

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 799  
Committee Substitute Favorable 4/23/15

Short Title: Zoning/Changes to Hist. Preserv. Procedures.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO CREATE AN ARBITRATION PROCESS TO APPEAL DECISIONS OF THE BOARD OF ADJUSTMENT ON APPEALS FROM THE HISTORIC PRESERVATION COMMISSION AND TO CREATE A PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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



- 1 (1) Undertake an inventory of properties of historical, prehistorical,  
2 architectural, and/or cultural significance;
- 3 (2) Recommend to the municipal governing board areas to be designated by  
4 ordinance as "Historic Districts"; and individual structures, buildings, sites,  
5 areas, or objects to be designated by ordinance as "Landmarks";
- 6 (3) Acquire by any lawful means the fee or any lesser included interest,  
7 including options to purchase, to properties within established districts or to  
8 any such properties designated as landmarks, to hold, manage, preserve,  
9 restore and improve the same, and to exchange or dispose of the property by  
10 public or private sale, lease or otherwise, subject to covenants or other  
11 legally binding restrictions which will secure appropriate rights of public  
12 access and promote the preservation of the property;
- 13 (4) Restore, preserve and operate historic properties;
- 14 (5) Recommend to the governing board that designation of any area as a historic  
15 district or part thereof, or designation of any building, structure, site, area, or  
16 object as a landmark, be revoked or removed for cause;
- 17 (6) Conduct an educational program with respect to historic properties and  
18 districts within its jurisdiction;
- 19 (7) Cooperate with the State, federal, and local governments in pursuance of the  
20 purposes of this Part. The governing board or the commission when  
21 authorized by the governing board may contract with the State, or the United  
22 States of America, or any agency of either, or with any other organization  
23 provided the terms are not inconsistent with State or federal law;
- 24 (8) Enter, solely in performance of its official duties and only at reasonable  
25 times, upon private lands for ~~examination~~ preparation of a renovation report  
26 or other report to aid in review of a certificate of appropriateness application,  
27 examination, or survey thereof. However, no member, employee or agent of  
28 the commission may enter any private building or structure without the  
29 express consent of the owner or occupant thereof;
- 30 (9) Prepare and recommend the official adoption of a preservation element as  
31 part of the municipality's comprehensive plan;
- 32 (10) Review and act upon proposals for alterations, demolitions, or new  
33 construction within historic districts, or for the alteration or demolition of  
34 designated landmarks, pursuant to this Part; and
- 35 (11) Negotiate at any time with the owner of a building, structure, site, area, or  
36 object for its acquisition or its preservation, when such action is reasonably  
37 necessary or appropriate."

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

39 **"§ 160A-400.9. Certificate of appropriateness required.**

40 ...

41 (d) All applications for certificates of appropriateness shall be reviewed and acted upon  
42 within a reasonable time, not to exceed 180 days from the date the completed application for a  
43 certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of  
44 procedure. If a completed application is not acted upon within the 180-day period, the  
45 commission shall issue the certificate of appropriateness. As part of its review procedure, the  
46 commission may view the premises and seek the advice of the Division of Archives and  
47 History or such other expert advice as it may deem necessary under the circumstances.

48 (e) An appeal may be taken to the Board of Adjustment from the commission's action in  
49 granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii)  
50 shall be taken within times prescribed by the preservation commission by general rule, and (iii)  
51 shall be in the nature of certiorari. A member of the Board of Adjustment shall not vote on a

1 matter under appeal pursuant to this subsection if that member is also a member of the  
2 commission or its equivalent. Any appeal from the Board of Adjustment's decision in any such  
3 case shall be heard by the superior court of the county in which the municipality is located.

4 (e1) Notwithstanding subsection (e) of this section, in lieu of an appeal to superior court,  
5 the party appealing the decision of the Board of Adjustment may submit the dispute to binding  
6 arbitration. The appealing party shall provide written notice to the Board of Adjustment within  
7 30 days of the decision. Unless a different method of arbitration is agreed upon by the parties, a  
8 single arbitrator shall be chosen by the parties and the appealing party may choose to  
9 consolidate all disputed issues into a single claim. The cost of the arbitration proceeding shall  
10 be borne equally by the parties. The American Arbitration Association rules shall apply to the  
11 arbitration unless the parties agree otherwise. The arbitrator shall consider, at a minimum, the  
12 entire record of proceedings with the commission and the Board of Adjustment, the degree to  
13 which the decision deviates from the rules of procedure and principles and guidelines of the  
14 commission pursuant to G.S. 160A-400.6, and the good faith of the parties. In any subsequent  
15 action to enforce the arbitrator's decision the prevailing party shall be entitled to reasonable  
16 attorneys' fees and court costs.

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

29 **SECTION 4.** Part 3C of Article 19 of Chapter 160A of the General Statutes is  
30 amended by adding a new section to read:

31 **"§ 160A-400.16. Renovation report by Historic Preservation Commission.**

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

- 35 (1) An identification and listing of all exterior features as defined in  
36 G.S. 160A-400.9 for particular buildings or structures (i) located on a  
37 particular parcel situated within a historic district or (ii) designated as a  
38 historic landmark.
- 39 (2) A reference to all applicable sections of locally adopted principles and  
40 guidelines not inconsistent with this Part and relevant to alteration or  
41 restoration of the exterior features identified and listed pursuant to  
42 subdivision (1) of this subsection.
- 43 (3) A listing of materials or substitute materials appropriate for use in alteration  
44 or restoration of the exterior features identified and listed pursuant to  
45 subdivision (1) of this subsection.

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

48 (b) An owner, or a potential purchaser with the owner's consent, may request a  
49 renovation report from the commission. In preparing the report, the commission shall examine  
50 the parcel or structure in collaboration with the requesting party and shall prepare and issue the  
51 report within 60 days of request. The commission may contract with a third party to prepare the

1 report and may establish and charge a reasonable fee to the party requesting the report not to  
2 exceed the actual cost of preparing the renovation report.

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

8 **SECTION 5.** This act becomes effective October 1, 2015, and applies to  
9 applications for certificates of appropriateness submitted on or after that date.