

SECTION 9.19 HISTORIC PRESERVATION COMMISSION

There is hereby established a Clinton Historic Preservation Commission (“Commission”) under the authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes.

The Commission shall consist of five members appointed by the City Council. All members shall reside within the planning and zoning jurisdiction of the City of Clinton. At least two members shall own property within the Clinton Downtown National Register Historic District or reside within one of the two Clinton Residential National Register Historic Districts. The Clinton City Council shall use its best efforts to appoint qualified members to the commission. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The Commission may appoint advisory bodies and committees as appropriate.

Members of the Commission shall serve four year staggered terms. Terms shall begin July 1, 2003. Initially, two (2) members shall be appointed for a two year term ending June 30, 2005 and three (3) members shall be appointed for a four (4) year term ending June 30, 2007. A member may be reappointed for a second consecutive term, but after two consecutive full terms, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of the termination of the second term. A member serving a partial term shall be eligible to serve only one additional term and then must wait until one calendar has elapsed before being eligible to serve. Each member shall serve until his or her successor is appointed and qualified.

The powers of the Historic Preservation Commission are as follows:

- A. Undertake an inventory of properties of historical, prehistorical, architectural and/or cultural significance;
- B. Recommend to the City 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”;
- C. Recommend to the City 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;
- D. Review and act upon proposal for alterations, demolition or new construction within historic districts, or for the alteration or demolition of designated landmarks;
- E. Conduct an educational program with respect to historic districts and landmarks within its jurisdiction;
- F. 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 review or of mutual interest. The City Council, or the Commission when authorized by the City 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;

G. 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;

H. Prepare and recommend the official adoption of a preservation element as part of the City of Clinton comprehensive plan;

I. Make recommendations to the City Council that the City acquire by any lawful means fee simple or any lesser interest, including options to purchase properties within established districts or 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;

J. With the permission of the City Council, restore, preserve and operate historic properties; and

K. With the permission of the City Council, 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 of 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.

9.19.1 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, prehistorical, 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 procedures have been carried out:

A. 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

B. 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 Clinton City Council within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the City Council of any responsibility for awaiting such analysis, and the City Council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The City 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 City's jurisdiction, the investigative studies and reports required by subdivision (A) 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 (B) of this section.

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

9.19.2 HISTORIC LANDMARKS.

Upon complying with the required landmark designation procedures set forth herein, the City 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, prehistorical, 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 prehistorical 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:

A. 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, prehistorical and cultural significance within the City of Clinton and its extraterritorial jurisdiction;

B. The Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources;

C. 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 City Council shall be relieved of any responsibility to consider such comments;

D. The Commission and the City 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;

E. Following the public hearing(s) the City Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary or reject the proposed ordinance;

F. 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 Sampson 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 Clinton City 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 Sampson County for such period as the designation remains in effect; and

G. 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 collector of Sampson County. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax collector in appraising it for tax purposes.

9.19.3 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 City of Clinton and all public utilities shall be required to obtain a certificate of appropriateness for construction, alteration, moving or demolition within the historic district or on designated landmarks.

9.19.4 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 not less than 21 calendar days 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 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 and 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.

9.19.5 ACTION ON APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.

The secretary of the Commission shall, by a mailing that is sent not less than seven days prior to the meeting at which the matter is to be heard, notification to the owners of property within 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 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. Once issued, a certificate of appropriateness is valid for one year. If after commencement of work authorized by the certificate the work is not completed within one year the certificate shall expire.

9.19.6 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 Sampson County.

The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision within 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.

9.19.7 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 that are consistent with the provisions of the review criteria set forth in this chapter and the Design Principles and Guidelines adopted by the Commission. If the Zoning Administrator determines that an applicant seeks a certificate of appropriateness for a minor work as defined herein, he may waive the requirement that the application be submitted 21 days prior to the next Commission meeting and the requirement that the application contain the names and addresses of nearby property owners.

Minor works are defined as those exterior changes that do not involve a change to the visual character of the property but do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or district as a whole. The Zoning Administrator shall make the determination as to whether the application involves a minor work as defined herein.

The Zoning Administrator may approve but may not deny an application for a certificate of appropriateness for minor works. If the Zoning Administrator decides not to issue a certificate of appropriateness for a minor work, the application shall be referred to the Commission for action.

A decision by the Zoning Administrator to issue a certificate of appropriateness for minor works may be appealed to the Board of Adjustment in the same manner as other decisions by the Zoning Administrator

9.19.8 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. Notwithstanding the foregoing, the Commission may apply the above-mentioned principles and guidelines in a manner that is consistent with their spirit, rather than literally, when it concludes that the benefit derived from strict adherence to the principles and guidelines is outweighed by the practical or financial hardships imposed on an applicant by such literal application on non-contributing structures.

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

- A. Lot coverage, defined as the percentage of the lot area covered by primary structures;
- B. Setback, defined as the distance from the lot lines to the building;
- C. Building height.
- D. Spacing of buildings, defined as the distance between adjacent buildings;
- E. Proportion, shape, positioning, location, pattern, sizes and style of all elements of fenestration and entry doors;
- F. Surface materials and textures;
- G. Roof shapes, forms and materials;
- H. Use of regional or local architectural traditions;
- I. General form and proportion of buildings and structures and the relationship of additions to the main structure;
- J. Expression of architectural traditions;
- K. Orientation of the building to the street;
- L. 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;
- M. Proportion of width to height of the total building façade;
- N. Archaeological sites and resources associated with standing structures;
- O. Effect of trees and other landscape elements;
- P. Major landscaping which would impact known archaeological sites;
- Q. Style, material, size and location of all outdoor advertising signs;
- R. Appurtenant features and fixtures, such as lighting;
- S. Structural condition and soundness;

T. Walls – physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses;

U. Ground cover or paving; and

V. 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 of and guidelines used in reviewing applications of the State of North Carolina for certificates of appropriateness.

9.19.9 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 for the public safety because of an unsafe or dangerous condition. None of the foregoing work shall require a certificate of appropriateness. Nothing herein shall be construed to prevent (a) the maintenance or (b) in the event of an emergency, the immediate restoration of the existing above-ground utility structure without approval by the Commission.

9.19.10 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 the designation of a landmark or the designation of an area as a historic district and final designation has not been made by the City 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 City Council takes final action on the designation, whichever occurs first.

B. The City 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 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.

9.19.11 DEMOLITION BY NEGLECT OF HISTORIC LANDMARKS AND STRUCTURES WITHIN LOCAL HISTORIC DISTRICTS; STANDARDS.

The exterior features of any building or structure, including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature, or any type of outdoor advertising sign, either designated as a historic landmark or located within a local historic district shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the City repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to any of the following defects:

- (1) Deterioration of exterior walls, foundations or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- (2) Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- (3) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- (4) Deterioration or crumbling of exterior plasters or mortars.
- (5) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- (6) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- (7) Rotting, holes, and other forms of decay.
- (8) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes deterioration, instability, loss of shape and form, or crumbling.
- (9) Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
- (10) Deterioration of fences, gates, and accessory structures.
- (11) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the historic landmark.
- (12) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

9.19.12 DEMOLITION BY NEGLECT PETITION AND ACTION.

The historic preservation commission or any other interested party may file a petition listing specific defects with the Zoning Administrator requesting that he act under the following procedures to require the correction of deterioration or making of repairs to any historic

landmark or significant structure located within the local historic district so that such structure shall be preserved and protected in accordance with the purposes of this chapter.

- (1) Whenever a petition is filed with the Zoning Administrator charging that a structure is undergoing demolition by neglect, the Zoning Administrator, or a designated agent, shall, if preliminary investigation discloses a basis for such charges, within seven days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as such person may be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Zoning Administrator at a place within the city in which the property is located therein fixed not less than 30 nor more than 45 days after the serving of such complaint; that the owner and/or parties in interest shall be given a right to answer and to give testimony at the place and time fixed in the complaint; that the historic preservation commission shall also be given notice of the hearing; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Zoning Administrator. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or parties in interest wishes to petition the historic preservation commission for a claim of undue economic hardship.
- (2) If after such notice and hearing, the Zoning Administrator determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, according the standards of the previous section of this ordinance, the Zoning Administrator shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the owner and/or other parties in interest wish to petition for a claim of undue economic hardship, the Zoning Administrator's order shall be stayed until after the historic preservation commission's determination. Findings made by the Zoning Administrator or historic preservation commission may be appealed to the board of adjustment.
- (3) If after receipt of the findings of fact and order to repair, the property owner does not comply within the time specified, upon direction by City Council the Zoning Administrator may institute, perform and complete the necessary repairs to prevent deterioration and/or demolition by neglect and the expenses incurred by the City for such work, labor, and materials shall be a lien against the property, and draw interest at the legal rate, the amount to be amortized over a period of ten years subject to a public sale if there is a default in payment.

9.19.13 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 Section 19 of the City of Clinton Zoning Ordinance.

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 City 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.