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**New Bern  
Historic Preservation Commission**

# **Policies and Rules of Procedure**

**Adopted  
19AUG2015**

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These rules of procedure were adopted by the New Bern Historic Preservation Commission (HPC) during its regular meeting on 19AUG2015. Any changes to these guidelines shall be approved by the HPC. The HPC may update these guidelines as needed.

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## Overview

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A *historic district* is a special type of zoning district. *Historic district guidelines* are part of the city's zoning ordinances. The *Historic Preservation Commission* (HPC) is a public commission of the City of New Bern that is responsible for developing and administering the historic guidelines. A preservation commission's primary responsibility is to prevent changes in a historic district that would not be congruous (not in keeping) with the special character of the district.

The HPC performs three major preservation tasks.

1. Review and approve all exterior changes to existing structures, infill development projects, and major landscaping projects, in the locally designated historic districts.
2. Review and approve demolition of contributing structures and subsequent site redevelopment.
3. Monitor demolition by neglect of any structure in the locally designated historic districts and take actions to prevent demolition by neglect.

This document provides the policies and rules of procedure for defining how the Historic Preservation Commission functions. Procedures for processing a Certificate of Appropriateness (COA) and rules of procedure for meetings need to be followed as closely as possible since many decisions are made through a quasi-judicial hearing. There will occasionally be exceptions in steps and actions that vary from these rules of procedure, but in general, these rules should be followed as consistently as possible.

The policies and rules of procedure in this document supersede any rules of procedure that may be referenced in New Bern's "Historic District Guidelines".

## List of Abbreviations

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BOA	New Bern Board of Aldermen
COA	Certificate of Appropriateness
CBI	Chief Building Inspector
CZO	Chief Zoning Officer
DBN	Demolition by Neglect
HPC	Historic Preservation Commission
HPCA	HPC Administrator
SHPO	State Historic Preservation Office

## Enabling Statutes and Ordinances

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The following North Carolina statutes and City of New Bern ordinances provide the basis for the policies and rules of procedure in this document.

- General Statutes of North Carolina, Chapter 160A-400.1 through 160A-400.15 – enabling legislation on historic preservation
- General Statutes of North Carolina, Chapter 160A-393 – quasi-judicial decisions, standing, competent evidence
- House Bill 303 – Permit required to demolish a contributing structure
- New Bern Code of Ordinance, 15-411 through 15-429 – New Bern Historic Districts

- New Bern “Historic District Guidelines” – considered part of the New Bern Land Use Ordinance

## Member Composition

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The HPC shall be composed of nine (9) members. The New Bern Board of Aldermen set terms and make appointments. Election of HPC chair and vice-chair shall take place at the first regular meeting in July, unless the commission votes to delay election of officers by majority vote.

Newly appointed commissioners shall complete a new commissioner training session with the HPC administrator and designated HPC commissioners assigned by the chair prior to participating in their first HPC meeting.

## Member Roles and Responsibilities

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The **Historic Preservation Commission (HPC)** is responsible for

- defining the rules of procedure for how it conducts business
- determining the form used for the certificate of appropriateness application
- maintaining and updating the list of minor works
- determining if an application for a certificate of appropriateness is complete enough to be heard
- determining if adequate data has been provided to determine the nature of the application
- reviewing and acting on a COA application through a quasi-judicial hearing
- negotiating with property owners who propose to demolish or relocate contributing properties in a historic district
- prevention of demolition by neglect
- following accepted best practices and rules of procedure and conduct for a quasi-judicial hearing.

The HPC may delegate tasks to appropriate staff in the Development Services Department, but the HPC is ultimately responsible for ensuring that procedures are followed and appropriate actions are taken for all business related to the HPC.

The **chairman** is responsible for

- conducting a meeting in a fair and open manner
- ensuring that the HPC is following its rules of procedure for a meeting and a hearing
- ensuring that voting is conducted properly on all matters requiring action by the HPC
- ensuring that the meeting is being properly recorded
- assigning subcommittees
- calling special meetings and cancelling meetings if there is nothing on the agenda.

The **vice-chairman** is responsible for

- serving as chairman in the absence of the elected chairman
- having a reference of state statutes and city ordinances related to preservation matters and HPC rules of procedure at all meetings
- assisting the chairman during meetings with procedural questions and issues
- supporting the chairman in any manner as requested by the chairman.

**Individual commission members** are responsible for

- being knowledgeable of all relevant state statutes and city ordinances related to preservation, historic guidelines, and HPC policies and rules of procedure

- reviewing each COA application and relevant historic guideline sections before a hearing
- being familiar with any design reviews that have taken place for the application
- disclosing any potential conflicts of interest or ex parte communication before a public hearing.

A **COA applicant** is responsible for

- providing accurate and truthful information in a COA application
- providing complete information that is necessary for evaluating a COA application
- appearing before the HPC at a quasi-judicial hearing, or designating a representative to represent them at a hearing
- implementing changes to a property as documented in an approved COA. Failure to do so means the property owner is in violation of zoning ordinances and may be subject to fines.

The **HPC Administrator (HPCA)** assigned to the HPC is responsible for

- receiving applications, working with applicants to ensure complete applications, working with applicants to prepare for design reviews and public hearings
- ensuring that a COA application has been properly reviewed for compliance with land use ordinance and building code
- providing a written recommendation to the HPC for each COA related to its completeness, compliance with land use ordinance, and its congruity with historic guidelines
- approving COA applications that are minor works of an appropriate nature
- formally issuing an approved COA to an applicant
- communicating and coordinating with other departments, city personnel, and the HPC on matters related to a COA and to prevention of demolition by neglect
- notification of adjacent property owners and notification of public hearings for COA applications
- developing an agenda for HPC work sessions and regular meetings
- notifying property owners of violations of historic guidelines and COAs
- maintaining public access to all COA applications and supporting information submitted by an applicant.
- monitoring implementation of an approved COA
- processing and monitoring demolition by neglect complaints in a timely fashion.

The **Chief Building Inspector** is responsible for

- investigating and reporting on possible historic guideline violations
- communicating with property owners concerning COAs and violations
- holding a hearing with property owners engaged in demolition by neglect
- monitoring and enforcing work orders to mitigate demolition by neglect.

The **Zoning Administrator** is responsible for

- providing a written opinion regarding compliance with New Bern land use ordinance prior to the commission's consideration of an application for a certificate of appropriateness.

## Meetings

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The HPC shall adopt by resolution a schedule of the upcoming year's meetings no later than December. The schedule of meetings shall include the dates, times, and locations of meetings. The schedule of regular meetings shall be kept on file with the City Clerk, and shall be posted on the City of New Bern website. If the HPC changes its schedule of regular meetings, the revised schedule shall be filed with the City Clerk, and posted on the City of New Bern website at least seven (7) calendar days before the day of the first meeting held pursuant to the revised schedule.

## Work Sessions

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Work sessions are used for COA design reviews, for training, and for informal discussions of matters that do not require formal action by the HPC. Business requiring a vote may not be conducted at a work session. Public attendance is encouraged, but public comment and participation is typically not allowed at a work session.

No quorum is required at a work session since no formal action by the HPC may be taken at a work session.

### Scheduling

Work sessions are normally held on the first Wednesday of every month in the Development Services conference room. The meeting dates may vary due to holidays

Extra work sessions may be called at any time by the HPC chairman. At least a 48 hour notice must be given with the time and place of the meeting. This notice shall be given by the HPC chairman or the HPC administrator to all HPC commissioners.

If there is no business for an upcoming regularly scheduled work session, the HPC chairman may cancel the meeting. At least a 48 hour notice of cancellation must be given. This notice shall be given by the HPC chairman or the HPC administrator to all HPC commissioners. Notice must also be given to the local newspaper with the greatest circulation.

## Regular HPC Meetings

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Regular meetings are used to conduct any business that requires approval by a vote of the HPC. This includes quasi-judicial hearings on COA applications, demolition by neglect actions, and hardship hearings.

### Quorum

A quorum of five (5) commissioners is required in order to conduct any business. Attendance at regular meetings is required by each commissioner unless there is notice given to the chairman and the HPC administrator, preferably 48 hours before the meeting. Failure to attend three (3) meetings in a calendar year without excused absences is sufficient reason for dismissal. By majority vote, the HPC can recommend to the Board of Aldermen to remove a commissioner for failure to attend regular meetings.

### Scheduling

Regular business meetings are normally held on the third Wednesday of every month in City Hall.

Special or emergency meetings may be called at any time by the HPC chairman. If the HPC holds an official meeting at any time or place other than a time or place shown on the schedule of regular meetings, it shall give public notice of the time and place of that meeting as follows:

- If the HPC recesses a regular, special, or emergency meeting where prior public notice was given in compliance with this section, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- For any other meeting, except an emergency meeting, the HPC shall provide written notice of the meeting stating its purpose, it shall be posted at the door of its usual meeting room, and it shall be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the HPC Administrator. The HPC shall also mail, e-mail, or deliver the notice to any person who has filed a written

request with the HPC Administrator to receive the notice. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice shall also be posted continuously for 48 hours before the meeting at the door of the usual meeting room as well as on the door of the building or on the building in an area accessible to the public if the building containing the usual meeting room is closed to the public. Each person, newspaper, wire service, radio station, and television station submitting a written request for notice shall renew the request annually.

- An “emergency meeting” is one called because of generally unexpected circumstances that require immediate consideration by the HPC. For an emergency meeting, the HPC shall provide written notice of the meeting to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the HPC Administrator. This notice shall be given either by e-mail, by telephone, or by the same method used to notify the members of the HPC, and shall be given immediately after notice has been given to HPC members. Only business connected with the emergency may be considered at this meeting.

If there is no business for an upcoming regularly scheduled HPC meeting, the HPC chairman may cancel the meeting. Notice of cancellation must be given to all members of the HPC and to each person or entity that has filed a written request for notice of special or emergency meetings with the HPC Administrator. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the originally scheduled meeting.

## Order of Business

This is the general outline of the normal order of business at a regular meeting.

1. Roll call of HPC members to establish if a quorum is present.
2. Reading and approval of the minutes from past meeting(s) along with any corrections.
3. Conduct hearings on COA applications and hardship hearings related to prevention of demolition by neglect.
4. General Public comment.
5. HPC Administrator's Report.
6. New business.
7. Old business.
8. Adjournment of meeting.

## Subcommittees

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The chairman may appoint subcommittees consisting of HPC members to research and report on matters of the HPC. Subcommittees shall be appointed during regular business meetings.

Subcommittees may meet and discuss factual details of their assigned tasks. Subcommittees may not make decisions for the HPC, but may present findings. In particular, subcommittees may not make any recommendations related to a COA application or any hearing.

## Conflict of Interest

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*Conflict of interest* means a commission member has a strong personal interest in the outcome of a public hearing conducted by the HPC. This includes hearings related to COAs as well as hardship hearings related to demolition by neglect.

Conflict of interest can include a financial interest; personal association, such as a family or personal relationship with an applicant; a predetermined opinion or bias about the outcome; or undisclosed communications about the COA application outside of the hearing.

A commissioner shall not participate or vote on a matter if they have a fixed opinion (not susceptible to change) prior to the hearing; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome.

If a commissioner has any sense of a conflict of interest related to a hearing, the potential conflict should be noted before the hearing starts. Recusal of a commissioner from a hearing requires a motion and a vote by the HPC.

Having an opinion does not disqualify a commissioner from participating in a hearing. If the opinion is bias to the point where a commissioner feels they cannot make an impartial decision based on the facts presented, then they should not participate in the hearing.

Once a hearing has been scheduled, a commissioner should not discuss the merits of the hearing topic with other commissioners or the public. Commissioners may discuss technical details with the HPC administrator and staff and ask clarifying questions. A commissioner should not discuss a friend's or neighbor's likes or dislikes surrounding a hearing.

Commissioners should be very careful about statements that may be construed as their opinion or a preferred outcome related to an upcoming hearing. It is permissible to state the factual contents about a hearing topic, refer to specific points in the historic guidelines, or respond to questions related to the guidelines, but a commissioner should be very careful not to provide a personal opinion, debate the contents of an application, or try to influence anyone for or against the topic of a hearing.

If a commissioner owns adjacent property -- within 100 feet of a property that is the focus of a hearing -- the commissioner shall not participate in the hearing.

Any HPC member who thinks that they might have engaged in ex parte communication concerning an item that will be covered in a hearing shall complete an ex parte communication form and submit it to the HPC administrator before a business meeting.

## Processing Certificates of Appropriateness

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This section provides policies and procedures for processing an application for a *Certificate of Appropriateness* (COA). A COA is required by North Carolina statutes and City of New Bern Code of Ordinances for any changes to a property within a designated local historic district that involve modifying a structure, constructing a new structure, major landscaping, or demolishing a contributing structure

An additional section is provided in these Rules of Procedure to address COA applications for demolition and redevelopment of a property in a locally designated historic district.

## Processing a COA Application for Minor Works

This section outlines the general steps, actions, and responsible parties for processing a COA application for *minor works*. The steps are derived from the city ordinances, sections 15-411 through 15-429.

Evaluation of a minor work is based on the list of minor works found on the HPC web site.

Step	Description/Action	Responsible Party
1	A COA application is submitted to the HPCA. The date of submission is noted on the application. Payment of application fee is noted on the original application when payment it is received. Payment of application fee is considered formal submission/filing of the application.	Applicant HPCA
2	An application review is performed to check the following: <ul style="list-style-type: none"> <li>Applicant signature must be the property owner or the applicant must have written approval and signature from the property owner(s). (email is acceptable) with contact information for the property owner(s).</li> <li>Application is properly noted as a Minor/Major work.</li> <li>Application details and supporting materials appear complete enough for a review of the application by the HPCA.</li> </ul>	HPCA
3	The COA application is reviewed by the HPCA with comments and feedback related to the Checklist for Certificate of Appropriateness.	HPCA
4	The HPCA can approve a minor work that falls under the list of minor works. The HPCA may ask for guidance from the HPC. The HPCA may refer a COA application to the HPC for their consideration.  <i>The HPCA may not deny an application. Only the HPC may deny an application.</i>	HPCA HPC
5	The HPCA will report all approved minor works as part of the HPC Administrator's Report at a regular meeting.	

## Processing a COA Application for Major Works

This section outlines the general steps, actions, and responsible parties for processing a COA application for *major works*. The steps are derived from the city ordinances, sections 15-411 through 15-429. Also refer to city ordinance 15-41 on meeting notification requirements.

Step	Description/Action	Responsible Party
1	A COA application is submitted to the HPCA. The date of submission is noted on the application. Payment of application fee is noted on the original application when payment it is received. Payment of application fee is considered formal submission/filing of the application.	Applicant HPCA
2	An application review is performed to check the following: <ul style="list-style-type: none"> <li>Applicant signature must be the property owner or the applicant must have written approval and signature from the property owner(s). (email is acceptable) with contact information for the property owner(s).</li> <li>Application is properly noted as a Minor/Major work.</li> <li>Application details and supporting materials appear complete enough for a</li> </ul>	HPCA

Step	Description/Action	Responsible Party
	review of the application by the HPCA.	
3	<p>The COA application is reviewed by the HPCA with comments and feedback related to the Checklist for Certificate of Appropriateness.</p> <p>The detailed review should generate the following:</p> <ul style="list-style-type: none"> <li>• a document signed off by the CZO noting any potential issues with the New Bern land use ordinance.</li> <li>• categorization of proposed alterations (e.g., windows, doors, fencing, landscaping, etc.)</li> <li>• references to relevant sections from the guidelines for each category, with recommendations on whether proposed alterations are congruous/incongruous.</li> <li>• feedback on the application's completeness/missing information</li> </ul>	HPCA CZO
4	<p>The HPCA notifies the applicant of any COA application issues identified by the review and requests that the applicant address these issues, particularly those related to incomplete or inadequate information.</p> <p>If the applicant chooses not to address application issues, the HPCA shall make note of this and include it as part of staff feedback during the hearing.</p>	HPCA Applicant
5	<p>Depending on the nature and complexity of an application, the HPCA may recommend that the applicant meet with the HPC in a design review session to discuss the application.</p> <p>There are two types of design review:</p> <ul style="list-style-type: none"> <li>• Informal design review – an applicant can show up with anything and does not require a COA application. The goal is to get input on a project prior to submitting formal application.</li> <li>• An application review – this takes place at least two (2) weeks before a formal hearing. A completed application with supporting data is generally required so that the HPC can determine the scope and nature of the application.</li> </ul>	HPCA Applicant
6	<p>The COA application is scheduled for a hearing by the HPCA. The following steps must be completed in the timeframes specified before a hearing can take place:</p> <ul style="list-style-type: none"> <li>• A hearing cannot be scheduled sooner than 14 days prior to the next scheduled HPC meeting. The application fee must be paid before the hearing can be scheduled.</li> <li>• The COA application and accompanying materials submitted with the application shall be available for public review when a hearing is scheduled.</li> <li>• At least seven (7) calendar days before the hearing, postmarked letters shall be sent to property owners within 100 feet of the property referenced in the COA.</li> <li>• At least four (4) calendar days before the hearing, each HPC member shall receive a copy of the submitted application and any supporting materials, including the COA review form. The applicant must also receive staff recommendations and the review form.</li> <li>• A mailing list of the property owners within 100 feet of the applicant's property shall be created and be available at the COA hearing.</li> </ul> <p>NOTE: The timeframes listed above may be waived in the case of extreme</p>	HPCA

Step	Description/Action	Responsible Party
	circumstances such as, but not limited to, storm damage or flooding. The HPCA and HPC shall determine when extreme circumstances apply.	
7	A hearing for a COA application takes place at a regular HPC meeting or at a specially called meeting. The hearing shall be conducted as a quasi-judicial hearing. Refer to the section <i>Conduct of a COA Hearing</i> for more details.	HPC
8	<p><i>If a COA is approved</i>, it must include documented findings of fact as well as references to relevant historic guidelines, city ordinances, and state statutes, based on evidence presented at the hearing.</p> <ul style="list-style-type: none"> <li>The HPCA issues a COA describing the nature of the work with any conditions as approved by the HPC. The COA can be sent by mail or the applicant may request an electronic copy by email. The HPCA shall issue the COA within seven (7) days of HPC approval.</li> <li>Development Services Department shall maintain a copy of the COA along with any documentation and evidence from a hearing and they shall be available to the public.</li> <li>The Inspections Department and/or the HPC administrator shall monitor progress of a project and make at least 1 visit to the project site to confirm that the COA is being properly implemented. Any COA compliance issues will be reported to the HPC at its next regular meeting.</li> </ul> <p>A COA is in effect for one (1) year. In cases where a building permit has not been issued, or, when no permit is required and work has not commenced within a year, the COA is null and void. Prior to that expiration the HPCA may grant a one year renewal of a COA or the HPC may extend the COA for any length of time deemed appropriate. This does not require procedural steps for a hearing or public notification of a renewal request.</p>	HPCA CBI
9	<ul style="list-style-type: none"> <li><i>If a COA is denied</i>, it must include documented findings of fact as well as references to relevant historic guidelines, city ordinances, and state statutes based on evidence presented at the hearing. Development Services Department shall maintain a copy of the COA along with any documentation and evidence from a hearing and they shall be available to the public.</li> </ul>	HPCA
10	<p>An aggrieved party can appeal a decision of the HPC related to a COA. The appeal is heard by the Board of Adjustment. A written appeal shall be submitted to the HPCA within 30 working days of the HPC decision on a COA. Refer to Code of Ordinances, Section 15-422.</p> <p>The HPC cannot take further action on a COA or consider amendments to a COA while it is under appeal.</p>	Appellant HPCA
11	A Board of Adjustment decision can be appealed to superior court.	Appellant

## Conduct of a Design Review

It is common practice for the HPC to hold design reviews with COA applicants for major works at a work session, particularly for extensive alterations and construction. The purpose of a design review is to provide guidance on the historic guidelines that relate to the contents of a COA application. Public comment is not allowed on a COA application at a design review.

During a design review, commission members shall refrain from expressing any personal opinions, or personal likes or dislikes about a COA application. All questions and comments by commission members should be related to how an application's content relates to the guidelines.

Before a design review begins with an applicant, the HPC chairman shall state to the applicant(s) that any discussions or comments by HPC members during the design review are non-binding and have no connection, impact or influence on the upcoming hearing on the COA application.

## Conduct of a Hearing

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### General Principles

A hearing for a COA application must be conducted as a *quasi-judicial* hearing. The HPC determines if the application meets the standards of the historic guidelines ***based solely on written and oral evidence presented at the hearing***. A quorum of five (5) members is required for the HPC to hold a hearing.

Three necessary and sufficient conditions must always apply to every hearing on a COA application.

1. The applicant and parties with standing (or can demonstrate special damages) must have a fair and open opportunity to be heard.
2. Enough information should be provided with the application in order for the HPC to determine the nature of the changes and if the changes will be incongruous with the historic guidelines.
3. The HPC can deny an application only if it determines that the proposed changes are incongruous with the historic guidelines. Whether a proposed change is desirable or whether it is popular with the public plays no role in the decision.

The commission must do two things in order to make a decision on a COA:

1. It must determine the facts of the case (findings of fact).
2. It must apply the historic guidelines to those facts.

*Findings of fact* are based on evidence that ***must*** meet three criteria:

- **Competent** supported by legitimate factual data
- **Material** relevant to the issue being decided
- **Substantial** goes beyond speculation and is reasonably acceptable to support a conclusion.

Before a hearing can proceed, the HPC shall determine whether a COA application is complete enough to determine the nature of changes and to make a decision.

The applicant has the burden of producing sufficient evidence for the HPC to conclude that the application is not incongruous with the historic guidelines.

All persons addressing the HPC during a hearing must be sworn in. This is generally done en masse before any COA application is heard. No testimony shall be taken from any individual who has not been sworn in.

The HPC cannot consider comments based on personal likes or dislikes, hearsay, or personal opinion not backed up with facts. All comments and evidence must be tied directly to specific

guidelines. Likewise, HPC members shall refrain from stating personal opinion, personal likes or dislikes, or hearsay during a hearing.

## Standing

*Standing* is the legal justification to participate in a hearing related to a COA application.

Individuals with standing generally include

- the property owner or their representative for a COA application
- an owner of an adjacent property that may be materially affected by the COA
- an association, if 1) they have a prior existence not solely for the purpose of the COA, 2) their interests are germane to the association's purpose, 3) an individual with standing is a current member of the association and has asked the association for assistance.

Applicants and property owners within 100 feet of the property are assumed to have standing. The commission may consider testimony and evidence from these individuals if it determines that it is competent, material, and substantial information and that it can be directly and specifically related to the guidelines.

Testimony and evidence from a property owner beyond 100 feet may be allowed if

- it is not a repetition or duplication of testimony and evidence that has already been presented
- the presenter has competent, material, and substantial information to present that can be directly and specifically related to the guidelines
- the presenter can demonstrate that they may be materially affected by the proposed changes.

## Types of Hearings

The HPC can hold two types of hearings on a COA application. A *COA hearing* or a *public hearing*.

### COA Hearing

A *COA hearing* is the typical type of hearing on a COA application. Property owners within 100 feet of the property that received notice of the hearing are assumed to have standing to provide testimony.

### Public Hearing

A *public hearing* may be called for large projects that may materially affect a large number of property owners beyond 100 feet of the project. Information presented by a party must be competent, material, and substantial information that can be directly and specifically related to the guidelines, it cannot be a repetition or duplication of information already presented, and the party has to clearly state how they may be materially affected by the project.

The HPC must vote to conduct a public hearing on a COA application. There must be proper notification that the HPC is considering a public hearing on a COA application. A public hearing can be held at the next regular meeting or at a specially called meeting.

## Chairman's Responsibilities for Conducting a Hearing

The chairman shall preside over a hearing. In the absence of the chairman, the vice-chairman will preside over the hearing. In the absence of the vice-chairman, the commission will determine which member will preside over the hearing.

The chairman shall ensure that each party who speaks during a hearing is sworn in. Comments from unsworn parties shall not be allowed during a hearing under any circumstances.

The chairman shall clearly announce the opening and closing of hearings during the regular HPC meeting.

The chairman may rule on any objections or requests from participants in the hearing regarding the procedure of the hearing or evidence presented.

The chairman may rule on the admissibility of evidence with or without an objection.

The chairman may limit and/or cut off testimony that is irrelevant, repetitive, inflammatory, or hearsay.

The chairman may take additional actions and impose additional requirements to ensure a fair and efficient conduct of a hearing.

### Procedural Steps/Actions for a Hearing

This section outlines the steps for conducting a hearing. These steps apply to new COA applications as well as proposed amendments to a previously issued COA. The difference is that there is no motion to issue a COA for an amended COA. A proposed COA amendment should not substantively affect the nature of the issued COA.

The chairman may use his/her discretion in determining whether to combine steps as well as the level of detail to follow for steps, depending on the nature and complexity of the application.

Step	Description/Action	Comments
1	A preliminary description of the application is provided by the HPCA or the chairman. Pictures and video of a site may be provided.	
2	The chairman requests any comments from the HPCA and from the commissioners on issues of completeness of the application. A commissioner may call for a motion to vote on completeness of the application.  Agreement by the HPC on completeness of the application allows the hearing to proceed.	
3	The applicant or their designated representative presents testimony and evidence supporting the application. The applicant or their representative must do the presentation.  Evidence and materials presented by the applicant should include the application and any supporting materials provided to the HPC members and the public for preview before the hearing.	Additional evidence and materials may be presented by the applicant if it is for clarification and it does not substantially change the nature of the original application. The HPC shall make the determination of the impact of additional evidence.
4	The chairman opens public comment.	
5	Supporters of the application may present testimony and evidence related to the application. <b>NOTE: For COA hearing, the speaker must have received notice.</b>	These steps may be combined at the discretion of the chairman.  Those materially affected by the

Step	Description/Action	Comments
6	Opponents of the application may present testimony and evidence related to the application. <b>NOTE: For COA hearing, the speaker must have received notice.</b>	application must at least be given a fair and open opportunity to speak.  If this is a continuance, public comment shall be allowed, but limited to new evidence.
7	The applicant and supporters may provide rebuttal to opposing arguments in order to provide clarification or new evidence.	
8	Opponents may provide rebuttal to supporting arguments in order to provide clarification or new evidence.	
9	<b>For a COA hearing</b> , others who did not receive notice may be allowed to speak if they have information that is not repetitive, it is competent, material, and substantial, and they can clearly state how they may be materially affected by the project.	
10	The chairman closes public comment.	
11	The HPCA presents staff recommendations.  Any other official, commission, city department, or state agency presents evidence and/or testimony.	
12	The applicant is given the opportunity to make final comments on the application.	
13	The HPC deliberates evidence presented for the application.	
14	The chairman shall make sure that all HPC members understand the nature and details of the application before proceeding to a motion. The chairman and HPCA may provide a summary of evidence.	The chairman may use his/her discretion to determine how to summarize the evidence depending on the nature and complexity of the application.
15	Chairman calls for a motion to approve or deny the application.	A motion can be made to approve, approve with conditions, or deny the COA application. Relevant guidelines and stated findings of fact must be part of the motion to approve or deny.  A motion can be made to <i>continue</i> a hearing or <i>table</i> a COA application. A continuance must be reasonable, justified, and reflect the need for more information, a view of the property, etc. Parties with standing must be allowed to comment on any new evidence. The date and time of the continued hearing must be stated at the time of the motion to continue.  Notice for a tabled COA application must be given when a hearing is scheduled. The HPC must take action on a tabled COA within 180 days of its submission date.
15	The chairman calls for a second. (required to proceed)	
16	The motion is discussed by the commission.	
17	The chairman calls for a vote on the motion.	
<b><i>IF COA IS APPROVED... (Does not apply to COA amendments)</i></b>		
18	A motion is made to issue a COA.	Issuance of a COA can be delayed, but there must be findings of fact and they must be justified, fair and
19	The chairman calls for a second. (required to proceed)	
20	The chairman calls for comments.	

Step	Description/Action	Comments
21	The chairman calls for a vote on the motion to issue a COA.	reasonable.

## COA for Demolition and Redevelopment

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This section addresses a COA application to demolish a contributing structure. Demolition of a contributing structure is a unique situation and requires extra scrutiny and due diligence by the HPC. While the process for this type of COA is similar to that of a normal COA, there are some significant differences.

Policies and rules of procedure under the section *Processing Certificates of Appropriateness* should be followed as they also apply to COA applications for demolition.

### General Principles

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Two necessary and sufficient conditions must be met before a property owner can demolish a contributing structure in a locally designated historic district:

1. Demolition of the structure(s) must be approved by the HPC in a hearing. A hearing on redevelopment shall not take place unless and until demolition has been approved.
2. A redevelopment plan for the property, including a preliminary review by the Chief Building Inspector and a timeline for completion, must be approved by the HPC in a hearing.

These two conditions are addressed as sequential steps in a process that involves two separate hearings.

Once demolition has been approved and a redevelopment plan has been approved, the HPC issues a single COA for both actions.

No demolition can take place unless and until a redevelopment plan is approved. If construction of a new structure has been approved, a building permit shall be obtained for the new construction before demolition can take place.

### Evaluating a Contributing Structure for Demolition

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The following items must be verified by the HPC as part of the demolition review process.

1. The structure qualifies as a contributing structure in a locally designated historic district and it is 50 years or older.
2. SHPO has determined whether the structure has statewide significance. (This is in reference to 160A-400.14(b)).
3. SHPO has evaluated the interior and exterior of the structure and provided a written evaluation and opinion on the architectural, historical, and cultural significance of the structure.

Each commissioner shall visit the site of the structure proposed for demolition. Access to the interior shall be granted by the property owner if the property is safe to enter as determined by the

Chief Building Inspector. If deemed unsafe, the Chief Building Inspector shall provide an interior review as determined by the HPC.

## Structural Engineering Report

There is no requirement for the property owner to provide a structural engineering report, but if one is provided it should contain as much detail as possible, including

- a breakdown of the structural integrity of design components, such as the roof, walls, floors, windows, doors, and foundation.
- a detailed description and justification for each structural component on whether the component is 50% or more structurally unsound.

Any report provided by a structural engineer must be reviewed by the Chief Building Inspector.

## Design Review for Demolition

At least one design review must be held for a COA application that involves demolition of a contributing structure. The purpose is to provide advice on historic guidelines that relate to demolition.

## Hearing on Demolition

A hearing on demolition of a contributing structure shall follow the procedural rules and actions for a quasi-judicial hearing as outlined in this document. The difference is that no COA is issued through this hearing. A vote to approve or deny demolition must include findings of fact and references to specific historic guidelines based on evidence presented at the hearing.

A hearing on demolition of a contributing structure shall not take place at a special meeting called due to extreme circumstances such as, but not limited to, storm damage or flooding. A demolition hearing shall take place at a regular business meeting or at a specially called meeting specifically for the demolition request.

## Approval of Demolition of a Contributing Structure

Even when demolition of a contributing structure is approved, no demolition activities may take place at the site or on a structure until

- a redevelopment plan is approved
- a COA for demolition is issued
- a building permit is issued for any approved new construction.

The HPC shall work with the property owner to identify architectural features and materials that can be salvaged and reused. The HPC may require removal of salvageable building parts as part of the conditions for issuing a COA.

A structure must be documented for a historic record before it is demolished. The HPC shall determine the form and nature of documentation.

## Evaluating a Redevelopment Plan

Any new construction proposed for the site will be evaluated based on historic guidelines for infill construction.

A redevelopment plan must include the following items as conditions for approval of the redevelopment plan:

- a review and preliminary approval by the Chief Building Inspector
- a reasonable timeframe for completion of redevelopment.

## Prevention of Demolition by Neglect

*Demolition by neglect* (DBN) refers to the deterioration of a landmark structure or contributing structure in a historic district due to lack of maintenance. This section provides policies and rules of procedure for managing the list of demolition by neglect properties and explains how properties are added to the list, removed from the list, and actions that can be taken in order to prevent deterioration of a historic property in New Bern's locally designated historic districts

## Procedural Steps/Actions for DBN Properties

### Adding a Property to the DBN List

This section outlines the general steps, actions, decision points, and ownership for handling a demolition by neglect incident. The steps are derived from the city ordinances.

Step	Description/Action	Responsible Party
1	A completed DBN complaint form is submitted to the Development Services Department and stamped with the received date and initialed. Staff may fill out the complaint form based on email or phone call from a complainant.	HPCA
2	Within 14 days following receipt of the DBN complaint, a status report of the complaint investigation and actions taken is mailed to the complainant and, if warranted, the property owner is notified of a violation.  The complaint investigation is reported to the HPC at its next regular meeting if there is a basis for complaint.	HPCA
3	If there is a basis for complaint, the property owner in violation has 30 days to respond to the documented violation(s) contributing to demolition by neglect. The property owner may respond by phone, email or in writing. Development Services Department shall maintain a record of communication with the property owner.	property owner HPCA
4	If the property owner fails to respond or to address the violation(s) by the required deadline, the HPC administrator notifies the HPC of potential demolition by neglect along with findings and status.	HPCA
5	The HPC evaluates the staff notification of DBN findings for a property and determines whether to proceed with further action.  <b>If the HPC decides not to proceed with further DBN action, no other action is taken.</b>	HPC

Step	Description/Action	Responsible Party
6	<p><b>If the HPC decides to take further action</b></p> <ul style="list-style-type: none"> <li>• the HPC files a petition with the chief building inspector that lists the specific defects (see Section 15-429 of New Bern city ordinance).</li> <li>• the property is added to the potential DBN list.</li> <li>• the HPC administrator initiates a file folder for documenting activities related to DBN for the property.</li> </ul>	HPC HPCA
7	The chief building inspector performs a formal inspection of the property based on the DBN petition. Findings are reported to the HPC and added to the property's DBN folder. Any critical repairs needed to protect the property should be prioritized.	CBI
8	<p><b>If the formal inspection determines DBN</b></p> <ul style="list-style-type: none"> <li>• the chief building inspector issues a written complaint and notifies the property owner within 15 days, outlining the DBN violations.</li> <li>• the chief building inspector schedules a hearing between 30 and 45 days of the notice.</li> </ul> <p><b>If the formal inspection determines no DBN</b>, no other action is taken.</p> <p>All activities are reported to the HPC and noted in the property's DBN folder.</p>	CBI HPCA
9	<p>A hearing is conducted by the chief building inspector with the property owner. The purpose of the hearing is to formally inform the property owner of the chief building inspector's findings, the order for repairs, and any appeal rights of the property owner. The property owner is made aware that they can petition the HPC for economic hardship.</p> <p>HPC administrator posts the property on the public DBN list.</p>	CBI HPCA Property owner
10	<p><b>If the property owner does not petition the HPC for claim of undue economic hardship</b>, the chief building inspector issues an order for repair of the property based on what was presented in the hearing.</p> <p>A copy of the findings of fact and the final repair order are added to the property's DBN folder.</p>	CBI
11	<p><b>If the property owner petitions the HPC for claim of undue economic hardship</b></p> <ul style="list-style-type: none"> <li>• The chief building inspector must notify the HPC within 10 days of the complaint hearing.</li> <li>• The HPC schedules a hardship hearing based on its rules of procedure for its next regularly scheduled meeting.</li> <li>• The chief building inspector's order for repairs is stayed until after the hardship hearing.</li> </ul>	CBI HPC
12	<p>The HPC holds a hardship hearing for DBN at its regular meeting. The property owner may present information related to hardship and the HPC may require additional information relevant to DBN.</p> <p>All evidence and hearing notes shall be added to the property's DBN file folder.</p>	HPC

Step	Description/Action	Responsible Party
13	<p>After a hardship hearing, the HPC must present documented findings within 60 days to the property owner and to the chief building inspector.</p> <p>If no undue economic hardship is found, the chief building inspector proceeds with the order to repair.</p> <p>If economic hardship is found, the findings shall include a plan to relieve economic hardship and address DBN conditions. The chief building inspector shall issue repair orders based on the findings' relief plan.</p> <p>A copy of the repair order from the Chief Building Inspector shall be added to the DBN file folder.</p>	HPC CBI
14	<p>If a repair order has been issued by the chief building inspector and repairs have not been completed in the timeframe and as specified by the repair order the chief building inspector</p> <ul style="list-style-type: none"> <li>• notifies the HPC the property is still in violation</li> <li>• outlines proposed actions, which may include a civil penalty of \$50/day.</li> </ul>	HPCA HPC
15	Upon imposing a fine, the chief building inspector formally notifies the property owner about the fine.	CBI
16	<p>Once fines are being levied on a property the HPC administrator will notify the HPC every 180 days. The case will be turned over to the city attorney.</p> <p>This process will continue every 180 days.</p>	HPCA HPC
17	Fines are collected by means of a lien on the property or by an order of the judge.	HPCA

## Removing a Property from the DBN List

The Chief Building Inspector determines if a property can be removed from the published DBN list based on compliance with the repair order. Once the Chief Building Inspector has determined compliance with the repair order, the property shall be removed from the list. The Chief Building Inspector shall document compliance and the documentation shall be added to the property's DBN folder. The HPC administrator reports to the HPC when a property is being removed from the DBN list.

## Determination of Economic Hardship

A property owner may petition for a claim of economic hardship. The HPC holds a hardship hearing at its regular meeting. Required evidence of economic hardship must be defined by the HPC and it must be presented as evidence at the hearing.

## Conduct of a Hardship Hearing

The general points of conduct for a hardship hearing:

- The petitioner or their designated representative presents a request for economic hardship along with relevant evidence.
- The HPC administrator and other staff members may be directed to provide information relevant to hardship.
- The HPC may require additional information that is relevant to determination of economic hardship.
- HPC commissioners may ask questions at any time and to any presenter.

- A decision is not made at the hearing and the hearing may be continued if more information is requested by the HPC.

## Report of Findings

Upon completion of a hardship hearing, the HPC has up to 60 days to provide documented findings of economic hardship.

- If no economic hardship is found, the HPC notifies the chief building inspector who shall issue the repair order.
- If economic hardship is found, the HPC shall provide a recommended plan for relieving economic hardship. The chief building inspector shall issue a repair order in accordance with the recommended plan.

## Required Evidence for Determining Hardship

The commission shall state ahead of time which form of financial proof it deems relevant and necessary for the hardship case. If the information is not available, the petitioner shall describe why. The petitioner must provide the information as evidence at the hearing.

Minimum evidence for hardship shall include the items listed in the New Bern Code of Ordinances 15-429 (e) (2).

# Updating Ordinances, Guidelines and Minor Works

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## Updating Preservation Ordinances

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Preservation ordinances are part of land use ordinances so updates are handled like any other update to land use ordinances. The HPC may request updates to the preservation ordinances. Development Services is responsible for evaluating the requested ordinance updates. The city attorney is responsible for reviewing and drafting the ordinance update that is considered by Planning and Zoning Board and the Board of Aldermen. The Planning and Zoning Board is responsible for holding a public hearing on land use ordinance changes and for making a recommendation to the Board of Aldermen. The Board of Aldermen holds a public hearing on the ordinance changes and provides the final approval of the changes.

The HPC has no authority to update preservation ordinances or hold a public hearing on any proposed changes. Development Services is under no obligation to ask for HPC review of ordinance changes, but typically does ask for HPC review and agreement for changes.

SHPO has no authority or obligation to review or comment on preservation ordinance updates. They will consider reviewing ordinance changes if asked.

## Updating Historic Guidelines

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Historic guidelines are considered part of the land use ordinances so updates are handled similar to other updates to land use ordinances.

The HPC has the authority and responsibility to update historic guidelines. The HPC must hold at least one public hearing on proposed changes to historic guidelines. SHPO reviews the guidelines changes for certified local government (CLG) compliance. There are a number of ways to formulate updates to the historic guidelines including public workshops and engagement of a preservation consultant.

The city attorney is responsible for reviewing the final historic guidelines updates for legal compliance with state statutes and other land use ordinances. After the HPC approves historic guidelines updates, the Planning and Zoning Board is responsible for holding a public hearing on historic guidelines changes and making a recommendation to the Board of Aldermen. The Board of Aldermen holds a public hearing on the historic guidelines changes and provides the final approval of the changes.

## Maintaining the List of Minor Works

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The HPC has the authority to maintain and update the list of minor works. The list of minor works is available on the HPC web site.

Any proposed changes to the list of minor works must be reviewed by Development Services staff and the HPC administrator shall report any findings and recommendations.

Changes to the list of minor works must be approved by the HPC through a motion at a regular meeting.