



Historic Preservation Commission (HPC) Processes Assessment

Planning Department

Introduction

In the fall of 2021, the City of Burlington received a state grant to update its Historic Design Standards. The Walker Collaborative was selected to assist the City with this effort. Council was briefed on this in the spring of 2022 prior to work beginning. Based on input from City Council, staff formed the following three overarching goals to guide the update project:

- Modernize Standards
- Create User-Friendly Standards
- Streamline Processes

This document focuses on the goal to “Streamline Processes” and represents staff’s assessment of HPC processes with recommendations for improvement.

Input

The following list identifies some of the areas of HPC processes to consider for modification that were generated from staff, public input, the Historic Design Standards Advisory Committee and the Historic Preservation Commission.

- Simplify and modernize the COA process
- Maintain the integrity and value of the COA process in historic preservation
- Attempt to identify Major COA reviews that can be shifted to Minor COA reviews
- Attempt to identify Minor COA reviews that can be shifted to General Maintenance
- Review ways to provide more flexibility in processes
- Consider HPC members being able to visit a potential applicant’s site for insight/input
- Include an expedited process for emergency situations and disaster preparedness
- Provide for procedural consistency
- Consider how activating the Design Review Committee (DRC) may improve processes
- Appoint HPC members that have historic architectural and building expertise

HPC Functions

NCGS 160D-942 establishes the roles of the HPC. This is important as the function of the HPC differs greatly between the following two primary roles:

- Advisory
- Quasi-Judicial

Advisory

When the HPC functions in an advisory capacity, the board members have greater leeway in how they may interact with applicants and their role is to make recommendations to the Planning & Zoning Commission (P&Z) and City Council. Typically, such recommendations may be related to any of the following:

- Undertaking an inventory of historic properties
- Designation of historic districts or landmarks
- Removal of areas of an historic district or landmarks
- Preparation of historic district standards

Quasi-Judicial

When the HPC functions as a quasi-judicial board, members have less flexibility in their interactions and communications with applicants and interested parties outside of the HPC's formal evidentiary hearing. In this role they hold evidentiary hearings, make findings of fact and render decisions based upon sworn testimony and evidence in accordance with NCGS 160D-406. In this role, the HPC typically makes decisions related to the following:

- Major Certificates of Appropriateness, including exterior work and development activities, such as:
 - Alterations/Replacement
 - Restorations
 - New construction or reconstruction
 - Demolitions
 - Relocations
 - Signs
 - Other site improvements such as landscape and grading

Interior alterations and renovations are not regulated or reviewed by the HPC.

Assessment

In attempting to identify ways to streamline HPC processes staff evaluated both advisory and quasi-judicial processes.

Advisory

Currently, advisory processes generally take the form of the HPC giving advice in the form of legislative recommendations to P&Z which in turn makes recommendations for City Council to

consider in its decision. This is a fairly straight-forward process for inventory and district standards items. However, items involving district boundaries have prescriptive statutory requirements which are reflected in the City's Unified Development Ordinance (UDO) that include the additional time required to produce a historical survey/analysis report and require the State Historic Preservation Office to review the report prior to the HPC making its recommendation.

Quasi-Judicial

Quasi-judicial processes for Major COA's follow a statutory process as laid out in NCGS 160D-406 and reflected in the UDO which entails:

- Notice of evidentiary hearings (10 to 25 days prior to the hearing)
- Holding evidentiary hearings
- Provision of administrative materials
- Presentation of evidence
- Sworn testimony
- Subpoenas
- Findings of fact
- Voting
- Notification of decision
- Possible judicial review by the BOA and then Superior Court

While the quasi-judicial process is defined by the state statutes, efficiencies may still be achieved by making reasonable shifts from Major COAs to Minor COAs as well as reasonable shifts from Minor COAs to General Maintenance. Also, NCGS 160D-406 states that decisions must be made in a reasonable time and the UDO indicates a decision must be made within 75 days unless extended. Both of these are indefinite references which may provide needed flexibility for complex applications. However, it may be beneficial for the HPC to establish a written goal to make decisions quickly.

Recommendations

- General
 - With the seating of a new board in July, provide training by the City's Legal Department to the HPC to clarify the difference between advisory and quasi-judicial roles and to advise the HPC members on issues regarding ex-parte communications with interested parties and potential conflicts of interest.
 - Consider expanding the HPC board membership to allow for the addition of members with historic structure/architecture and building experience to encourage a more practical review for COAs. This could be included in the next round of UDO amendments.
 - The HPC should consider activating the Design Review Committee (DRC) as an option for applicants. The make-up and role of the DRC would be established in the Historic Design Standards. The DRC could serve to provide more nimble guidance and input to applicants to facilitate the applicant's more "nimble" navigation of the COA process.

- City staff could advertise on its website, reference in the Historic Design Standards and communicate annually via CityWorks:
 - that staff is available to meet potential applicants on-site to provide guidance and input on their projects, and,
 - that kiosks are available with staff support to assist any applicants with setting up their SmartGov accounts and applications.
 - The HPC should review the Historic District Standards and processes annually and provide recommendations to P&Z and City Council on any text amendments.
 - The HPC may set Special Meetings when needed to assist applicants in expediting their requests.
 - City Council should consider adding a position to the Planning Department for a qualified staff person whose responsibilities include working closely with the City Council, City Administration and Staff, the HPC and the community to achieve the City's Historic Preservation Goals.
 - City staff shall assure the DRC is made available for COA applicants.
 - Advisory Role Process Improvements
 - Provide guidance to HPC members regarding their advisory role which provides additional leeway in communication with applicants, including site visits.
 - Quasi-Judicial Role Process Improvements
 - The proposed Historic Design Standards include a number of shifts from Major COAs to Minor COAs as well as shifts from Minor COAs to General Maintenance in an effort to reduce the time it takes an applicant to undertake work on their property. While not exhaustive, some examples of these changes include the following:
 - Major COA shifted to Minor COA
 - Replacement of windows or doors and removal, addition, or replacement of garage doors if not visible from a street.
 - Tree topping
 - Installation of permanent signs that meet the Historic Design Standards.
 - Minor COA shifted to General Maintenance
 - Minor repointing and other masonry and stone repairs, such as loose bricks in steps.
 - Repairing, replacing or installing exterior lighting fixtures that comply with the guidelines and are appropriate to the structure.
 - Repairing or replacing masonry or wood exterior stairs, landings and steps if compatible with the structure's design.
 - Removal of deteriorated accessory buildings that are not original to the site or otherwise historically significant.
- The HPC and staff should continually work together to identify ways to identify logical efficiency shifts which may involve strategic specifications in the standards.
- The Historic Design Standards will be broadly interpreted to facilitate an expedited process for emergency situations and immediate restoration of utility services or emergency tree removal.

- HPC consider how it may set a written goal to make decisions as quickly as possible while maintaining the integrity of the process.

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