



Town of Southern Shores

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Ordinance 2016-10-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, under the authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes, the Town finds that certain structures within the Town contribute to the Town's historical, architectural, prehistorical and cultural significance.

WHEREAS, the Town finds that it is necessary to protect structures of historical, architectural, prehistorical and cultural significance to the Town.

WHEREAS, the Town further finds that the conservation and preservation of historic landmarks stabilize and increase property values and strengthen the overall economy of the State.

WHEREAS, the Town further finds that to safeguard the heritage of the Town by it is necessary to preserve landmarks therein that embody important elements of the Town's culture, history, architectural history, or prehistory.

WHEREAS, the Town further finds that preserving such landmarks will promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole.

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That Chapter 17 **HISTORIC LANDMARK DESIGNATION AND HISTORIC LANDMARKS COMMISSION** be added as follows:

Sec. 17-1. Commission Established; Membership; Terms

(1) There is hereby established a Southern Shores Historic Landmarks Commission ("Commission") under the authority of Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes.

(2) The Commission shall consist of five members appointed by the town council. All members shall reside within the planning and zoning jurisdiction of the Town. 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.

(3) Members of the Commission shall serve terms of three years. Terms shall be staggered with three (3) of the initial commissioners being designated by the town council to serve an initial two (2) year term. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur, for the period of the unexpired term, by the town council. The Commission shall elect its chairman and vice-chairman. The term of the chairman and vice-chairman shall be for one year, with eligibility for reelection.

Sec. 17-2. Powers and Duties

(1) The powers of the Historic Landmarks Commission are as follows:

(a) Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance.

(b) Recommend to the Town Council individual structures, buildings, sites, areas or objects to be designated by ordinance as "Landmarks".

(c) Recommend to the Town Council that designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.

(d) Review and act upon proposals for the alteration or demolition of designated landmarks.

(e) Conduct an educational program with respect to historic landmarks within its jurisdiction.

(f) Cooperate with the state, federal and local government in pursuance of the purpose of this subchapter; to offer or request assistance, aid, guidance or advice

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concerning matters under its purview or mutual interest. The Town Council, or the Commission when authorized by the Town 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 Town of Southern Shores Land Use Plan.

(2) Prior to any official action the Commission shall adopt rules of procedure governing its meetings and the conduct of official business and the election of officers and related matters. The Commission shall also prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks.

Sec. 17-3. Historic Landmark Designation Procedure

(1) Upon complying with the required landmark designation procedures set forth herein, the Town 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, prehistoric, design, setting, workmanship, materials, feeling and/or association. No property shall be proposed for designation as a landmark, nor shall any ordinance be adopted designating a property as a landmark, unless a written application is received from the record owner(s) of the property requesting such designation.

(2) 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 prehistoric 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 subchapter 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.

(3) 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, prehistoric and

cultural significance within the Town.

(b) The Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, 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 Town Council shall be relieved of any responsibility to consider such comments.

(d) The Commission and the Town 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 Town 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 Dare 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 Town Clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be kept on file with the Planning and Code Enforcement Department. The fact that a building, structure, site, area or object has been designated a building, structure, site, area or object shall be clearly indicated on all tax maps maintained by Dare County for such period as the designation remains in effect.

(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 supervisor of Dare County. The tax supervisor in appraising it for tax purposes shall consider the designation and any recorded restrictions upon the property limiting its use for preservation purposes.

Sec. 17-4. Certificate of Appropriateness

(1) Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning:

EXTERIOR FEATURES. Includes 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** also includes historic signs 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.

(2) Certificate of Appropriateness required.

- (a) From and after the designation of a landmark, 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 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 construction, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this subchapter. A Certificate of Appropriateness shall be required whether or not a building or other permit is required.
- (b) The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town, and all public utilities shall be required to obtain a Certificate of Appropriateness for construction, alteration, moving or demolition of designated landmarks.

(3) Application for Certificate of Appropriateness.

- (a) Applications for a Certificate of Appropriateness shall be obtained from the Planning and Code Enforcement Department and when completed, filed with the Zoning Administrator. The application shall be filed two weeks 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 the property within 100 feet on all sides of the property that is the

subject of the application must also be filed. No application that does not include the aforementioned information will be accepted.

- (b) 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 subcommittee 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 guideline, the nature of the area where the proposed project will take place, and other relevant factors. The members of the subcommittee, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by a member of the subcommittee at such informal meeting shall not be considered official or binding upon the Commission.

(4) Action on application. On behalf of the Commission, the Zoning Administrator shall notify, by mail, not less than one week prior to the meeting at which the matter is to be heard, the owners of the property within 100 feet on all sides of the subject property. Application for a Certificate of Appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a 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 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 each special character of the landmark.

(5) Hearing on application; jurisdiction; appeal.

- (a) Prior to the issuance or denial of a Certificate of Appropriateness the applicant or other property owner(s) 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 Laws, G.S. Ch. 143, Art. 33C.
- (b) The Commission shall have no jurisdiction over any interior design, arrangement, or materials.
- (c) In any action granting or denying a Certificate of Appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment. The Commission is an aggrieved party with regard to any application approved by the Zoning Administrator as minor works on the issue of whether the Zoning Administrator had jurisdiction to approve the application.
- (d) Absent a general rule by the Commission to the contrary, written notice of the intent to appeal must be sent to the Commission and to the Board of Adjustment, post

marked within 30 days following the date of the decision is reduced to writing and mailed to the applicant. Appeals shall be in the nature of certiorari. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of Dare County.

- (e) The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision with 30 days from the date that the 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.

Sec. 17-5. Administrative Approval of Minor Works

(1) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning:

MINOR WORKS. Those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property. **MINOR WORKS** shall be limited to those listed in the Commission's "Design Guidelines".

(2) Notwithstanding Section 17-3, (4), upon receipt of a completed application the Zoning Administrator may issue a Certificate of Appropriateness for a minor works.

(3) No application may be denied without formal action of the Commission. The Zoning Administrator in his or her sole discretion may treat any proposed minor works application as an application that must be heard by the Commission. If the Zoning Administrator exercises such discretion or otherwise determines that an application for minor works cannot be approved the application shall be treated as if it is a non-minor works application for a certificate of appropriateness and shall be forwarded to the Commission for consideration pursuant to Sec. 17-4. All minor works applications approved by the Zoning Administrator shall be provided to the Commission at the next meeting of the Commission, and the Commission may appeal such approvals to the Board of Adjustment for consideration of whether the Zoning Administrator had jurisdiction to approve the application.

Sec. 17-6. Review Criteria

(1) 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 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 of landmarks shall be congruous with the special character of the landmark.

(2) At a minimum, the Design Guidelines adopted by the Commission shall address the following features or elements of design which shall be considered in reviewing applications for Certificates of Appropriateness:

- (a) Lot coverage;
- (b) Setbacks;
- (c) Building height;
- (d) Spacing of buildings, defined as the distances 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 detailing;
- (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, as to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale;
- (m) Proportion of width to height of the total building facade;
- (n) Archaeological sites and resources associated with standing structures;
- (o) Effect of trees and other landscape elements;
- (p) Major landscaping which would impact 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 or combination of these;
- (u) Ground cover or paving;
- (v) Significant landscaping, archaeological and natural features.

(3) The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for Certificates of Appropriateness.

(4) Color shall not be considered as a feature or element of design regulated under this Chapter by either the principles and guidelines adopted by the Commission, or by the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings".

Sec. 17-7. Certain Changes Not Prohibited

Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a landmark which does not involve a change in design, material, 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 features which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent either maintenance, or in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the Commission.

Sec. 17-8. Enforcement and Remedies

(1) Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Zoning Administrator. Failure to comply with the certificate issued shall be a violation of the Code of Ordinances and subject to established procedures and penalties for such violations.

(2) In case a building, structure, site, area or object designated as a landmark is about to be demolished, whether a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed except in compliance with this Chapter, the Town Council on its own accord or at the request of 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 violations, or to prevent any illegal act or conduct with respect to such a building or structure. Such remedies shall be in addition to any other remedies available to the Town.

Sec. 17-9. Delay in Demolition of Landmarks

(1) An application for a Certificate of Appropriateness authorizing the demolition, removal, or destruction of a designated landmark may not be denied except as provided in subsection (3) 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.

(a) If the Commission has voted to recommend the designation of a landmark, and the final designation has not been made by the Town Council, the demolition or destruction of any building, structure or site on the property of the designated landmark may be delayed by the Commission for up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.

(2) The Town Council may enact an ordinance to prevent the demolition by neglect of any designated landmark. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

(3) 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.

PART II. That Town Code Sec. 1-6 General penalty; enforcement of ordinances; continuing violations. be amended as follows:

...

(d) Violations of the following provisions of this Code shall subject the offender to a civil penalty upon the issuance of a citation for said violations as provided in this section. The civil penalty, if not paid to the town treasurer within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be no more than \$500.00 for each violation, and each day any single violation continues shall be a separate violation. The provisions of this Code which shall subject the offender to a civil penalty are as follows:

...

(4) Chapters 6, 16, 17, 24, 30, all provisions.

...

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the 4th day of October, 2016.



Thomas B. Bennett

Mayor

Date: 10/4/2016

Vote: Ayes 5 Nays 0

ATTEST:

[Signature]
Town Clerk

APPROVED AS TO FORM:

[Signature]
Town Attorney