

Sec. 10-2052. HISTORIC OVERLAY DISTRICT.

(a) Approval.

(1) ***Site plans and plot plans.***

If the use requires a site plan, as set forth in §10-2132.2, approval of a site plan is required by either the administrative staff, the Planning Commission, or the City Council ; see §10-2132.2(b) and (c). If the use requires a plot plan, as set forth in §10-2132.1, administrative approval is required.

(Ord. No. 1997-137-TC-153, §2, TC-18-96, 1-14-97)

(2) Certificate of appropriateness.

a. Required.

In addition to all other approval processes, within the Historic Overlay District, and for any Historic Landmark, no portion of the exterior features of any building or other structure (including walls, fences, light fixtures, steps, pavement, path, or any other appurtenant features), trees, nor above ground utility structure nor any type of outdoor advertising sign, or portion of the designated interior features of a Historic Landmark, is to be erected, altered, restored, demolished, or moved unless and until after an application for a certificate of appropriateness as to the exterior features, or portion of the designated interior features of a Historic Landmark, has been submitted to and approved by the Historic Districts Commission. A certificate of appropriateness shall be issued prior to any application for a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures or appurtenant features being made, and shall be issued or denied, subject to such reasonable conditions as the Historic Districts Commission may impose thereon, according to such procedures as may be set forth elsewhere in this section or adopted by the Historic Districts Commission. A certificate of appropriateness shall be required for all activities specified in this section whether a building permit or other permit is otherwise required or not; except no certificate of appropriateness shall be required for:

1. The ordinary maintenance or repair of any features which do not involve a change in design, material, color, or outer appearance thereof.
2. The construction, reconstruction, alteration, restoration, moving, or demolition of any feature which the Director of Inspections or his designee shall certify is required by the public safety because of an unsafe or dangerous condition.
3. The ordinary maintenance or repair of streets, sidewalks, pavement markings, above-ground utility service lines, street signs, traffic signs and/or replacement of streetlight fixtures in the event of equipment failure, accidental damage or natural occurrences such as electrical storms, tornadoes, ice storms and the like.

All of the provisions of §10-2052 et seq. are hereby made applicable to construction, alteration, restoration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, instrumentalities, and public utilities. Individual certificates of appropriateness for each change may be requested or if the activity is of the same character and involves a number of objects, as in the case of utility pole replacement, a programmatic certificate of appropriateness can be requested.

State law reference:G.S. 160A-400.9(f)

b. Application.

All applications for a certificate of appropriateness are to be filed in the office of either the Planning Department or of the Historic Districts Commission. The application shall be filed no later than ten (10) working days - excluding the meeting date - prior to the next regularly scheduled meeting of the Historic Districts Commission on forms provided by the City, and it must be accompanied by sketches, drawings, photographs, specifications, descriptions, and other information of sufficient detail to clearly show the proposed exterior alterations, alterations to designated interior features of Historic Landmarks , 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 is unaccompanied by the aforementioned information will be accepted.

c. Action on application for certificate of appropriateness.

1. Deadline.

Applications for certificates of appropriateness shall be acted upon within ninety (90) days after the complete application is filed, otherwise the application shall be deemed to be approved and a certificate of appropriateness shall be issued; provided however, that the Commission may take the matter under advisement for a total period of up to one hundred eighty (180) days to receive additional evidence or memoranda of authority requested by the Commission for its consideration. Nothing herein shall prohibit an extension of time where mutual consent is given. The City staff may advise the applicant and make recommendations in regard to appropriateness.

2. Minor works.

Upon receipt of a completed application, the Planning Director or his designee may issue a certificate of appropriateness for minor works. Minor works are defined as those changes that do not involve substantial alterations, additions, or removals that could impair the integrity of the Landmark, property and/or the Overlay District as a whole. Such minor works shall be limited to those listed in the "Bylaws and Rules of Procedure" of the Historic Districts Commission. Applications for minor works shall be reviewed by the Planning Director or his designee according to the detailed development standards of §10-2052(e)(4). All certificates of appropriateness for minor works issued by an administrative official shall be forwarded to the Historic Districts Commission, for its information, at its next regularly scheduled meeting. Failure to approve the requested minor work by the City staff shall in no way interfere with the applicant's right to be heard by the Historic Districts Commission; in that, no application for a certificate of appropriateness may be denied without the formal action of the Historic Districts Commission.

3. Notice.

Whenever a hearing on the application is to be heard by the Commission, the Planning Department shall make a reasonable attempt to identify and notify by mail the owners of property within one hundred (100) feet on all sides of the property which is the subject of the pending application.

The mailed notices are for the convenience of the property owners and occupants and any defect or their omission therein shall not impair the validity of issuing a certificate of appropriateness, or any action following therefrom. The Planning Department shall transmit the application for a certificate of appropriateness, together with the supporting material, to the review body for its consideration.

4. Hearing.

Prior to the issuance or denial of a certificate of appropriateness by the Commission, 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 Historic Districts Commission shall be open to the public in accordance with the North Carolina open meetings law, General Statutes Chapter 143, Article 33B. Interior arrangement shall not be considered by the review body and no certificate of appropriateness is required for interior repairs or renovations, except for designated interior features of Historic Landmarks. The review body shall not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features in the Historic Overlay District or for Historic Landmarks, which would be incongruous with the special character of the District and/or would be incongruous with the special character of the Landmark. The Commission shall render its decision in written form, including its reasons for issuing or denying the certificate and a summary of any citation to the evidence, testimony, studies, or other authority upon which it based its decision. When with the consent of all interested parties, the Historic Districts Commission may hold a summary proceedings of a Certificate of Appropriateness. Such proceedings shall be a public meeting, and the Commission's decision shall be rendered in written form.

In all proceedings or public hearings before the Historic Districts Commission with regard to an application for a certificate of appropriateness, the burden of producing substantial evidence or testimony is upon the applicant, and if the applicant fails to do so, the Commission shall deny the certificate.

Notwithstanding any other provisions of this Code, the Historic Districts Commission may require additional evidence or memoranda of authority to be submitted and may take the matter under advisement until such evidence or memoranda have been submitted and considered up to the one hundred eighty (180) day limit established in subsection c.1. above. As part of its deliberation, the Commission may view the premises and seek the advice of the North Carolina Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

The Commission's action on the application shall be approval, approval with conditions, deferral, or denial.

5. Demolition of buildings, structures, and sites.

i. General.

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure, or site within the

district may not be denied except as provided in paragraph iii below. However, the authorization date of such a certificate may be delayed for a period of up to three-hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period of delay the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure, or site. If the Commission finds that the building, structure, or site has no particular significance or value toward maintaining the character of the Overlay District, it shall waive all or part of such period and authorize earlier demolition or removal.

(Ord. No. 889-TC-381, TC-18-91, 12-8-91)

ii. Pending Historic Landmark and Within a Pending Historic Overlay District.

If the Commission has voted to recommend designation of a property as a Historic Landmark, or an area as a Historic Overlay District, and final designation has not been made by the City Council, the demolition or destruction of any building, site, or structure proposed as a Landmark or located in the proposed District may be delayed by the Commission for a period of up to one hundred eighty (180) days or until the City Council takes final action on the designation, whichever occurs first. Should the Council approve the designation prior to the expiration of the one hundred eighty (180) day delay period, an application for a certificate of appropriateness for demolition must then be filed; however, the maximum period of authorization date delay for such demolition certificate shall be reduced by the Commission equal to the period of delay while the designation was pending.

Cross reference: No demolition permit shall be issued until expiration of period of delay, §10-6035.

iii. Statewide significance.

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure, or site determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places 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.

6. Compliance with other law.

Issuance of a certificate of appropriateness shall not relieve the applicant, contractor, tenant or property owner from obtaining any other permit required by this Code or any law.

Annotation: A-S-P Associates v. City of Raleigh, 298 N.C. 207, 230, 258 S.E. 2d 244 (1979). The police power encompasses the right to control the exterior appearance of private property when the object of such control is the preservation of the state's legally or historically significant structures.

d. Appeals.

In any action granting or denying any certificate of appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment. To perfect such an appeal, written notice of intent to appeal must be sent to the Historic Districts Commission, postmarked within twenty (20) days following the decision, unless oral notice of appeal is made to the Commission during the meeting at which the decision is rendered. A completed "Application for Review of the Historic Districts Commission's Decision Before the Raleigh Board of Adjustment" must then be filed with the Board of Adjustment within sixty (60) days following the decision of the Commission. Appeals shall be in the nature of certiorari.

The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission or any successor agency. Notice to the Historic Districts Commission shall be served on the same day and in the same manner as for the North Carolina Historical Commission unless oral notice of appeal is given to the Historic Districts Commission during the meeting at which the decision is rendered. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the Historic Districts Commission.

State law reference: G.S. 160A-400.9(f)

(Ord. No. 1997-137-TC-153, §2, TC-18-96, 6-17-97)

e. Jurisdiction.

i. General.

The Historic Districts Commission always has jurisdiction for certificates of appropriateness for the exterior of all properties (including Historic Landmarks) within the Historic Overlay District. The Historic Districts Commission will also have jurisdiction for Historic Landmarks outside the Historic Overlay District and within Raleigh's zoning jurisdiction when there is no interlocal agreement with Wake County delegating such administration to the Wake County Historic Preservation Commission.

ii. Interior.

The Wake County Historic Preservation Commission will have jurisdiction over all designated interior spaces, unless there is no interlocal agreement with Wake County delegating such administration to the Wake County Historic Preservation Commission.

f. Expiration of certificate of appropriateness.

A certificate of appropriateness shall expire six (6) months after the date of issuance if the work authorized by the certificate has not been commenced. If after commencement the work is discontinued for a period of twelve (12) months , the permit therefor shall immediately expire. A certificate of appropriateness authorizing demolition shall expire if the work has not been commenced within six (6) months after the authorization date set by the Commission. If after commencement the demolition work is discontinued for a period of twelve (12) months , the approval therefor shall immediately expire.

No work authorized by any certificate that has expired shall thereafter be performed until a new certificate has been secured.

(Ord. No. 989-TC-291, §3, TC-12-87, 5-19-87)

(b) Permitted Uses.

Subject to the provisions of §10-2052 and other overlay districts, all general uses, conditional uses, and special uses - including bed and breakfast inn - allowed in the underlying zoning

district by the Schedule of Permitted Uses in Zoning Districts §10-2071 are allowed in the Historic Overlay District.

Annotation: A-S-P Associates v. City of Raleigh, 298 N.C. 207, 230, 258 S.E. 2d 244, 458 (1979). The requirement of G.S. 160A-382 that zoning regulations shall be uniform for each class of land or building throughout each district does not prohibit the creation of an Historic Overlay District which imposes additional regulations on some property within an underlying use district and not on all of the property within it.

(c) Prohibited Uses.

Except for improvements made pursuant to Part 10 chapter 3 of this Code, any use not explicitly allowed in the Schedule of Permitted Land Uses in Zoning Districts, §10-2071, is prohibited in the Historic Overlay District and for Historic Landmarks . If a use is prohibited in either an overlay district or the underlying district, that use is prohibited even if one (1) of these districts allows the use. The enumeration of expressly prohibited uses shall not be deemed exclusive or all-inclusive. Prohibited uses include:

- All uses prohibited in the underlying district.
- The erection, alteration, restoration or moving of the exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), trees, or above ground utility structure, or any type of outdoor advertising sign within a Historic Overlay District, or any Historic Landmark , or portion of the designated interior features of a Historic Landmark , without an approved certificate of appropriateness; provided, the activities listed in §10-2052(a)(2)a.1.--3., above, may be undertaken without a certificate of appropriateness.
- The changing of the exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), trees, or above ground utility structure, or any type of outdoor advertising sign within a Historic Overlay District, or any Historic Landmark , or portion of the designated interior features of a Historic Landmark , except in accordance with the terms, plans, conditions and provisions of an approved certificate of appropriateness.
- The demolition of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, important landscape and natural features, or any other appurtenant features), trees, or above ground utility structure, or any type of outdoor advertising sign that has been recommended for designation by the Historic Districts Commission as a Historic Landmark or is located within an area recommended as a Historic Overlay District, for a period up to one hundred eighty (180) days (unless the Commission votes to shorten it) or until the City Council takes final action, whichever occurs first.
- The demolition by neglect of the exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), or any type of outdoor advertising sign within a Historic Overlay District, or any Historic Landmark , or portion of the designated interior features of a Historic Landmark .

Cross reference: Chapter 6, Article J, Demolition by Neglect of Historic Landmarks and Within Historic Overlay Districts.

- The demolition of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, important landscape and natural features, or any other appurtenant features), trees, or above ground utility structure, or any type of outdoor advertising sign within a Historic Overlay District, or any Historic Landmark , without a certificate of appropriateness.

(d) Area, Density, Bulk, Yard, and Height Requirements.

(1) Area, density, and bulk.

- a. The required minimum net lot areas for any dwelling unit and equivalent

dwelling unit is that of the underlying zoning district.

b. The maximum residential density per net acre is that of the underlying zoning district.

All minimum net lot areas and residential densities shall be calculated in accordance with §10-2073(c). All residential density and minimum net lot area requirements are subject to the exceptions listed in §10-2073(d).

(2) Yard.

The minimum and maximum yard setbacks within the Historic Overlay District, and for Historic Landmarks, shall be congruous with setbacks of typical well-related nearby buildings in the Overlay District, and congruous with the character of the Historic Landmark, as set forth in the development standards, subsection (e)(4).

If the yard setbacks of the underlying district conflict with these yard setbacks, the yard setbacks of the development standard shall control.

See §10-2075 for other yard areas required by this Code, method of calculating, exceptions and reductions to yard areas, and illustrations.

(3) Height.

Buildings and structures shall be congruous with the height of well-related nearby buildings and structures in the Historic Overlay District. In general, this height is within ten (10) per cent of the height of these well-related buildings and structures. If the height regulations of the underlying district conflict with these height regulations, the height regulations of the Historic Overlay District shall control.

See §10-2076 for method of height calculation, exceptions, and illustrations.

(e) Supplementary Regulations.

All uses and activities of this Overlay District, and for Historic Landmarks, are also subject to Article H, other overlay zoning districts, conditional use zoning districts, and supplementary regulations of Article E. Supplementary regulations include:

TABLE INSET:

(1)	Off-street parking	see §10-2081
(2)	Landscaping	see §10-2082

(3) Signage.

Signs in the Historic Overlay District and for Historic Landmarks are regulated by areas of special control, §10-2083.1(b)(2); no such sign shall be erected, altered, restored or moved except in compliance with a certificate of appropriateness.

(4) Development standards.

See documents entitled: "Design Guidelines for Raleigh Historic Districts," "Guidelines for Exterior Rehabilitation for the Moore Square Historic District," and "**The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.**" Said documents are incorporated herein by reference as authorized by G.S. 160A-76 and are made a part of this Code and on file in the Planning Department. These documents contain architectural guidelines and design standards which shall be applied in consideration of applications for certificates of appropriateness, to insure insofar as possible that the exterior features of buildings, structures, and their appurtenant features located within an Historic Overlay District, and designated as a Historic Landmark, shall remain in harmony with other buildings, structures and appurtenant features in the District, and the character of the Historic

Landmark . The current edition of **"The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings"** shall be the sole standards and guidelines used in reviewing applications by the State of North Carolina for certificates of appropriateness.

The issuance of a certificate of appropriateness shall not be prohibited in situations where, owing to conditions especially affecting the structure, such as availability of materials and lot size but not affecting the Historic Overlay District or Historic Landmarks generally, compliance with the development standards would cause an unusual and unnecessary hardship on the property owner beyond what other property owners in the Historic Overlay District or of Historic Landmarks would meet.

Annotation: A-S-P Associates v. Raleigh, 298 N.C. 207, 222, 258 S.E. 2d 444, 454 (1979). Architectural guidelines and design standards contained in Raleigh ordinance for use by the Historic Districts Commission in its administration of the ordinance do not constitute an impermissible delegation of legislative power.

(5) Effect of conflict with other ordinances.

Whenever any ordinance adopted pursuant to Part 3C, Article 19, Chapter 160A of the General Statutes requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or designated Historic Overlay District than are established under any other statute, charter provision, or regulation, Part 3C shall govern. Whenever the provisions of any other statute, charter provision, ordinance, or regulation require a longer waiting period or impose other higher standards than are established under general statute such other statute, charter provision, ordinance, or regulation shall govern.

(Ord. No. 2001-26-TC-208, §2, TC-5-01, 6-19-01; Ord. No. 2003-373-TC-231, §4, TC-23-02, 2-4-03)

(f) Designation, amendment, and repeal of historic districts.

Historic Overlay Districts, as provided for in this section, may from time to time be designated, amended or repealed through the following procedure:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any proposed Historic Overlay District and a description of the boundaries of such Overlay District, changes in boundaries, or de-designation due to loss of significance, shall be prepared and/or reviewed by the Raleigh Historic Districts Commission, and its recommendation shall be forwarded to the City Council. The Council shall refer such report to the North Carolina Department of Cultural Resources.

(2) The Department of Cultural Resources, acting through an agent or employee designated by its Secretary, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure by the Department to submit its written analysis and recommendations to the City of Raleigh within thirty (30) calendar days after a written request for such analysis has been received by the Department shall relieve the City of any responsibility for awaiting such analysis, and the City may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

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

(4) The recommendation(s) shall thereupon be treated in the same manner as any request for a change in the City's zoning ordinance and shall be processed according to the procedures set forth in §10-2165.

(5) With respect to any changes in the boundaries of an adopted Historic Overlay District subsequent to its initial establishment, an investigative study and report describing such changes, and reasons therefor, shall be processed according to subsections (f)(1) through (f)(4) above.

State law reference: Chapter 160A, Article 19, Part 3C of North Carolina General Statutes.

(Ord. No. 431-TC-225, §1, TC-273, 11-21-84)

(Code 1959, §§24-57--24-75.8; Ord. No. 1 1978-945-TC-92, §1, 11-21-78; Ord. No. 1980-361-TC-117, 1-29, 21-28, TC-Q-80, 5-6-80; Ord. No. 1980-527-TC-133, 1 §8-20, 11-18-80; Ord. No. 1982-49-TC-174, §§2-6, TC-174, 12-21-82; Ord. No. 1983-245-TC-205, §53, 12-6-83; Ord. No. 1989-346-TC-337, §1, 4-18-89; Ord. No. 1989-387-TC-339, §6, 6-20-89; Ord. No. 1991-879A-TC-384, §1, TC-12A-91, 11-19-91; Ord. No. 1992-29-TC-395, §2, TC-12-92, 8-4-92; Ord. No. 2001-26-TC-208, §1, TC-5-01, 6-19-01)