

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 799  
Committee Substitute Favorable 4/23/15  
Committee Substitute #2 Favorable 8/19/15

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

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW A PROPERTY OWNER TO REQUEST REMOVAL FROM A  
3 HISTORIC DISTRICT, TO MAKE AMENDMENTS TO THE PROCESS TO CREATE A  
4 HISTORICAL COMMISSION, TO MODIFY THE CONFLICT OF INTEREST  
5 RECUSAL FOR MEMBERS OF HISTORICAL COMMISSIONS, AND TO CREATE A  
6 PROCESS FOR THE COMMISSION TO ISSUE INFORMATIONAL REPORTS TO  
7 POTENTIAL PURCHASERS OF HISTORIC PROPERTIES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 160A-400.4 reads as rewritten:

10 "§ 160A-400.4. Designation of historic districts.

11 (a) Any municipal governing board may, as part of a zoning or other ordinance enacted  
12 or amended pursuant to this Article, designate and from time to time amend one or more  
13 historic districts within the area subject to the ordinance. Such ordinance may treat historic  
14 districts either as a separate use district classification or as districts which overlay other zoning  
15 districts. Where historic districts are designated as separate use districts, the zoning ordinance  
16 may include as uses by right or as conditional uses those uses found by the Preservation  
17 Commission to have existed during the period sought to be restored or preserved, or to be  
18 compatible with the restoration or preservation of the district.

19 (b) No historic district or districts shall be designated under subsection (a) of this  
20 section until:

21 (1) An investigation and report describing the significance of the buildings,  
22 structures, features, sites or surroundings included in any such proposed  
23 district, and a description of the boundaries of such district has been  
24 prepared, and

25 (2) The Department of Cultural Resources, acting through the State Historic  
26 Preservation Officer or his or her designee, shall have made an analysis of  
27 and recommendations concerning such report and description of proposed  
28 boundaries. Failure of the ~~department~~ Department to submit its written  
29 analysis and recommendations to the municipal governing board within 30  
30 calendar days after a written request for such analysis has been received by  
31 the Department of Cultural Resources shall relieve the municipality of any  
32 responsibility for awaiting such analysis, and said board may at any time  
33 thereafter take any necessary action to adopt or amend its zoning ordinance.

34 (c) The municipal governing board may also, in its discretion, refer the report and  
35 proposed boundaries under subsection (b) of this section to any local preservation commission



1 or other interested body for its recommendations prior to taking action to amend the zoning  
2 ordinance. With respect to any changes in the boundaries of such district subsequent to its  
3 initial establishment, or the creation of additional districts within the jurisdiction, the  
4 investigative studies and reports required by subdivision (1) of subsection (b) of this section  
5 shall be prepared by the preservation commission, and shall be referred to the local planning  
6 agency for its review and comment according to procedures set forth in the zoning ordinance.  
7 Changes in the boundaries of an initial district or proposal for additional districts shall also be  
8 submitted to the Department of Cultural Resources in accordance with the provisions of  
9 subdivision (2) of subsection (b) of this section.

10 On receipt of these reports and recommendations, the municipality may proceed in the same  
11 manner as would otherwise be required for the adoption or amendment of any appropriate  
12 zoning ordinance provisions.

13 (d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to  
14 historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the  
15 location or screening of solar collectors may encompass requiring the use of plantings or other  
16 measures to ensure that the use of solar collectors is not incongruous with the special character  
17 of the district.

18 (e) The owner of a property included in a historical district under this section may  
19 petition the commission for removal. Such petition shall be in writing, stating the property  
20 owner's name, location of the property, and reasons the property should be removed from the  
21 historic district, and be delivered to the clerk to the board. Within 10 days, the clerk shall notify  
22 the commission and submit the petition to the Department of Cultural Resources, acting  
23 through the State Historic Preservation Officer or his or her designee, for an analysis of and  
24 recommendations concerning the petition. The Department shall submit its written analysis and  
25 recommendations, if any, to the commission within 30 calendar days after receipt of a written  
26 request for such analysis. The commission shall schedule a public hearing on the matter to  
27 receive comments from the public regarding the continued inclusion of the property in the  
28 historic district, after notice for at least two successive weeks in a newspaper of general  
29 circulation in the city. After the public hearing, the commission shall make a recommendation  
30 to the municipal governing body regarding its continued inclusion after consideration of any  
31 analysis from the Department, the public hearing comments, and any other information the  
32 commission has before it regarding the property. Upon receipt of the recommendation of the  
33 commission, the municipal governing body shall proceed in accordance with this Article to  
34 amend any ordinance adopted in accordance with this Article including that property in a  
35 historic district, in the discretion of the municipal governing body. If a commission has  
36 multiple petitions before it, the commission may, in its discretion, combine the  
37 recommendations to the municipal governing board for action."

38 **SECTION 2.** G.S. 160A-400.7 reads as rewritten:

39 **"§ 160A-400.7. Historic Preservation Commission.**

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

48 In lieu of establishing a historic preservation commission, a municipality may designate as  
49 its historic preservation commission, (i) a separate historic districts commission or a separate  
50 historic landmarks commission established pursuant to this Part to deal only with historic  
51 districts or landmarks ~~respectively~~, respectively or (ii) a planning board established pursuant to

1 this Article, or (iii) a community appearance commission established pursuant to Part 7 of this  
2 Article. In order for a commission or board other than the preservation commission to be  
3 designated, at least three of its members shall have demonstrated special interest, experience, or  
4 education in history, architecture, or related fields. At the discretion of the municipality the  
5 ordinance may also provide that the preservation commission may exercise within a historic  
6 district any or all of the powers of a planning board or a community appearance commission.

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

11 **SECTION 3.** G.S. 160A-400.8 reads as rewritten:

12 **"§ 160A-400.8. Powers of the Historic Preservation Commission.**

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

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

1           **SECTION 4.** G.S. 160A-400.9 reads as rewritten:

2   "**§ 160A-400.9. Certificate of appropriateness required.**

3       (a) From and after the designation of a landmark or a historic district, no exterior  
4 portion of any building or other structure (including masonry walls, fences, light fixtures, steps  
5 and pavement, or other appurtenant features), nor above-ground utility structure nor any type of  
6 outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such  
7 landmark or within such district until after an application for a certificate of appropriateness as  
8 to exterior features has been submitted to and approved by the preservation commission. The  
9 municipality shall require such a certificate to be issued by the commission prior to the  
10 issuance of a building permit or other permit granted for the purposes of constructing, altering,  
11 moving, or demolishing structures, which certificate may be issued subject to reasonable  
12 conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall  
13 be required whether or not a building or other permit is required.

14       For purposes of this Part, "exterior features" shall include the architectural style, general  
15 design, and general arrangement of the exterior of a building or other structure, including the  
16 kind and texture of the building material, the size and scale of the building, and the type and  
17 style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of  
18 outdoor advertising signs, "exterior features" shall be construed to mean the style, material,  
19 size, and location of all such signs. Such "exterior features" may, in the discretion of the local  
20 governing board, include historic signs, color, and significant landscape, archaeological, and  
21 natural features of the area.

22       Except as provided in (b) below, the commission shall have no jurisdiction over interior  
23 arrangement and shall take no action under this section except to prevent the construction,  
24 reconstruction, alteration, restoration, moving, or demolition of buildings, structures,  
25 appurtenant fixtures, outdoor advertising signs, or other significant features in the district which  
26 would be incongruous with the special character of the landmark or district.

27       (b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over  
28 interior spaces shall be limited to specific interior features of architectural, artistic or historical  
29 significance in publicly owned landmarks; and of privately owned historic landmarks for which  
30 consent for interior review has been given by the owner. Said consent of an owner for interior  
31 review shall bind future owners and/or successors in title, provided such consent has been filed  
32 in the office of the register of deeds of the county in which the property is located and indexed  
33 according to the name of the owner of the property in the grantee and grantor indexes. The  
34 landmark designation shall specify the interior features to be reviewed and the specific nature  
35 of the commission's jurisdiction over the interior.

36       (c) Prior to any action to enforce a landmark or historic district ordinance, the  
37 commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles  
38 and guidelines not inconsistent with this Part for new construction, alterations, additions,  
39 moving and demolition. The ordinance may provide, subject to prior adoption by the  
40 preservation commission of detailed standards, for the review and approval by an  
41 administrative official of applications for a certificate of appropriateness or of minor works as  
42 defined by ordinance; provided, however, that no application for a certificate of appropriateness  
43 may be denied without formal action by the preservation commission.

44       Prior to issuance or denial of a certificate of appropriateness the commission shall take such  
45 steps as may be reasonably required in the ordinance and/or rules of procedure to inform the  
46 owners of any property likely to be materially affected by the application, and shall give the  
47 applicant and such owners an opportunity to be heard. In cases where the commission deems it  
48 necessary, it may hold a public hearing concerning the application. All meetings of the  
49 commission shall be open to the public, in accordance with the North Carolina Open Meetings  
50 Law, Chapter 143, Article 33C.

1 (d) All applications for certificates of appropriateness shall be reviewed and acted upon  
2 within a reasonable time, not to exceed 180 days from the date the completed application for a  
3 certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of  
4 procedure. If a completed application is not acted upon within the 180-day period or a period of  
5 time otherwise consented to by the parties, the commission shall issue the certificate of  
6 appropriateness. As part of its review procedure, the commission may view the premises and  
7 seek the advice of the Division of Archives and History or such other expert advice as it may  
8 deem necessary under the circumstances.

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

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

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

30 **"§ 160A-400.16. Renovation report by Historic Preservation Commission.**

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

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

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

47 (b) An owner, or a potential purchaser with the owner's consent, may request a  
48 renovation report from the commission. In preparing the report, the commission shall examine  
49 the parcel or structure in collaboration with the requesting party and shall prepare and issue the  
50 report within 90 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 6.** This act becomes effective October 1, 2015, and applies to  
9 applications for certificates of appropriateness submitted on or after that date.