

Chapter 22.

Land Use*

Article 21. Historic Preservation

Sec. 22-22-1. Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certificate of Appropriateness (COA) means a document evidencing approval by the historic preservation commission (HPC) of an application to make a material change in the appearance of a designated historic property or of a property located within a designated historic district.

Exterior Architectural Features means the architectural style, general design, and general arrangement of the exterior of a building or other structure, including, but not limited to, the kind of texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, features, details or elements relative to the foregoing.

Exterior Environmental Features means all those aspects of the landscape or the development of the site which affect the historical character of the property.

Historical District means a geographically definable area which contains structures, sites, works of art or a combination thereof which exhibit a special historical, architectural, or environmental character as designated by the mayor and council of the city.

Material Change in Appearance means a change that will affect either the exterior architectural or environmental features of an historical property or any structure, site, or work of art within a historic district, and may include any one or more of the following:

- 1) A reconstruction or alteration of the size, shape, or facade of a historic property including any of its architectural elements or detail,
- 2) Demolition of a historic structure,
- 3) Commencement of excavation for construction purposes.
- 4) A change in the location of advertising visible from the public right-of-way.
- 5) The erection, alteration restoration or removal of any building or other structure within an historic property or district, including walls, fences, steps and pavements or other appurtenant features. (Code 1968, §12 ¼-21)

Sec. 22-21-2. Scope and Purpose.

In support and furtherance of its findings and determination that the historical, cultural, and aesthetic heritage of the city is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity and general welfare of the people; and in order to stimulate revitalization of the business districts and historic neighborhoods and to protect and enhance local historical and aesthetic attractions to tourists and thereby promote and stimulate business; and in order to enhance the opportunities for federal tax relief of property owners under relevant provisions of the Economic Recovery Tax Act of 1981 allowing tax investment credits for rehabilitation of certified historic structures (26 USC 191): The mayor and council of the city hereby declare it to be the purpose and intent of this article to establish a uniform procedure for use in providing for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, and works of art having a special historical, cultural, or aesthetic interest or value, in accordance with the provisions of the article.
(Code 1968, §12 ¼-22)

Sec. 22-21-3. Maintenance of Historic Property.

- 1) *Ordinary Repair.* Ordinary maintenance or repair of any exterior architectural feature in or on an historic property, that does not involve a material change in design, material, or outer appearance thereof, is excluded from review.
- 2) *Conformity to Existing Building Codes.* Nothing in this chapter shall be construed as to exempt property owner from complying with existing city building codes, nor to present any property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations.

(Code 1968, §12 ¼-27)

Sec. 22-21-4. Creation, Membership; Powers; Authority.

- 1) **Creation.** The title of the historic preservation commission (HPC) shall be the “Elberton historic preservation commission”. Commission members shall be appointed by the mayor with consent of city council, and will have only advisory authority in recommending landmark and historic district designations.
- 2) **Position with City Government.** The city historic preservation commission shall be considered a part of the planning functions of the city.
- 3) **Members; Number; Appointment; Terms; Compensation.** The historic preservation commission shall consist of five members appointed by the Mayor with the consent of the city council who shall be residents of the city, who have demonstrated special interest, experience or education in history, architecture, or the preservation of historic resources. Members shall serve three year terms. Members may not serve more than two consecutive terms. In order to achieve staggered terms, initial appointments shall be: two members for one year; two members for two years; and one member for three years. Members do not receive a salary although they may be reimbursed for expenses.

- 4) **Statement of Powers.** The historic preservation commission shall be authorized to:
- a) Prepare an inventory of all property within its respective historic jurisdiction having the potential for designation as historic property;
 - b) Recommend to the city council specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts;
 - c) Review applications for certificates of appropriateness and grant or deny same in accordance with the provisions of this article;
 - d) Recommend to the city council that the designation of any place, district, site, building, structure or work of art as an historic property or as an historic district be revoked or removed;
 - e) Restore or preserve any historic properties acquired by the city;
 - f) Promote the acquisition by the city of facade easements and conservation easements in accordance with the provisions of the "Facade and Conservation Easements of 1976";
 - g) Conduct an educational program on historic properties located within its historic preservation jurisdiction;
 - h) Make sure investigations and studies of matters relating to historic preservation as the mayor and council or the commission itself may, from time to time, deem necessary or appropriate for the purposes of preserving historic resources;
 - i) Seek out state and federal funds for historic preservation, and make recommendations to the city concerning the most appropriate uses of any funds acquired;
 - j) Submit to the historic preservation section of the department of natural resources a list of historic properties or historic districts designated;
 - k) Perform historic preservation activities as the official agency of city historic preservation program;
 - l) Employ persons, if necessary, to carry out the responsibilities of the commission;
 - m) Receive donations, grants, funds, or gifts of historic property, and to acquire and sell historic properties; however, the commission shall not obligate the city without prior consent; and
 - n) Review and make comments to the historic preservation office concerning the nomination of properties within its jurisdiction to the national register of historic places.
- 5) **Power to Adopt Rules of Procedure.** The historic preservation commission shall adopt rules for the transaction of its business and consideration of applications; shall provide for the time and place of regular meetings, and for the calling of special meetings. The historic preservation commission shall have the flexibility to adopt rules of procedure without amendment to this article. A quorum shall consist of a majority of the members. Roberts' rules of order, newly revised, at the time of any meeting, shall determine the order of business at all meetings.
- 6) **Authority to Receive Funding from Various Sources.** The historic preservation commission shall have the authority to accept donations and shall ensure that these funds do not displace appropriated governmental funds.
- 7) **Records of Meetings.** A public record shall be kept of the historic preservation commission's resolutions, proceedings, and actions.

Sec. 22-21-5. Designation of Historic Districts and Landmarks.

1) Preliminary research by the HPC shall be as follows:

- a) **Mandate to conduct a survey of local historic resources.** The HPC shall have the authority to compile and collect information and conduct surveys of historic resources within the city.
- b) **Power to recommend districts and buildings to city council for designation.** The HPC shall present to the city council nominations for historic districts and local landmarks.
- c) **Preparation of a report on proposed designations.** The HPC shall prepare formal reports when nominating historic districts or local landmarks. These reports shall be used to educate the community and to provide a permanent record of the designation. The report will follow guideline for nominating structures to the national register of historic places (National Preservation Act of 1966 and any amendments thereto or statutory modifications), and shall consist of two parts:
 - A physical description; and
 - A description of historic significance.

This report will be submitted to the historic preservation section of the department of natural resources.

2) Designation of an historic district shall be performed with consideration of the following:

- a) **Criteria for Selection.** An historic district is a geographically definable area, which contains structures, sites, works of art, or a combination thereof which:
 - Have special character or special historic/aesthetic value or interest.
Represent one or more periods of styles of architecture typical of one or more eras in the history of the municipality, county, state or region;
 - Cause such area, by reason of such factors, to constitute a visibly perceptible section of the municipality or county.
- b) **Boundaries.** Boundaries of an historic district shall be specified on tax maps; these boundaries will be included in the separate ordinances designating local districts. Boundaries specified in legal notices shall coincide with the boundaries finally designated. Districts shall be shown on the official zoning map or, in the absence of zoning, on an official map designated as a public record and shall follow recognizable natural or artificial dividing lines such as streams, roads, railroads, etc.
- c) **Evaluation of Properties within Historic Districts.** Individual properties within historic districts shall be classified as:
 - Historic, more than 50 years old;
 - Non-historic, less than 50 years old, yet possessing architectural character;
 - Intrusions, structures less than 50 years old which do not contribute to the historical character of the district.
- d) **Affirmation of existing zoning.** This historic preservation article is not a use ordinance, and local zoning laws, where they exist, remain in effect until modified.

3) Designation of a landmark shall be performed with consideration of the following:

- a) **Criteria for selection of landmarks.** An historic landmark is a structure, site, work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of value to the city or local region for one or more of the following reasons:
- It is an outstanding example of a structure representative of its era;
 - It is one of the few remaining examples of past architectural style;
 - It is a place of structure associated with an event or person of historic or cultural significance to the city, state or the region.
- b) **Boundary Description.** Boundaries shall be clearly defined for individual properties on tax maps and located on the official zoning map or, in the absence of zoning, on an official map designated as a public record.
- 4) Matters effecting designation of both historic districts and landmarks area as follows:
- a) **Application for Designation of Historic District or Landmark.** An historical society, neighborhood association, or group of property owners may apply for designation as an historic district. A historical society or property owner may apply for designation as a landmark structure.
- b) **Required Public Hearings.** The HPC and the mayor and council shall hold a public hearing on the proposed ordinance for designation. Notice of the hearing shall be published in at least three consecutive issues in the legal organ of the city, and written notice of the hearing shall be mailed by the HPC to all owners and occupants of such properties. All such notices shall be published or mailed not less than ten nor more than 20 days prior to date set for the public hearings. A letter sent via the United States mail to the last known owner of the property shall constitute legal notification under this article.
- c) **Notification of Property Owners of Proposed Designation.** Any ordinance designating any property or district as historic shall describe each property to be designated, set forth the names of the owners of the designated property, and require that a certificate of appropriateness be obtained from the HPC prior to any material change in appearance of the designated property.
- d) **Requirements Regarding District Boundaries.** Any ordinance designating any property or district as historic shall require that the designated property or district be shown on the official zoning map of the city and kept as public record to provide notice of such designation.
- e) **Notification of Historic Preservation Section.** Prior to designating any property or district as historic, the HPC must submit a report on the historic, cultural, architectural, or aesthetic significance of each place, district, site, building/structure, or work of art, to the historic preservation section of the department of natural resources; 30 days will be allowed to prepare written comments.
- f) **Ordinance for Designation Announcement.** A decision to accept or deny the ordinance for designation shall be made within 15 days following the public hearing and shall be in the form of a resolution to the city council.
- g) **Notification of Adoption of Ordinance for designation.** Within 30 days immediately following the adoption of the ordinance for designation, the owners and occupants of each designated historic property, and the owners and occupants of each structure, site, or work of art located within a designated historic district shall be given written

notification of such designation by the city council; which notice shall apprise the owners and occupants of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated.

- h) **Notification of Other Agencies Regarding designation.** The HPC shall notify all necessary agencies within the city of the ordinance for designation, including the local historical organization.
- i) **Moratorium on Application for Alteration or demolition while ordinance for designation is pending.** If an ordinance for designation is being considered the HPC shall have the power to freeze the status of the involved property.
- j) *Authority to Amend or Rescind Designation.* The HPC has the authority to amend and/or rescind the designation if necessary.

(Code 1968, §12 ¼-24)

Sec. 22-21-6. Application to Historic Preservation Commission (HPC) for Certificate of Appropriateness (COA); Issuance.

- 1) **Approval of Alterations or new construction in Historic Districts or involving landmarks.** After the designation by ordinance of an historic property or of a historic district, no material change in the appearance of such historic property, or of a structure, site, or work of art within such historic district, shall be made or be permitted to be made by the owner or occupant thereof, unless or until application for a certificate of appropriateness has been submitted to and approved by the HPC.
- 2) **Approval of New Construction within Designated Districts.** The HPC shall issue certificates of appropriateness to new structures constructed within designated historic districts. These structures shall conform in design, scale, building materials, setback, and landscaping to the character of the district specified in the HPC's design guidelines.
- 3) **Guidelines and Criteria.** When considering applications for certificates of appropriateness to existing buildings, the secretary of the interior's "standards of rehabilitation" shall be used as a guideline along with any other criteria adopted by the HPC.
- 4) **Submission of Plans.** An application for certificates of appropriateness shall be accompanied by such drawings, photographs, or plans, as may be required by the HPC.
- 5) **Acceptable Reaction to Application.**
 - a) The HPC shall approve the application and issue a certificate of appropriateness if it finds that the proposed material changes in the appearance would not have a substantial adverse effect on the aesthetic, historic, or architectural significance and value of the historic property or the historic district. In making this determination, the HPC shall consider, in addition to any other pertinent factors, the historical and architectural value and significance, architectural style, general design arrangement, texture, and material of the architectural features involved, and the relationship thereof to the exterior architectural style, and pertinent features of the other structures in the immediate neighborhood.

- b) The HPC shall deny a certificate of appropriateness if it finds that the proposed material changes in appearance would have substantial adverse effects on the aesthetic, historic, or architectural significance and value of the historic property or the historic district.
- 6) Public Hearings on Applications; Notices; right to be heard.** At least seven days prior to review of a certificate of appropriateness, the HPC shall take such action as may reasonably be required to inform the owners of any property likely to be affected by reason of the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the HPC deems it necessary, it may hold a public hearing concerning the application.
- 7) Interior Alterations.** In its review of applications for certificates of appropriateness, the Historic Preservation Commission shall not consider interior arrangement or use having no effect on exterior architectural features.
- 8) Technical Advice.** When dealing with difficult technical questions, the Historic Preservation Commission shall have the power to seek expert advice.
- 9) Deadline for Approval or Rejection of Application.** The deadline shall be as follows:
- a) The HPC shall approve or reject an application for a certificate of appropriateness within not more than 45 days after the filing thereof by the owner or occupant of any historic property, or of a structure, site, or work of art located within an historic district. Evidence of approval shall be by a certificate of appropriateness issued by the HPC.
 - b) Failure of the HPC to act within 45 days shall constitute approval, and no other evidence of approval shall be needed.
- 10) Necessary Actions to be taken by HPC upon rejection of application.** The following actions are required upon rejection of an application:
- a) If the commission rejects an application, it shall state its reasons for doing so and shall transmit a record of such actions and reasons, in writing, to the applicant. The HPC may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he so desires, may make modifications to the plans and may resubmit the application at any time after doing so.
 - b) In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of the application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such a case, no building permit shall be issued.
- 11) Undue Hardship.** Where, by reason of unusual circumstances, the strict application of any provision of this article would result in the exceptional practical difficulty or undue hardship upon any owner of a specific property, the HPC, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provisions, so as to relieve such difficulty or hardship, provide such

variances, modification, or interpretations shall remain in harmony with the general purpose and intent of the provisions, so that the architectural or historical integrity, or character of the property, shall be conserved and substantial justice done. In granting variances, the Historic Preservation Commission may impose such reasonable and additional stipulations and conditions as well, in its judgment, best fulfill the purpose of this article. An undue hardship shall be a situation not of the person's own making which is:

- a) A problem unique to a specific property; or
- b) In order to comply with this article, the person will conflict with another ordinance of the city.

12) Requirement of conformance. Work not in accordance with an issued certificate of appropriateness shall be halted before it is completed.

13) Certificate void if construction not commenced. A certificate of appropriateness shall become void unless construction is commenced within six months of the date of issuance. certificates of appropriateness shall be issued for a period of 18 months and are renewable.

14) Recording of applications. The HPC shall keep a public record of all applications for certificates of appropriateness, and of all the historic preservation commission's proceedings in connection with an application.

15) Acquisition of property. The HPC may, where such action is authorized by the Mayor and Council, and is reasonably necessary or appropriate for the preservation of a unique historic property, enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise, of the property or any interest therein.

16) Appeals. Any person adversely affected by a determination made by the Commission relative to the issuance of denial of a certificate of appropriateness may appeal such determination to the city council. The appeal must be applied for within 15 days after notification is sent. The city may approve, modify, or reject the determination made by the HPC, if the mayor and council finds that the HPC abused its discretion in reaching its decision. Appeals from decisions of the city made pursuant to the state historic preservation act may be taken to the county superior court, in the manner provided by law, for appeals from conviction for municipal or county ordinance violations.

(Code 1968, § 12 ¼-25)

Sec. 22-21-7. Demolition or Relocation Applications.

1) Authority to Comment on Demolition Permit Applications. The HPC shall have the authority to comment on any request for a permit to demolish or relocate a structure within a historic district or classified as an historic landmark.

2) Actions Acceptable in Reaction to Application. The Historic Preservation Commission shall have the authority to deny demolition or relocation permits within its jurisdiction.

- 3) **Consideration of Pre-demolition Plans.** A public hearing shall be scheduled for each application for demolition. This hearing shall be scheduled prior to the delay period specified.
- 4) **Consideration of Post-demolition Plans.** The HPC shall not grant demolition permission without reviewing at the same time the plans for the building that would replace the structure.
- 5) **Demolition or Relocation Criteria.** The following shall serve as criteria for demolition or relocation approval:
- a) Whenever a property owner shows that a building classified as historic is incapable of earning an economic return on its value, as appraised by a qualified real estate appraiser, and the HPC fails to approve the issuance of a certificate of appropriateness, such building may be demolished; provided, however, that before a demolition permit is issued, notice of the proposed demolition shall be given as follows:
- For buildings rated historic: six months.
 - For buildings rated non-historic: two months.
 - For building rated intrusive: no delay.
- b) Notice shall be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice shall be published in a newspaper of general local circulation at least three times prior to the date of the permit, and the first notice of which shall be published no more than 15 days after the application for a permit to demolish is filed. The purpose of this section is to further the purposes of this article by preserving historic buildings which are important to the education, culture, traditions, and the economic values of the city and to give the city's interested persons, historical societies, or organizations the opportunity to acquire or to arrange for the preservation of such buildings. The Historic Preservation Commission may at any time during such stay approve a certificate of appropriateness, in which event a permit shall be issued without further delay.
(Code 1968, §12 ¼-26)