

RULES OF PROCEDURE & BYLAWS

CITY OF ELIZABETH CITY HISTORIC PRESERVATION COMMISSION

1.0 PURPOSE AND TERMONOLOGY

The objectives and purposes of the Historic Preservation Commission of the City of Elizabeth City, Pasquotank County, are to promote, enhance, and preserve the character of the Downtown and West Main Street Historic Districts, and is authorized and empowered to undertake such actions reasonably necessary to discharge and conduct its duties and responsibilities as outlined in the Unified Development Ordinance and the North Carolina General Statutes.

The Rules of Procedure and Bylaws establish procedures for organizing the business of the Elizabeth City Historic Preservation Commission, hereafter termed “Commission,” and processing Applications for Certificates of Appropriateness, hereafter referred to as “COA Application,” for: a) any change in the external appearance of existing structures; b) design of new structures; and c) for demolition of existing structures within the Downtown and West Main Street Historic Districts, hereafter referred to as “Districts, as described in the Unified Development Ordinance, hereafter referred to as “Ordinance.” The term “Staff” shall refer to any one or all of the following: an employee of the City of Elizabeth City, Planning Director, Zoning Administrator, or agent officially representing the City of Elizabeth City. The term “Council” or “Governing Body” shall refer to the politically elected body of officials known as the City of Elizabeth City Council.

2.0 GENERAL RULES

The Commission shall be governed by the terms of the Administrative Mechanisms for the Historic Preservation Commission and the Historic District Ordinance as contained in Article III Section 3-7 of the Ordinance, and by the terms of NCGS 160A-400.1 – 160A-44.14, as they may be amended or revised. For procedures not covered by these Rules, and to the extent there is not conflict with North Carolina law or the Elizabeth City Code of Ordinances or the spirit of these rules, the Commission shall refer to *Roberts Rules of Order Newly Revised*, to answer unresolved procedural questions.

In matters of governing restrictions and contradiction, the Commission shall follow the standards established by Ordinance Article II Interpretations and Definitions §2-1.2 Greater Restrictions Govern, as may be amended or revised.

3.0 JURISDICTION

The Commission’s jurisdiction for requiring Certificates of Appropriateness as mandated by the Historic District Overlay Requirements (City of Elizabeth City Unified Development Ordinance, Article XII, Section 12-8) is delineated on the Official Zoning Map for the City of Elizabeth City.

4.0 MEMBERSHIP AND PARTICIPATION

The Commission shall be composed of seven members, whose terms of office are set by the City Council of the City of Elizabeth City, as per Ordinance §3-7.2.

- 4.1 Terms.** Terms of the general membership and any individual member of the Commission, including residency and length of service, shall be in accordance with the Ordinance.
- 4.2 Attendance.** Committed and prompt attendance at all meetings of the Commission, and conscientious performance of the duties required of members, shall be a prerequisite to continuing membership on the Commission. Should a member fail to attend three (3) consecutive regular meetings or more than one-half of the regular meetings within a calendar year or for any other good cause related to the performance of duties, the Chairman, with the concurrence of a majority of the entire Commission, shall recommend to the City Council that a vacancy be declared and that the vacant position be filled. The Secretary shall notify a member when he or she is approaching the maximum number of unexcused absences.
- 4.3 Familiarity.** Each member of the Commission shall be thoroughly familiar with all statutes, laws, ordinances, and rules of procedure relating to the Districts and the Commission, as well as the *Handbook for Historic Preservation Commissions in North Carolina* published by Preservation North Carolina and the State Historic Preservation Office, division of the NC Department of Cultural Resources Division of Archives and History.
- 4.4 Ethics.** In addition to the guidelines outlined in these Rules, members of the Commission shall be subject to any and all codes of ethics which may apply to the City Council of the City of Elizabeth City and are required by Ordinance. The following provisions are intended for use by Commission members in order to avoid conflicts of interest; these standards will aid Commission members to avoid situations or conduct which give rise to an appearance of impropriety, even when no actual impropriety may have occurred.
- 4.4.1 Applications Involving Members.** No Commission member shall take part in the hearing, consideration or determination of any case in which he or she is a part or has a financial interest or personal interest in the property or action concerned, or has or believes he or she has any other conflict of interest as defined by applicable law. No member of the staff or the Commission or of any agency serving the Commission shall prepare or present arguments or reports, or attempt to influence decisions of the Commission in any case in which the staff member has similar interest. A member or staff's mere residency within the Districts shall not debar him or her under this Rule.
- 4.4.2 Notification.** As soon as any Commission member or staff member of any agency serving the Commission becomes aware of any potential conflict of interest in any case scheduled to come before the Commission, he or she shall notify the Chairman or acting Chairman of the particulars. Where the Chairman finds that conflict clearly exists, he or she shall call for a vote of the remaining members present as per Rule 6.7.7 Excused Voting. Once a member has been excused, the Chairman shall require the disqualified member to leave the area during any discussion of the matter which creates the conflict, and cause the Secretary to enter the circumstances in the record and to make arrangements for such alternate services as are required. The Chairman may also elect to forward the question of potential conflict of interest to the Attorney of the City of Elizabeth City.

- 4.4.3 Impartiality Required.** No Commission member shall, in any manner, discuss any COA Application with any parties prior to the Commission's deliberations on such COA Application, except during committee meetings, as specified elsewhere in the Commission's Rules of Procedure or as authorized in advance by the Commission, provided, however, that members may seek and/or receive information pertaining to the COA Application from any other member of the Commission or its staff prior to the hearing.
- 4.4.4 Outside Communication.** Members of the Commission shall not express individual opinions on the proper judgment of any application with any persons prior to the determination of that application except in accordance with these rules.
- 4.4.5 Outside Employment.** Any Commission member shall notify the Commission regarding negotiations, employment or contracts with persons/applicants who have matters pending before the Commission. No member of the Commission shall accept employment or work of any sort which exists as a specific result of an action taken by the Commission unless it is otherwise ruled by a vote of the Commission that such employment or work does not constitute a conflict of interest.

5.0 OFFICERS, DUTIES AND ELECTIONS

Officers of the Commission shall be elected and serve in accordance with the Ordinance and the following:

- 5.1 Chairman.** Subject to these rules, the Chairman shall preside at all meetings and hearings of the Commission; he/she shall decide all points of order and procedure and shall appoint any committees found necessary to investigate any matter before the Commission, unless directed otherwise by a majority of the Commission in session at the time. The Chairman shall speak for and on behalf of the Historic Preservation Commission on all official matters of business.
- 5.2 Vice-Chairman.** The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman and at such times shall have the same powers and duties as the Chairman.
- 5.3 Secretary.** The Planning Director or his designee shall serve as Secretary to the Commission. The Secretary, subject to the direction of the Commission, shall keep all permanent records, prepare agendas of regular and special meetings with the Chairman; provide notice of meetings to Commission members; arrange proper and legal notice of hearings; conduct all correspondence of the Commission and generally supervise the clerical work of the Commission. The Secretary shall not be eligible to vote upon any matter.
- 5.4 Recorder.** A member of the Elizabeth City Planning & Community Development Department staff or person designated by the Planning Director shall serve as Recorder to the Commission and shall be responsible for preparing the written record of all meetings of the Commission. The Recorder may or may not be the same person as the Secretary. The Recorder shall not be eligible to vote upon any matter.

5.5 Elections. Election of officers shall be by majority vote of its membership (excluding vacant seats). Nomination shall be made from the floor at the regularly scheduled meeting in June of each year; election of officers shall be the first order of business. Members shall be notified by the Secretary, in writing, of the election of officers prior to that regular meeting.

5.5.1 Chairman. The Chairman shall serve for a term of one (1) year, and until his successor is elected. The Chairman shall be eligible for re-election, with no more than two (2) consecutive terms allowed.

5.5.2 Vice-Chairman. A Vice-Chairman shall be elected by the Commission from among its members in the same manner as the Chairman. The Vice-Chairman shall serve for a term of one (1) year and may succeed him or herself.

5.5.3 Election. A candidate receiving a majority vote of the entire membership of the Commission shall be declared elected and shall serve for one year or until his/her successor shall take office.

5.5.4 Vacancies. At such time as required by the resignation or other departure from the Commission of either the Chairman or Vice-Chairman, special elections shall be held at the next regular meeting for the purpose of filling the vacant position.

6.0 MEETINGS

6.1 Regular Meetings. Regular meetings of the Commission shall be held on the second Thursday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held at another appointed time to be determined by Staff in consultation with the Commission. The regular meetings shall be held at 4:30 PM in Council Chambers, located on the second floor of the Municipal Administration Building, 306 E Colonial Avenue, Elizabeth City, NC, provided that meetings may be held at some other convenient place, if directed by the Chairman in advance of the meeting. When time of meeting is changed, advance notice shall be given by the Secretary.

6.2 Special Meetings. Special meetings of the Commission may be called at any time by the Chairman. When requested to do so, it shall be the duty of the Chairperson or the Secretary to notify all members of the Commission by First Class Mail and/or Electronic Communication not less than ten (10) days in advance of such special meeting, provided, that this requirement may be waived by action of a majority of the members. Including the time and place of the special meeting, the notice of such a meeting shall specify the purpose of such meeting. Only those items of business specified in the notice may be transacted at a special meeting called in this manner.

A special meeting may also be called or scheduled by vote of the Commission in open session during another duly called meeting. The motion calling or scheduling the special meeting shall specify its time, place and purpose. At least forty-eight (48) hours before a special meeting, called in this matter, notice of the time, place and purpose of the meeting shall be provided to members of the Commission by First Class Mail and/or Electronic Communication. Similarly, such notice shall also be mailed or electronically delivered to

each Commission member not present at the meeting at which the special meeting was called or scheduled.

6.3 Recessed (or Adjourned) Meetings. The Commission may adjourn a properly called regular or special meeting if all applications cannot be disposed of on the day set. The continued meeting date, time and place shall be determined by procedural motion made and adopted in open session during the regular or special meeting. No further public notice shall be given of a recessed (or adjourned) meeting.

6.4 Cancellation of Meetings. Whenever there is no business for the Commission, the Secretary, upon notification to the Chairman, may dispense with a regular meeting by giving notice to all the members not less than twenty-four (24) hours prior to the time set for the meeting.

6.5 Quorum. A majority of the membership of the Commission (excluding vacant seats) or four (4) members shall constitute a quorum, and the number of votes necessary to transact business shall be a majority of those members present. A record of the roll call shall be kept as a part of the minutes.

6.6 Voting on a Decision.

6.6.1 Chairman. The Chairman may take part in all deliberations.

6.6.2 Vice-Chairman. The Vice-Chairman may take part in all deliberations. The Vice-Chairman may vote on all business.

6.6.3 Participation in Continued Hearing. No Commission member shall vote on any matter deciding an application or a request to reconsider unless he or she shall have attended the Commission's previous deliberations on such application, or shall otherwise have the approval of the Chairman to vote on such matter. The Chairman's approval shall be contingent on the assurance by the member that he or she has familiarized himself or herself with the application, supporting documents, and the minutes of any meeting at which the application was discussed. This provision shall also apply to newly appointed members.

6.6.4 Quorum and Voting. The vote of a majority of members present shall be sufficient to decide matters before the Commission, except amending these Rules and Bylaws, provided a quorum is present. Each member shall have one (1) vote, with the Chairman voting as a member. In the event of a tie vote when only a quorum is present, the Commission shall follow the rules contained in the current edition of *Robert's Rules of Order*.

6.6.5 Duty to Vote. Every member must vote unless excused by the remaining members according to the Ordinance and these Rules. In all other cases, a failure to vote by a member who is physically present in the meeting chambers, or who has withdrawn without being excused shall be recorded as an affirmative vote.

6.6.6 Roll Call. A roll call vote shall be taken upon the request of any member.

6.6.7 Excused Voting. A member may be excused from voting on a particular issue by majority vote of the remaining members present only under the following circumstances:

- a) If the member has a direct financial interest in the outcome of the matter at issue; or
- b) If the matter at issue involves the member's own official conduct; or
- c) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
- d) If a member has such close personal ties to the applicant that the member cannot reasonable be expected to exercise sound judgment in the public interest.

In cases where a potential conflict of interest exists, also consult §4.4 Ethics of these Rules. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

6.7 Conduct of Meetings. All meetings, except Closed Sessions authorized by North Carolina law, shall be open to the public. The requirements of the Open Meetings law shall apply to all meetings of the Commission and its subcommittees.

6.7.1 Order of Business. The order of business at regular meetings shall be:

- a) Call to Order
- b) Roll Call and Determination of a Quorum
- c) Adoption of the Agenda
- d) Approval of Minutes
- e) Comments from the Public
- f) Consideration of Applications
 - 1. New Cases
 - 2. Continued Cases
- g) Committee Reports (if any)
- h) Staff Report
- i) Old Business
- j) New Business
- k) Adjournment

6.7.2 Public Participation/Speaking. Any individual or group who wishes to address the Commission shall, at the beginning of the meeting, make their request known by providing their name and requisite information on the Public Participation Sign-In Sheet provided by the Recorder. All applicants shall be allowed to speak for three (3) minutes, and all others wishing to speak for or against a petition shall be allowed to speak for two (2) minutes. The Chairperson may allow additional time at his/her discretion.

- 6.7.3 Commissioner Participation/Speaking.** Commission members shall be allowed to speak for two (2) minutes. The Chair may allow additional time at his/her discretion.
- 6.7.4 Agenda.** The Secretary shall prepare the agenda for each meeting. A request by a Commission member to have an item of business placed on the agenda must be received at least seven (7) business days before the meeting. An agenda package shall be prepared that includes, for each item of business placed on the agenda, as much background information on the subject as is available and feasible to reproduce. Each commission member shall receive a copy of the agenda and the agenda package and it shall be available for public inspection, distribution, and copying after it is distributed to the Commission members.
- 6.7.5 Action by the Commission.** The Commission shall proceed by motion. Any member, with the exception of the Chairman, may make a motion. The Commission shall follow Rules 11 through 20 of the *City of Elizabeth City Council Rules of Procedure* originally adopted February 22, 2010, where applicable and with the exception of Rule 18 Procedural Motions Section b Motions 13 through 16, as they may be amended or revised, when taking action. Where there is a conflict or procedural reference, the Commission shall, first follow the regulations established in the Ordinance, and second follow these Rules. No Rule, either established by Council or the Commission shall supersede any review and/or hearing deadline established by the Ordinance. For clarity, the terms in the Council adopted Rules shall coincide as follows:
- a. "mayor" shall refer to the "chairman"
 - b. "council" shall refer to the "commission"
 - c. "city clerk" shall refer to the "secretary"

7.0 HEARINGS

In addition to those required by law, the Commission may at its discretion hold public hearings when it decides that such hearings will be in the public interest. Public Hearings shall be handled in accordance with the Ordinance and the following:

- 7.1 Notice.** Notice of such hearings shall be published in *The Daily Advance* or in a newspaper of general circulation at least ten (10) days before the time of public hearings. Additional non-official notification may be provided via public access channel, City website, property posting, and bulletin.
- 7.2 Procedure.** The case before the Commission shall be presented in summary by the Secretary or a designated member of the Commission and parties in interest shall have privileges of the floor.
- 7.3 Public Record.** A record shall be kept of those speaking before the Commission.

8.0 APPLICATION PROCEDURES AND CONSIDERATION

Applications shall be received, filed, processed and heard in accordance with the policy and procedures regulated by Ordinance, the *Elizabeth City Historic Preservation and Certificate of Appropriateness* brochures, and established by the Planning Director.

8.1 Filing of Application. A COA Application must be filed with the Zoning Administrator or Commission Secretary at least twenty-one (21) calendar days prior to the next meeting of the Commission, accompanied by sketches, drawings, specifications, descriptions, etc., of the proposed project, and a photograph(s) which represents the premises at the time of filing. COA Applications must be filed for both major and minor work items. Minor work items as listed in the *Elizabeth City Historic Preservation and Certificate of Appropriateness* brochure need only Planning Department approval, but do require a COA Application to be filed.

8.1.1 Eligibility to File. COA Applications will be accepted only when filed by property owners or those bearing Certified Power of Attorney to act in their behalf.

8.2 Notice to Neighboring Property Owners. Using addresses supplied by the applicant which have been verified by Staff, the Secretary shall notify by mail, not less than four (4) days prior to the meeting at which the matter is to be heard, the affected property owners within one hundred (100) feet on all sides of the subject property.

8.3 Review Subcommittee. In regard to COA Applications for consideration by the Commission, especially those involving new structures or extensive alterations and/or additions to existing structures, a subcommittee of the Commission may be appointed to meet with representatives of the person(s) or organizations(s) involved in a forthcoming application at some early state in the design process in order to advise them informally concerning the Commission's guidelines, the nature of the area where the proposed construction is to take place, and other relevant factors. Members of this subcommittee, collectively and individually, shall refrain from any indication of approval or disapproval, but shall not, for that reason, be barred from a reasonable discussion of the applicant's proposals. No advice, opinion given, or reported as having been given, by any member of the subcommittee at such an information meeting shall be in any way official or binding upon the Commission at any time. Notice of the need for such a conference should be provided to the Chairman or the Planning Department at the earliest appropriate time.

8.4 Viewing Premises. The Commission may, in its discretion, view the premises and obtain additional facts concerning any application before arriving at a decision. All decisions of the Commission shall be supported by such conditions and/or recommendations as it may determine to be reasonable under the circumstances. This paragraph shall be deemed as complementary to Section 8.3 of these Bylaws.

8.5 Witnesses. In considering applications, witnesses may be called and factual evidence may be submitted, but the Commission shall not be limited to consideration of such evidence as would be admissible in a court of law.

8.6 Modification of Application. Upon filing an application, the pending COA Application to be heard by the Commission may be modified by a written request from the applicant. Applications that have been advertised can only be amended after presentation to the

Commission on the day of the regular meeting. Amendment requests shall include a description of the proposed change and shall be accompanied by documents, elevations, plans or sketches, where necessary. If the Commission finds that the modification constitutes a substantial change which might affect surrounding property owners or is less stringent than the original application, it shall notify affected property owners following the customary procedures for adjacent property notification before taking action on the modification. The Commission shall thereupon treat the request in the same manner as any other application.

8.7 Time for Decision. The Commission must issue or deny a Certificate of Appropriateness within ninety (90) days after the filing of the Application, except when the time has been extended by written agreement between the applicant and the Commission, or when requested by the applicant during the Commission meeting at the time the COA Application is being considered.

8.8 Approved Applications. If the COA Application is approved, the Secretary to the Commission shall transmit a Certificate of Appropriateness to the applicant, clearly describing the nature of the work which has been approved. A copy shall be forwarded to the Inspections Department, which is responsible for its enforcement.

8.9 Access to Official Record. If a COA Application is denied, a copy of the approved/adopted minutes of the meeting and written reasons for denial shall be made available to the applicant.

9.0 RECONSIDERATION OF DENIED APPLICATIONS

Whenever the Commission disapproves a COA Application, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Commission until one year has elapsed unless the applicant clearly demonstrates that:

- a) Circumstances affecting the property that is the subject of the application have substantially changed where after receiving the evidence, the Commission shall proceed to deliberate whether or not there has been substantial change in facts, evidence or conditions relating to the COA Application which would warrant reconsideration; or
- b) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Planning Department within the time period for an appeal to the Board of Zoning Adjustment (see Section 10.0). However, such a request does not extend the 30-day period within which an appeal must be taken.

10.0 APPEALS

Appeals from decision of the Commission shall be made to the Board of Zoning Adjustment within thirty (30) days of the approval by the Commission of the minutes of the meeting containing the decision being appealed.

11.0 AMENDMENTS

These Rules of Procedure and Bylaws may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than five (5) members of the Commission, excluding vacant seats, and not including the Chairman, provided that such amendment shall have first been presented to the membership in writing at a regular or special meeting preceding the meeting at which the vote is taken.

The Commission was established by the City Council of the City of Elizabeth City, March 3, 1986. The Commission approved its initial Rules of Procedure and Bylaws March 24, 1986, with Richard Regan, Chairman, and Carmalite B. Hooper, Secretary.

The City Council approved the Commission's name change, from Historic Districts Commission to Historic Preservation Commission, October 3, 1994.

Revised Rules of Procedure and Bylaws were adopted by the Commission on this the 20th day of December, 1994, and are hereby amended this 13th day of June 2006, with Robert Schenck, Chairman, and D. Dawn Harward, Secretary.

Amendment of the Revised Rules of Procedure and Bylaws adopted the 13th day of January 2011, with James Calliotte, Chairman, and D. Dawn Harris, Secretary.