landmark or district." G.S. § 160A-400.9.

Special Character

The character of the district or landmark is not left to speculation or guessing. It is not conjured up at the time of COA review. State law requires the local government to distill and clarify the character and context of the historic district or landmark at the time of designation and to establish "principles and guidelines" for COAs.

Before the local governing board may establish a historic district the local government must draft and submit to the State Historic Preservation Officer (SHPO) "[a]n investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district." G.S. § 160A-400.4. For historic landmarks, the local government must draft and submit to the

SHPO a similar document. Additionally, the ordinance designating the landmark “shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated.” G.S. § 160A-400.5.

Separately the preservation commission must “prepare and adopt principles and guidelines . . . for new construction, alterations, additions, moving and demolition.” G.S. § 160A-400.9. These principles and guidelines commonly are adopted as design guidelines for the district.

With these procedural requirements, local governments must investigate and report on the elements justifying the designation of a historic district and/or landmark and establish design principles and guidelines to guide the commission in determining if a change is incongruous with the district.

Incongruity Standard

The incongruity standard is a subjective standard requiring judgment. In other words, it is a quasi-judicial standard. The commission must hold an evidentiary hearing to take in evidence and evaluate that evidence against the standards for incongruity.

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).

Evidence

As with any quasi-judicial decision, a decision on a certificate of appropriateness must be based upon competent, relevant, substantial evidence in the record. The record is composed of the application, any staff analysis or reports, testimony and documents presented at the evidentiary hearing, and other related documents. Additionally, the preservation statutes specifically highlight the role and usefulness of site visits and expert opinion in the decision-making process. “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.” G.S. § 160A-400.9(d).

Limited Discretion

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 character of the district 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.*

<https://canons.sog.unc.edu/2017/03/special-character-historic-district/>
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).

Conclusion

To be sure, determinations about certificates of appropriateness are not simple, objective determinations—they require judgment from the decision-makers. That is why COA decisions require quasi-judicial procedures.

That said, the establishment of the historic district and the evidence in the record guide the decision. At the time of establishing a historic district, the local government must submit a report to the SHPO. For historic landmarks, the ordinance must describe, among other things, the integral elements of the landmark. Before it acts on a COA application, the preservation commission must adopt principles and guidelines—design guidelines. Additionally, when a property owner seeks a COA, the preservation commission must base its decision on the standards establishing the special character and on evidence in the record—the application, the testimony, and other information obtained through the evidentiary hearing. If a decision veers from those standards and evidentiary record, it may be overturned as arbitrary and capricious.

Note: This blog previously appeared on the blog [Community and Economic Development in North Carolina and Beyond](#)

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Town of Hillsborough
Historic District Commission
Certificate of Appropriateness Decision-Making Worksheet

Consideration of, and decisions on, COA applications shall take place during a quasi-judicial evidentiary hearing.¹ All quasi-judicial decisions shall be based on competent, material, and substantial evidence in the record.² The HDC must comply with all applicable conflict of interest rules.³

Intended Use and Application of this Worksheet

The following worksheet is intended to provide general guidance on how the HDC may frame its consideration of COA applications. This worksheet is not intended to provide a rigid framework for the HDC's decision-making process. Rather, it is a set of suggested topics for consideration that will likely be helpful to the HDC. HDC Members should feel free to omit consideration or discussion of any topics described herein, and should also feel free to supplement with additional or other discussion topics.

Standard of Review

The HDC shall take no action on COA applications 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.⁴ This is a fairly liberal standard, and implies that COAs shall be approved unless the proposed work would be incongruous with the special character of the historic district. Note that this does not require the work to be congruous or to be consistent with "best practices" for historic preservation or the Secretary of the Interior's Standards.

The "incongruity standard" is a "contextual standard," meaning that it "derives its meaning from the objectively determinable, interrelated conditions and characteristics of the subject to which the standard is to be applied."⁵

In the context of HDC decisions on COA applications, "the standard of 'incongruity' must derive its meaning, if any, from the total physical environment of the [relevant] Historic District. That is to say, the conditions and characteristics of the [relevant] 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."⁶

¹ G.S. 160D-947(c).

² G.S. 160D-406(j).

³ See, *inter alia*, G.S. 160D-109(d).

⁴ G.S. 160D-947(a).

⁵ *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 258 S.E.2d 444 (1979).

⁶ *Id.*

The HDC may apply those portions of the *Hillsborough Historic District Design Standards* (the “Design Standards”) which “provide an analysis of the structural elements of the different styles [within the relevant Historic District] [to] provide additional support for [the HDC’s] conclusion[s]” related to the overarching “incongruity” standard.⁷

Suggested Discussion Topics and Review Steps

Step 1: Determine exactly what work the Applicant is proposing.

- HDC Members should review the Application materials to make sure that the HDC understands the scope of the proposed “construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district.”
- HDC Members may ask questions of the Applicant and Town Staff in order to ensure that the HDC clearly understands the scope of the proposed work. For example:
 - Confirm the location of the Subject Property by asking the Applicant and Town Staff for the street address and PIN;
 - Confirm the applicable Historic District designation by asking Town Staff to confirm that the Subject Property is located in the specified Historic District;
 - Determine which elements of the proposed work are within the HDC’s jurisdiction, versus Town Staff’s jurisdiction to grant administrative approvals by questioning the Applicant on the scope of the proposed project and confirming which elements of the proposed project require COA approval from the HDC.

Step 2: Determine what the “Special Character” of the applicable Historic District is for the purposes of the COA application before the HDC.

- HDC Chair should note for the record that the Design Standards are incorporated into the record by reference.
- HDC should review the “Hillsborough History and Character” Section of the Design Standards and discuss what the History and Character Section tells the HDC about the “Special Character” of the Historic District.
 - See, Section 2: Hillsborough History and Character at pp. 21-26.
- HDC should review the Historic District Inventory, Historic District Map, and Historic District Inventory Map and discuss what those resources tell the HDC about the “Special Character” of the Historic District.

⁷ *Id.*

- For each Section of the Design Standards applicable to a particular COA application, the HDC should review the associated Design Considerations and discuss what the relevant Considerations tell the HDC about the “Special Character” of the relevant Historic District.
- For each Section of the Design Standards applicable to a particular COA application, the HDC should review the associated Design Standards and discuss what the relevant Standards tell the HDC about the “Special Character” of the relevant Historic District. Note that, where the Standards prescribe or prohibit a particular action, the HDC may infer that the particular action is significant to the “Special Character” of the Historic District. However, conformance or nonconformance with a particular Standard, on its own, cannot be the basis for approval or denial of a COA application.⁸
- HDC Members should review any evidence presented by the Applicant (or any other witnesses or Parties with standing) and discuss what the Applicant’s evidence tells the HDC about the “Special Character” of the relevant Historic District. HDC Members should:
 - Consider the source of the evidence to determine whether it is sufficiently trustworthy for the HDC to rely on. If the evidence IS sufficiently trustworthy, it is likely to be “competent” evidence. HDC Members should feel free to question the Applicant about, among other things:
 - the source of their evidence,
 - the identity of anyone who may have assisted the Applicant in gathering or preparing their evidence,
 - any edits, modifications, or other changes that the Applicant may have made to the evidence.
 - Consider whether the evidence is directly relevant to the HDC’s consideration of whether the proposed work is not incongruous with the “Special Character” of the relevant Historic District. If the evidence is directly relevant, it is likely to be “material” evidence.
 - Consider the “weight” of the evidence. If the HDC determines that the Applicant has presented enough evidence, then the evidence is like “substantial.”
- HDC should summarize, based on all of the above, what the “Special Character” of the relevant Historic District is as applicable to the particular COA application before the HDC.

Step 3: Consider whether the proposed work is “Incongruous” with the “Special Character” of the relevant Historic District.

- HDC Members shall apply their “special interest, experience, or education in history, architecture, archaeology, or related fields”⁹ to determine whether the proposed work is not incongruous with the “Special Character” of the relevant Historic District.

⁸ See, G.S. 160D-947(a).

⁹ See, G.S. 160D-303(a).

- HDC Members should be mindful of the Standard of Review described above and should make sure to consider whether the proposed work is *not incongruous* with “the total physical environment of the [relevant] Historic District,” as opposed to incongruous with any existing structure(s) located on the Subject Property or with those in the immediate area surrounding the Subject Property.¹⁰
- When discussing this topic, HDC Members should:
 - Specifically describe the “Special Character” of the relevant Historic District;
 - Consider whether the evidence presented indicates that similar features to those proposed in the COA application exist elsewhere in the relevant Historic District;
 - Consider whether those features contribute to the relevant Historic District’s “Special Character,” and
 - Consider whether the Design Standards provide any basis to determine that the proposed work is incongruous with the “Special Character” of the relevant Historic District.

Step 4: Make Motions and Vote

As discussed above, the HDC may take no action on COA applications 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.¹¹

Therefore, the first motion and vote shall dispose of the incongruity issue. A HDC Member may make a motion that the proposed COA is not incongruous with the special character of the historic district (the “Congruity Motion”). A Congruity Motion shall specify the evidence on which the motion is based. Alternatively, a HDC Member may make a motion that the proposed COA is incongruous with the special character of the historic district (the “Incongruity Motion”). A Incongruity Motion shall also specify the evidence, or lack thereof, on which it is based. In the event that an Incongruity Motion is made because a HDC Member believes that the evidence presented to the HDC is not “competent, material, and substantial,” the HDC Member making the Incongruity Motion shall specify why the evidence presented is not “competent, material, and substantial.” All motions shall be seconded by another HDC Member before they can be put to a vote. All votes require a simple majority of the HDC Members to pass.¹²

Note that a Congruity Motion which does not receive a simple majority vote does not have the effect of a denial of the COA Application. So, until a new Congruity Motion or an Incongruity Motion is made, seconded, and receives a majority vote, the COA Application remains pending.

In the event that an Incongruity Motion is made and properly passed, the HDC does not need to take any further action. In the event that a Congruity Motion is made and properly passed,

¹⁰ *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 258 S.E.2d 444 (1979).

¹¹ G.S. 160D-947(a).

¹² See, G.S. 160D-406(i).

the HDC should make a second administrative motion to issue the COA (the “COA Motion”). Alternatively, the COA Motion may be incorporated into a Congruity Motion.

Finally, once a Congruity Motion and COA Motion have been made and properly passed, the HCD should consider the template Written Decision included with the Staff Memorandum. If the Written Decision adequately reflects the facts and evidence on which the HDC’s decision was based, the HDC may make a motion and vote to approve the Written Decision. This will allow the Chair to sign the Written Decision so that it can be filed with the Town and issued to the Applicant, as required by law.¹³

In the event that the HDC does not believe that adequate evidence was presented in order for the HDC to properly review the COA Application, the HDC may continue the evidentiary hearing in lieu of taking a final votes.

¹³ See, G.S. 160D-406(j).