

## **APPENDIX B**

### **Example Historic Preservation Ordinance**

#### **AN ORDINANCE CREATING THE HISTORIC PRESERVATION COMMISSION OF CARY**

WHEREAS, the historic heritage of the State of North Carolina is one of our most valued and important assets; and

WHEREAS, the North Carolina General Statutes authorize cities to safeguard the heritage of the town by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory and to promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the town and the State as a whole; and

WHEREAS, the conservation of historic districts and landmarks will stabilize and increase property values in their areas and strengthen the overall economy of the State; and

WHEREAS, the Town Council of Cary desires to safeguard the heritage of the town by preserving and regulating historic landmarks and historic districts; to enhance the environmental quality of neighborhoods; to establish and improve property values; and to foster economic development; and

WHEREAS, the Town Council of Cary does therefore desire to create a commission to be known as the Historic Preservation Commission of Cary to perform the duties of regulating historic landmarks and historic districts pursuant to N.C.G.S. Chapter 106A, Article 19, Part 3C and the provisions of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF CARY AS FOLLOWS:

#### Historic Preservation Commission

There is hereby established a Cary Historic Preservation Commission (“Commission”) under the authority of Chapter 106A, Article 19, Part 3C of the North Carolina General Statutes.

The Commission shall consist of (at least three) members appointed by the Town Council. All members shall reside within the planning and zoning jurisdiction of Cary. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architec-

ture, archaeology or related fields. The Commission may appoint advisory bodies and committees as appropriate.

Members of the Commission shall serve terms of four years. Terms shall be staggered. A member may be reappointed for a second consecutive term, but after two consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of the termination of his or her second term.

The powers of the Historic Preservation Commission are as follows:

1. Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance.
2. Recommend to the Town Council areas to be designated by ordinance as “historic districts” and individual structures, buildings, sites, areas or objects to be designated by ordinance as “Landmarks.”
3. Recommend to the Town Council that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.
4. Review and act upon proposals for alterations, demolition or new construction within historic districts, or for the alteration or demolition of designated landmarks.
5. Conduct an educational program with respect to historic districts and landmarks within its jurisdiction.
6. Cooperate with the state, federal and local government in pursuance of the purposes of this ordinance; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Town Council, or the Commission when authorized by the Town Council, may contract with the State or the United States, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.
7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without express consent of the owner or occupant thereof.
8. Prepare and recommend the official adoption of a preservation element as part of the Town of Cary comprehensive plan.
9. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
10. Restore, preserve and operate historic properties.

Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

Prior to any official action the Commission shall adopt rules or procedure governing its meetings and the conduct of official business and bylaws governing the appointment of members, terms of office, the election of officers and related matters. A public record shall be kept of the Commission's resolutions, proceedings and actions. The Commission shall also prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks or within historic districts.

### Historic Districts

Historic districts are hereby established as districts which overlap with other zoning districts. All uses permitted in any such district, whether by right or as a special use, shall be permitted in the historic district.

Historic districts, as provided for in this section, may from time to time be designated, amended, or repealed, provided however that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance. Such district must also possess integrity of design, setting, workmanship, materials, feeling and/or association. No district shall be designated, amended, or repealed until the following procedure has been carried out:

1. An 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 has been prepared, and
2. The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the Town Council within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the Town Council of any responsibility for awaiting such analysis, and the Town Council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The Town Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendations prior to taking action to amend the zoning ordinance.

With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of this section shall be prepared by the Commission and shall be referred to the Planning Board for its review and comment according to the procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision

(2) of this section.

Upon receipt of these reports and recommendations the Town Council may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

### Historic Landmarks

Upon complying with the required landmark designation procedures set forth herein, the Town Council may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

The ordinance 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 prehistoric value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area or object so designated as a landmark, the ordinance shall require that the waiting period set forth in this ordinance be observed prior to its demolition. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise the sign may be placed on a nearby public right-of-way.

No property shall be designated as a landmark until the following steps have been taken:

1. As a guide for the identification and evaluation of landmarks, the Commission shall, at the earliest possible time and consistent with the resources available to it, undertake an inventory of properties of historical, architectural, prehistoric and cultural significance within Cary.
2. The Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of each building, structure, site, area or object proposed for the designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
3. The Department of Cultural Resources, acting through the State Historic Preservation Officer, or his or her designee, shall either upon request of the Department or at the initiative of the Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark. All comments will be provided in writing. If the Department does not submit its comments to the Commission within 30 days following receipt by the Department of the report, the Commission and the Town Council shall be relieved of any responsibility to consider such comments.
4. The Commission and the Town Council shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

5. Following the public hearing(s) the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
6. Upon adoption of the ordinance the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the Commission in the office of the Register of Deeds of Wake County. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office and the Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Cary Town Clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by Wake County for such period as the designation remains in effect.
7. Upon the adoption of the landmark ordinance or any amendments thereto, it is the duty of the Commission to give notice thereof to the tax supervisor of Wake County. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

#### Certificate of Appropriateness Required

From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within the historic district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Commission.

Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this ordinance. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this ordinance, “exterior features” shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size and location of all such signs.

The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Cary, and all public utilities shall be required to obtain a certificate of appropriateness for ~~construction, alteration, moving or demolition within the historic district or of designated landmarks.~~

### Application for Certificate of Appropriateness

Applications for a certificate of appropriateness shall be obtained from and when completed, filed with the administrator. The application shall be filed two weeks prior to the next regularly scheduled meeting of the Commission. Each application shall be accompanied by sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction. The names and mailing addresses of property owners filing and/or subject to the application and the addresses of property within one hundred (100) feet on all sides of the property which is the subject of the application must also be filed. No application which does not include the aforementioned information will be accepted.

It shall be the policy of the Commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a sub-committee of the Commission shall be available to meet with persons involved in planned or pending applications in order to advise them informally at an early stage in the development process concerning the Commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The members of the sub-committee, collectively or individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any member of the sub-committee at such an informal meeting shall not be considered official or binding upon the Commission.

### Action on Application for Certificate of Appropriateness

The secretary of the Commission shall notify, by mail, not less than one week prior to the meeting at which the matter is to be heard, owners of property within one hundred (100) feet on all sides of the subject property. Applications for certificates of appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed to be approved and a certificate shall be issued. An extension of time may be granted by mutual consent of the Commission and the applicant. As part of the review procedures the Commission may view the premises and seek the advice of the Department of Cultural Resources or other such expert advice as it may deem necessary under the circumstances. The Commission may hold a public hearing on any application when deemed necessary. The action on an application shall be approval, approval with conditions or denial and the decision of the Commission must be supported by specific findings of fact indicating the extent to which the application is or is not congruous with the special character of the historic district or landmark.

### Hearings for Certificate of Appropriateness

Prior to the issuance or denial of a certificate of appropriateness the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. All meetings of the Commission shall be open to the public in accordance with the North Carolina Open Meetings Law, G.S. 143, Article 33C.

The Commission shall have no jurisdiction over interior arrangement, except as provided below, and shall take no action under this ordinance except to prevent the construction, reconstruction, alteration,

restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features which would be incongruous with the special character of the historic district or landmark.

The jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned landmarks for which consent for interior review has been given by the owners. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the Register of Deeds office and indexed according to the name of the owner of the property in the grantor and grantee indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commission's jurisdiction over the interior.

In any action granting or denying a certificate of appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment.

Written notice of the intent to appeal must be sent to the Commission, postmarked within 30 days following the decision. Appeals shall be in the nature of certiorari. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of Wake County.

The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision within thirty (30) days from the date that a notice of appeal by the state is received by the Historical Commission. The decision of the Historical Commission shall be final and binding upon both the state and the Commission.

#### Administrative Approval of Minor Works

Notwithstanding the subsection above (Action on Certificates of Appropriateness), upon receipt of a completed application the Zoning Administrator may issue a certificate of appropriateness for minor works. Minor works are defined as those exterior changes which do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or district as a whole. Such minor works shall be limited to those listed in the Commission's "Bylaws and Rules of Procedure." No application may be denied without the formal action of the Commission. All minor works applications approved by the Zoning Administrator shall be forwarded to the Commission in time for its next scheduled meeting.

#### Review Criteria

No certificate of appropriateness shall be granted unless the Commission finds that the application complies with the principles and guidelines adopted by the Commission for review of changes. It is the intent of these regulations to insure insofar as possible that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district or of landmarks shall be congruous with the special

character of the district or landmark.

In addition to the principles and guidelines, the following features or elements of design shall be considered in reviewing applications for certificates of appropriateness:

- Lot coverage, defined as percentage of the lot area covered by primary structures
- Setback, defined as the distance from the lot lines to the building
- Building height
- Spacing of buildings, defined as the distance between adjacent buildings
- Proportion, shape, positioning, location, pattern, sizes, and style of all elements of fenestration and entry doors
- Surface materials and textures
- Roof shapes, forms and materials
- Use of regional or local architectural traditions
- General form and proportion of buildings and structures, and the relationship of additions to the main structure
- Expression of architectural detailing
- Orientation of the building to the street
- Scale, determined by the size of the units of construction and architectural details in relation to the human scale and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale
- Proportion of width to height of the total building façade
- Archaeological sites and resources associated with standing structures
- Effect of trees and other landscape elements
- Major landscaping which would impact known archaeological sites
- Style, material, size and location of all outdoor advertising signs
- Appurtenant features and fixtures, such as lighting



--Structural condition and soundness

--Walls – physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, or combinations of these

--Color

--Ground cover or paving

--Significant landscape, archaeological, and natural features

The Secretary of the Interior’s “Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for certificates of appropriateness.

#### Certain Changes Not Prohibited

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, materials, or outer appearance thereof; the ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs; the construction, reconstruction, alteration, restoration or demolition of any such feature which the Building Inspector shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration, of any existing above-ground utility structure without approval by the Commission.

#### Enforcement and Remedies

Compliance with the terms of the certificate of appropriateness shall be enforced by the Zoning Administrator. Failure to comply with the certificate shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.

In case any building, structure, site, area or object designated as a landmark or within a historic district is about to be demolished, whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed except in compliance with this ordinance, the Town Council, the Commission, or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

Delay in Demolition of Landmarks and Buildings Within Historic Districts

(a) An application for a certificate of appropriateness authorizing the demolition, removal, or destruction of a designated landmark or a building, structure, or site within a historic district may not be denied except as provided in subsection (c) below. However, the effective date of such a certificate may be delayed for up to 365 days from the date of approval. The period of delay shall be reduced by the Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period the Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure, or site. If the Commission finds that a building, structure, or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

If the Commission has voted to recommend designation of a landmark or the designation of an area as a historic district, and final designation has not been made by the Town Council, the demolition or destruction of any building, structure, or site in the proposed district or on the property of the designated landmark may be delayed by the Commission for up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.

(b) The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

(c) An application for a certificate of appropriateness authorizing the demolition of a building, structure or site determined by the State Historic Preservation Officer as having statewide significance as determined in the criteria of the National Register may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.