

CITY of WILMINGTON North Carolina

ITEM O5a

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11/16/2021

City Council
City Hall
Wilmington, North Carolina 28401

Dear Mayor and Councilmembers:

Attached for your consideration are companion ordinances making technical amendments to the rules and procedures of the Historic Preservation Commission and Planning Commission. In addition, attached for your consideration is a third companion ordinance that adopts new rules and procedures for the new Design Adjustment Committee.

On August 17, 2021, City Council adopted the new Wilmington Land Development Code that becomes effective on December 1, 2021. Revisions in the new Land Development Code require that some minor changes be made to the rules and procedures for the Planning Commission and Historic Preservation Commission. In addition, the new Land Development Code created the Design Adjustment Committee which is replacing the existing Subdivision Review Board. New rules of procedure are needed for the Design Adjustment Committee.

Specifically, the proposed amendments and new rules accomplish the following for each Commission or Committee:

- Historic Preservation Commission – Reduces the number of members from 9 to 7
- Planning Commission – Deletes the section of the rules governing appeals from the SRB
- Design Adjustment Committee – Adopts new rules for this Committee created by the new Land Development Code.

The Historic Planning Commission received a copy of the proposed new rules on September 9, 2021, and voted on October 14, 2021, to recommend approval of these amendments to their rules.

The Planning Commission considered the proposed changes on November 4, 2021, and voted to recommend approval of these amendments to their rules.

The City Council Appointments Committee considered the rule amendments for the Historic Planning Commission and Planning Commission, as well as the new rules for the Design Adjustment Committee at their regular meeting on November 1, 2021, and recommended approval.

If approved, the City will be compliant with rule changes and new rules required to comply with the Land Development Code which will become effective on December 1, 2021.

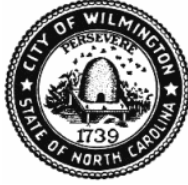
Please note that the Board of Adjustment will be voting on their rule changes on November 18, 2021, and if approved those changes will be brought before Council at a subsequent meeting.

Passage of the attached Ordinances is recommended.

Respectfully submitted,

Anthony N. Caudle,
City Manager

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Anthony N. Caudle, City Manager

Date: 11/16/2021

Ordinance Approving Amendments to the Rules of Procedure for the Historic Preservation Commission Mandated by Adoption of the New Land Development Code

LEGISLATIVE INTENT/PURPOSE:

This ordinance is necessary due to the adoption of the new Land Development Code which will be effective on December 1, 2021. Specifically, under the new Land Development Code, the Historic Preservation Commission will decrease in size from nine to seven commissioners. The following amended rules and procedures made amendments necessary to reduce the number of Commissioners to seven as required by the new Land Development Code.

THEREFORE, BE IT ORDAINED:

THAT, the attached Amended Rules of Procedure for the Wilmington Historic Preservation Commission are hereby adopted and shall be effective beginning December 1, 2021.

Adopted at a _____ meeting
on _____ 2021

Bill Saffo, Mayor

ATTEST:

APPROVED AS TO FORM:

Penelope Spicer-Sidbury, City Clerk

City Attorney

**RULES OF PROCEDURE
WILMINGTON HISTORIC PRESERVATION COMMISSION**

**Revised and readopted on October 5, 1989.
Readopted by City Council on October 3, 1995.
Revised by City Council on December 5, 1995.
Revised by City Council on July 9, 1996.
Revised by City Council on October 29, 1996.
Revised by City Council on July 15, 2003.
Revised by City Council on December 14, 2004
Revised by City Council on March 7, 2006
Revised by City Council on October 17, 2017
Revised by City Council on June 15, 2021
Revised by City Council on November 16, 2021**

**RULES OF PROCEDURE
WILMINGTON HISTORIC PRESERVATION COMMISSION**

I. MEMBERS, OFFICERS, AND DUTIES.

- A. General.** The commission shall be composed of seven members, the majority of whom shall have demonstrated special interest, experience, or education in history, architecture, archeology, or related fields. At least three members shall be residents within a locally designated historic district or overlay. At least one member shall be a building owner or proprietor of a business within a historic overlay district. At-large members shall have expertise in areas related to historic preservation, including, but not limited to, architecture, architectural historic, public history, engineering, and landscape architecture. All members shall be residents of the city of Wilmington. The commission may appoint advisory bodies and committees as appropriate. (10/5/89) (10/29/96) (12/14/04)
- B. Chair.** A chair shall be elected by the voting members of the historic preservation commission. Their term shall be for two years, and they may serve for no more than two consecutive terms. 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 the time. The chair shall appoint any committees found necessary to investigate any matters before the commission. The chair shall vote on all matters before the commission and shall have no extraordinary voting powers in the case of a tie vote.
- C. Vice-chair.** A vice-chair shall be elected by the commission from among its members in the same manner as the chair and shall be eligible for re-election. They shall serve as acting chair in the absence of the chair, and at such times they shall have the same powers and duties as the chair.
- D. Secretary.** The secretary to the historic preservation commission is the planning director, or their designated representative. All records, minute taking, conduct of correspondence, and general supervision of clerical work of the historic preservation commission is the responsibility of the secretary. The secretary is not eligible to vote upon any manner.
- E. Use of Parliamentary Practice.** The rules of parliamentary procedures in Roberts Rules of Order (A Manual of General Parliamentary Law) shall be parliamentary authority at the commission meetings except as otherwise provided in these rules or by law.

- F. **Attendance at Meetings.** Should a member fail to attend three consecutive regular meetings of the commission and should there be no adequate excuse for such absences, the chair, with the concurrence of a majority of the entire commission, shall recommend to the appropriate authority that a vacancy be declared and that the vacant position be filled.
- G. **Conflicts of Interests.** Commissioners shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected person's 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 direct, substantial, and readily identifiable financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse themselves, the remaining members shall, by majority vote, rule on the objection. Commissioners, even after being recused, shall not present applications to the commission.
- H. **Voting.** All members of the commission shall vote upon every issue that requires this procedure except as outlined in item G. above. Commissioners shall only vote on an issue if they are present for all the evidence. In the event a commission member abstains from voting for reasons other than a direct, personal, or financial interest, the abstention shall be ruled by the chairman as an affirmative vote. A tie vote of those present shall cause the motion in question to fail.
- I. **Oath.** All members of the commission shall, before entering their duties, qualify by taking an oath of office.
- J. **Minutes.** The secretary to the commission shall keep minutes of its proceedings.

II. **MEETINGS:**

- A. **Regular Meetings.** Regular meetings of the commission shall be held on the second Thursday of each month at 5:30 p.m. in City Hall or other suitable venue. (7/18/89 - 12/5/95)
- B. **Annual Meeting.** The annual meeting of the Wilmington historic preservation commission shall be the first regular meeting in the month of January of each year. Such meeting shall be devoted to the following: (11/18/86)
 1. Election of officers;
 2. Annual report of the historic preservation commission;
 3. Establish schedules and deadlines; and

3. Other business as scheduled by the historic preservation commission.
- C. **Special Meetings.** Special meetings of the historic preservation commission shall be held at a time and place designated by the officer calling the same and shall be called by the chair or vice-chair. Notice thereof shall be given to all members not less than 48 hours in advance thereof.
 - D. **Cancellation of Meetings.** Whenever there is no business for the commission, the secretary may dispense with a regular meeting by giving notice to all members not less than 48 hours in advance.
 - E. **Quorum.** A quorum shall consist of a majority of the commission membership. Once a quorum has been established for a meeting, it shall not be lost if a member cannot consider an item due to a conflict of interest, provided the member remains present at the meeting. (7/9/96)
 - F. **Conduct of Meetings.** Hearings for certificates of appropriateness are quasi-judicial in nature. All meetings shall be open to the public, subject to the North Carolina open meetings laws and the rules as contained herein. The order of business at regular meetings shall be as follows: introduction; swearing in of applicants and witnesses; approval of minutes; consideration of each agenda item; other business.
 - G. **Legal Advisor.** The Wilmington city attorney's office shall be the legal advisor to the commission and shall be responsible for obtaining outside legal counsel to advise the commission when necessary.

III. **CONSIDERATION OF APPLICATIONS:**

Any party may appear in person or by agent or attorney at the meeting. The order of business for consideration of applications for certificates of appropriateness shall be as follows:

- A. The chair, or such person as he/she shall direct, shall introduce the application as an agenda item;
- B. All witnesses shall be sworn before providing testimony;
- C. Staff presents a report, including proposed findings of fact;
- D. The applicant presents their application;
- E. Parties with standing shall be provided the opportunity to participate in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; and
- F. Parties to the proceeding shall be provided the opportunity for a full and fair presentation of their case. The chair or presiding officer may place time limits on opening and closing statements, public input, and repetitive or argumentative information and testimony presented to the commission.

- G. Non-parties may participate in the evidentiary hearing to present competent, material, and substantial evidence. The commission shall determine what weight, if any, to give the evidence presented in making its determination.
- H. The commission proceeds to deliberate whether to grant the certificate of appropriateness or to deny it. The commission's decision shall be based on the competent, material, and substantial evidence presented.
- I. The commission may, at its discretion, make an on-site inspection or obtain additional facts before arriving at a decision.
- J. The final decision of the commission shall be shown in the written order of the commission, which is signed by the secretary and the chair. Such order shall consist of findings of fact setting forth the decision of the commission, such findings of fact being based on the competent, material, and substantive evidence presented at the hearing.

IV. APPLICATION PROCEDURES

- A. Applications are filed in the planning division subject to deadlines established by the commission at the annual meeting. The applicant must include a detailed description of the proposed project, photographs of existing conditions, tax map, list of adjacent property owners, and accompanying stamped, addressed envelopes. In addition, site plans, elevations, sample of building materials and colors, and product information sheets may be required, as appropriate. Planning staff will not advance an incomplete application.
- B. A pre-application meeting with staff and the applicant is required for major works applications.
- C. The applicant, parties with standing, and witnesses presenting competent, material, and substantial evidence shall be given an opportunity to appear and be heard at the meeting at which the application is presented.
- D. Action on certificates of appropriateness and other, noninformational, items. A simple majority vote of those commission members present shall be sufficient to decide any of these actions; a tie vote shall cause a motion in question to fail. (7/21/87)
 - 1. Approval of an application for a certificate of appropriateness may be in the form as requested by the applicant or with reasonable conditions in conformity with the *Wilmington Design Standards for Historic Districts and Landmarks* and the U.S. Secretary of the Interior's Standards for Rehabilitation.

2. Denial – The applicant shall be informed by letter of the denial and the reasons therefore. The letter shall also inform the applicant of the appropriate procedures to appeal the commission’s action.
 3. Continuance – A delay in consideration of an application for no more than 35 days. The commission shall state the reason(s) for the delay and shall specify the date of the meeting at which the application will be considered. (3/7/06)
 4. Withdrawal – Acceptance of the applicant’s request to withdraw their application from the agenda before it is considered by the commission.
 5. All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed.
- E. If the application is approved or denied, the secretary for the commission shall transmit a letter to the applicant that clearly describes the type of work that has been approved or denied.

Compliance with Roberts Rules of Order shall not be necessary for a commission action to be valid. (7/21/87)

V. AMENDMENT

The rules of procedure shall be adopted by the commission for the conduct of its business and the election of its officers. City council shall approve the rules of procedure and any amendments prior to implementation.

**HISTORIC PRESERVATION COMMISSION
POLICIES AND PROCEDURES REGARDING
DESIGNATION OF LOCAL HISTORIC LANDMARKS**

In accordance with the provisions of Chapter 160D, Article 9 of the North Carolina General Statutes and Chapter 18 of the Wilmington Code of Ordinances, the historic preservation commission of the City of Wilmington establishes this policy to provide criteria, principles for the application of criteria, priorities, and procedures for the designation of local historic landmarks.

Section 1. Goals

1.1 The first goal of the local historic landmark designation program is to preserve the heritage of Wilmington by extending protection of landmark status to especially significant structures, buildings, sites, areas, or objects (hereinafter collectively “the property or properties”).

1.2 The second goal of the local historic landmark designation program is to promote the use and conservation of especially significant properties for the education, pleasure, and cultural enrichment of residents of Wilmington and of the public at large.

1.3 In furtherance of these goals, the commission shall encourage the public to nominate properties for landmark status and shall itself actively seek to identify properties worthy of designation. The commission shall regularly conduct educational and other programs to enhance public knowledge and awareness of the historic landmarks in Wilmington.

Section 2. Criteria for Landmark Designation

2.1 Recommendations. The historic preservation commission may recommend to the city council individual properties to be designated as local historic landmarks only if the commission finds that the property meets the criteria of age, special significance, and integrity.

2.2 Age. A property should be at least 50 years old to be considered for local historic landmark status. The commission may make exceptions for properties less than 50 years old that are threatened with demolition and that meet the special significance and integrity criteria.

2.3 Special Significance. The property's special historical, prehistorical, architectural, or cultural significance must be evidenced by meeting one or more of the following criteria:

- (1) The property embodies in a special or outstanding way the distinguishing characteristics of architectural styles, building types, construction technology, landscape design or other architectural, aesthetic or engineering expressions that are particular to the appearance and development of Wilmington.
- (2) The property exemplifies in a special or outstanding way the political, economic, social, scientific, educational archeological, architectural, cultural, or artistic heritage of Wilmington.
- (3) The property is an especially important site of events that were critical turning points in the history of Wilmington.
- (4) The property is an especially important site associated with persons, groups, institutions, or movements that contributed significantly to the heritage, culture, or development of Wilmington.
- (5) The property is the principal building, structure, or object in Wilmington associated with a person of recognized importance to the history of Wilmington, the region, the state, or the nation.
- (6) The property is an outstanding example of the work of craftsmen, artists, engineers, builders, or developers whose works have influenced the evolution of their fields of endeavor in the region or nation, or whose works have influenced markedly the development of Wilmington.

- (7) The property provides information or evidence not available elsewhere in the Wilmington area concerning historic or prehistoric events, institutions, settlement patterns, or other facets of earlier cultures.
- (8) The property reflects in a unique way the patterns of settlement or use of the landscape as well as the evolution of cultural attitudes toward the land.

2.4 Integrity. The property has integrity if its significance can be seen or experienced, not just imagined. All or most of the following characteristics are required for the property to meet this standard:

- (1) Integrity of design – The historic organization of space, proportion, scale, technology, and materials can be experienced.
- (2) Integrity of setting – The place where the property played its significant role can be experienced because the physical environment related to the property’s function, role, or design retains its historic character.
- (3) Integrity of workmanship – The physical evidence of the crafts of the culture or people during the period when the property was created can be experienced.
- (4) Integrity of materials – The historical materials that were combined to form the property must have been preserved and not recreated.
- (5) Integrity of feeling – The historical or aesthetic sense of the property’s original time can be experienced because its physical features together enable it to evoke a sense of its historical character.
- (6) Integrity of association – The property is the place where a significant activity or event occurred or where a significant person lived or engaged in historic actions. The property is sufficiently intact that the observer can experience the property’s connection with the significant event, activity or person.

Section 3. Principles for Applying the Criteria

The following principles govern the application of the criteria for landmark designation in Section 2 above:

3.1 Local Historic Districts. The commission may recommend landmark designation for properties that are located within local historic districts and that meet the criteria of special significance and integrity, subject to the following principles.

3.1.1 The commission may recommend a building within a local historic district for landmark designation only if the building contains interior features of special significance and the owner consents to review of the interior features and an annual inspection by the city's historic preservation planner to ensure that the features remain intact.

3.1.2 By way of exception to the preceding principle, the commission may recommend landmark designation for a building within a local historic district without subjecting its interior features to review if at least one of the following conditions applies:

- (1) The commission finds that the property's associative history or exterior features alone are of sufficient citywide significance that landmark designation without interior review will contribute substantially to the goal of education, pleasure, and cultural enrichment of the residents of Wilmington and of the public at large.
- (2) The commission finds that achievement of the goal of physical preservation through restoration, rehabilitation, or rescue from demolition can be accomplished if the tax benefit associated with landmark designation is granted, thereby making such restoration, rehabilitation, or rescue from demolition economically feasible.

3.2 Age. Age alone does not warrant local historic landmark designation.

3.3 Significance. Any association with persons or events must be substantial to meet these criteria.

3.4 Exception to Material Integrity. An exception to the criterion of material integrity (e.g., a building lacks material integrity because it has been covered with aluminum or vinyl siding) may be made if the property is of major importance, meets the criteria of special significance, and is threatened with demolition.

Section 4. Procedure

4.1 Lists.

Four lists of properties should be maintained in connection with landmark designation, as follows:

4.1.1 High Priority List. This list contains properties that the commission has determined deserve urgent attention as follows:

- (1) First Priority. Properties that are threatened with demolition.
- (2) Second Priority. Properties whose preservation is of significant community interest because they are related to, or are a part of, a larger historic preservation projects, including but not limited to any programs or projects initiated or endorsed by the commission.
- (3) Third Priority. Other properties that the commission determines are of greater historical, architectural, social, cultural, or technological importance than the remaining properties under consideration for landmark designation.

4.1.2 Inventory of Historic Properties. This inventory is described in Section 19-131(4) of the Land Development Code.

4.1.3 Master List of Potential Landmarks. This is a list of properties that have been recommended by the commission, city staff, or interested members of the public as possible candidates for landmark designation. The required information on each property is name and address or location.

4.1.4 Study List. This list contains the properties that the commission has found, on the basis of preliminary research presented in the study list application, to be likely to meet the criteria for designation. Inclusion on the study list is not a guarantee of recommendation for landmark designation.

4.2 The Process of Designation. The principal steps in the designation of local historic landmarks are as follows.

- (1) Any property on the commission's high priority list may bypass steps 2 and 3 below.
- (2) The property is suggested by the commission, historic preservation planner, or the public as a candidate for landmark designation and is added by the commission to the master list of potential landmarks. If the suggested property is not already in the Inventory of Historic Properties, it is added to the Inventory in accordance with the procedures stated in Chapter 5 of the Handbook for Historic Preservation Commissions in North Carolina (1994).
- (3) A study list application is completed and submitted. If the commission finds that, on the basis of the application, the property is likely to meet the criteria for landmark designation, the commission may place the property on the study list.
- (4) A landmark designation application is completed and sent to the State Historic Preservation Office, which reviews the application and forwards its comments and recommendation concerning the application to the commission.
- (5) The commission considers the landmark designation application, the comments and recommendations of the State Historic Preservation Office, the comments and recommendations of the historic preservation planner, and other relevant evidence in deciding whether to recommend to the city council approval or rejection of an ordinance designating the property as a local historic landmark.

4.3 Application Forms. There are two local landmark designation application forms to be completed in connection with the designation process and submitted to the commission for its consideration:

- (1) Study List Application. A brief form that contains the identifying information of the property and a brief explanation of how the property can be expected, upon further detailed research, to meet the criteria for designation.
- (2) Landmark Designation Application. A longer form that contains all the information needed to demonstrate that the property meets the requirements of state law and the Land Development Code for landmark designation.

4.4 Responsibility for Completing Applications.

- (1) In the case of private properties, it is ordinarily the responsibility of the property owner to do the needed research and to complete the applications, or to have the research and completion of forms done by a qualified consultant.
- (2) In the case of public properties, or properties that are threatened with imminent demolition and the owners of which are unwilling or unable to complete the application, the commission or the historic preservation planner may conduct the necessary research and complete the forms unless qualified volunteers can be found to complete the research or grant funds can be obtained to fund completion by qualified consultants.

4.5 Review Schedule

- (1) The commission may consider study list or landmark designation applications at any time.
- (2) The commission may add properties to the high priority list, master list of potential landmarks, and the study list at any time.
- (3) The historic preservation planner will provide to the commission an annual report on proposed landmark designations, including a list of applications received and the status of the applications.

The landmark policies were adopted by the historic preservation commission on May 8, 2003, and by City Council on July 15, 2003.