



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2019-3826

Substitute

Public Hearing: YES NO

Department: Board of Commissioner - District 6

SUBJECT:

Commission District(s): All

An Ordinance to Amend the Chapter 13.5 (Historic Preservation)

Information Contact: Commissioner Gannon

Phone Number: 404 371 6353

PURPOSE:

Update the Historic Preservation Ordinance

NEED/IMPACT:

The original ordinance was adopted in 1994. After 25 years of experience, several minor corrections will improve the administration of the ordinance. In particular, the appointment process needs to be updated to reflect past changes in the Organizational Act.

FISCAL IMPACT:

None

RECOMMENDATION:

Adopt the ordinance and authorize the chief executive officer to execute all necessary documents...

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 13.5 (HISTORIC PRESERVATION)
AND FOR OTHER PURPOSES.**

WHEREAS, the Governing Authority recognizes the historical, cultural and aesthetic heritage of DeKalb County as essential to the promotion of the health, prosperity; and

WHEREAS, the Historic Preservation Commission is vital to protecting the historical, cultural and aesthetic heritage of DeKalb County; and

WHEREAS, the Code of DeKalb County must be updated to ensure the Historic Preservation Commission is adequately staffed to continue its important mission, among other things;

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 13.5 of the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By amending sections 13.5-2, 13.5-3, 13.5-7, 13.5-8, 13.5-10, and 13.5-13 to read as follows:

Sec. 13.5-2. Definitions.

Ordinance of Designation – means an ordinance proposed by the historic preservation commission for consideration by the governing authority to designate a property or district as historic.

Sec. 13.5-3. Historic Preservation Commission; Creation and Appointment.

There is created a commission whose title shall be "DeKalb County Historic Preservation Commission" (hereinafter "preservation commission"). The preservation commission shall consist of seven seats divided into two groups. Seats 1-4 shall constitute Group A and seats 5-7 shall constitute Group B. Notwithstanding the terms of any appointments prior to [INSERT EFFECTIVE DATE OF THIS ORDINANCE AMENDMENT], the terms of seats 1-4 in Group A shall be three years beginning on July 1, 2020. The terms of seats 5-7 in Group B shall be three years beginning on July 1, 2021. Each successive term shall begin on July 1 and terminate on June 30 of the third year.

Preservation commission members shall be residents of DeKalb County for at least one year prior to taking office and shall have demonstrated special interest, experience, or education in the preservation of historic resources, history, or architecture. At least a majority of members shall be currently or previously licensed architects, landscape architects, or interior designers or professionals in the fields of history, historic preservation, architectural history, planning or archaeology or have a degree in a relevant field of study.

Preservation commission members shall serve a maximum of two consecutive three year terms. Any member serving a term as of [INSERT EFFECTIVE DATE OF THIS ORDINANCE AMENDMENT] shall be eligible for two consecutive three year terms after the expiration of the current term.

The county clerk shall notify the chief executive officer, the board of commissioners, and the planning director ninety (90) days prior to any vacancy. The planning director shall take such action as may reasonably be required to inform county residents that an opening exists on the preservation commission, including the publication of a notice in the principle newspaper of general circulation in DeKalb County. The planning director shall accept and conduct an initial review of applications for appointment to the preservation commission and submit a list of qualified applicants to the chief executive officer. The chief executive officer or designee shall nominate individuals for confirmation by the board of commissioners as provided in Section 13A of the DeKalb County Organizational Act.

Should a member of the preservation commission be unable to complete a term of office, the governing authority shall fill the vacancy for the remainder of the unexpired term in the same manner as making initial appointments. A member who serves the remainder of an unexpired term created by a vacancy shall be eligible to serve two consecutive terms thereafter.

Members shall serve until their successors are appointed and qualified. Members of the preservation commission shall serve without compensation but may be reimbursed for reasonable expenses.

Sec. 13.5-7. Designations.

Designation of places, districts, sites, buildings, structures, objects, or works of art or historic properties or districts shall be by ordinance adopted by the governing authority, which shall be subject to the following requirements:

(1) Studies

The governing authority, an historical society, neighborhood organization, property owner(s) or resident(s), may request that the preservation commission initiate studies of individual properties or districts to determine whether they meet the criteria specified in this section of designation as historic properties or historic districts. The preservation commission may also initiate such a study or studies on its own initiative based on a review of the county's historic resources. Upon determining that such recommended properties or districts meet the criteria for designation, the preservation commission may submit an ordinance for designation to the governing authority in accordance with the provisions of this section.

(2) Reports

The preservation commission shall adopt a report prior to submitting an ordinance for designation to the governing authority. The report shall contain, as a minimum:

- a) a physical description of the property(ies) and/or district(s) proposed for designation;
- b) a statement of the historical, cultural, architectural and/or aesthetic significance of the same;
- c) a map showing district boundaries and classification (e.g. - historic, non-historic, intrusive and other significant categories) of individual properties therein, or showing boundaries of individual historic properties;
- d) a statement justifying district or individual property boundaries; and
- e) representative photographs.

These reports shall be used to educate the community and to provide a permanent record of the designation.

(3) Criteria

The preservation commission shall consider, but not be limited to, the following criteria when considering recommendations to the governing authority for designation of historic properties or historic districts.

a) Historic Properties:

Whether they:

1. are an outstanding example of a structure representative of its era;
2. are one of the few remaining examples of past architectural style;
3. are a place or structure associated with an event or persons of historic or cultural significance to DeKalb county, the State of Georgia, or the nation;
4. are a site of natural or aesthetic interest that is continuing to contribute to the cultural or historical development and heritage of the county, state or nation; or
5. are currently on or have been declared eligible by the appropriate authorities for listing on the National Register of Historic Places or Georgia Register of Historic Places.

b) Historic Districts:

Whether they:

1. have special character or special historic or aesthetic value or interest;
2. represent one or more periods, styles or types of architecture typical of one or more eras in the history of the county, state or nation;
3. cause such area, by reason of such factors, to constitute a visibly perceptible section of the county; or
4. are currently on or have been declared eligible by the appropriate authorities for listing on the National Register of Historic Places or Georgia Register of Historic Places.

(4) Notice to State

At least thirty (30) days prior to making a recommendation on any ordinance designating a property or district as historic and at least fifteen (15) days prior to the public hearing for such designation, the preservation commission must submit a report to the Office of Historic Preservation of the Georgia Department of Natural Resources or its successor for review and comment, as required by O.C.G.A. Section 44-10-26(b).

(5) Ordinance

Any ordinance designating any property as historic property or any district as a historic district shall:

- a) require that the designated property or district be shown on the official zoning map of the county and be kept by the county as a public record to provide notice of such designation in addition to other notice requirements specified by this section;

- b) describe each property to be designated, set forth the name or names of the owner or owners of the property and require that a certificate of appropriateness be obtained from the preservation commission prior to any material change in appearance of the designated property; and
- c) include a description of the boundaries of such district, list each property located therein, set forth the name or names of the owner or owners of each such property and require that a certificate of appropriateness be obtained from the preservation commission prior to any material change in appearance of any structure, site or work of art located within the designated historic district.

(6) Notice and Hearing

The preservation commission and the governing authority shall hold a public hearing on any proposed ordinance for the designation of any historic district or property. Notice of the hearing shall be published in at least three (3) issues of the principal newspaper of general circulation within DeKalb County and written notice of the hearing shall be mailed to all owners and occupants of such properties. All such notices shall be published or mailed not fewer than ten (10) nor more than twenty (20) days prior to the date set for the public hearing. A notice mailed to the last known owner of the property shown on the DeKalb tax records and a notice mailed to the address of the property on which residences or business are located to the attention of the occupant shall constitute legal notification to the owner and occupant under this Ordinance.

This published notice shall state the time, date, place and purpose of the hearing. This published notice shall also include the location or boundaries of the property or properties and a statement that the property could be proposed for historic designation during the proposal process.

The commission shall cause to be erected a sign or signs giving notification of the date, time and place of a public hearing to consider the proposed historic designation. In the case of an historic property, one sign shall be placed on the property visible from a public street. In the case of a historic district, signs shall be placed at each point where the district boundary intersects a public street.

(7) Recommendation to Governing Authority

A recommendation to adopt, modify or reject the proposed ordinance for designation shall be made by the preservation commission within fifteen (15) days following the public hearing and shall be in the form of a resolution to the governing authority.

Following receipt of the preservation commission's recommendation, the governing authority may adopt the ordinance as proposed, may adopt the ordinance with any amendments it deems necessary, or reject the ordinance.

(8) Final Notice

Within thirty (30) days following a designation by the governing authority, the owners and occupants of each designated historic property, and each structure, site or work of art located within a designated historic district, shall be given written notification of such designation by the governing authority. The notice shall apprise owners and occupants of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in appearance of the historic property designated or within the historic district designated.

(9) Moratorium

Upon a vote by the preservation commission to accept an application for designation, the governing authority may enact a moratorium on land development permits, building permits, and other permits for work that would constitute a material change in the appearance of a property or any building, structure, site, object, landscape feature or work of art within an area that is being considered for historic designation. A moratorium imposed under this subsection shall be effective for no more than sixty (60) days from the date of enactment.

(10) Inspections

(a) Upon the issuance of a building permit or land development permit for any property or district designated as historic by ordinance, the planning director or designee may inspect such property to ensure compliance with this chapter.

(b) The inspecting official may enter the property at reasonable times to conduct an inspection of the exterior of a building or structure. If access to the interior of a building or structure is required, prior to entry the official shall present credentials, state the reason for the inspection, and request entry. If the building is unoccupied, the official shall make reasonable efforts to locate any person having control of the property and request entry.

(c) If entry is refused or the official is unable to obtain consent, the official shall have recourse to every remedy provided by law to secure entry, including but not limited to an application to a magistrate judge or any court of competent jurisdiction for an administrative search warrant.

(d) An administrative search warrant may be issued where the person seeking the warrant establishes under oath or affirmation that the property to be inspected is to be inspected as part of a legally authorized program of inspection which includes that property, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection.

Sec. 13.5-8. Certificate of Appropriateness

After the designation by ordinance of a historic property or of a historic district, no material change in the appearance of such historic property, or of any building, structure, site, object, landscape feature or work of art within such historic district shall be made or be permitted to be made by the owner according to the DeKalb

County tax records or an authorized agent unless or until an application for a certificate of appropriateness has been submitted and approved by the preservation commission.

(1) *Application for Certificate of appropriateness.* Owners of historic property or of property in a historic district, or their duly authorized agents, must make application for a certificate of appropriateness on forms and according to procedures promulgated by the preservation commission for such purpose. The Georgia Department of Transportation and contractors performing work funded by the Georgia Department of Transportation are exempt from provisions of this chapter. Local governments are also exempt from obtaining certificates of appropriateness but shall notify the preservation commission at least forty-five (45) days prior to beginning or undertaking any work that would otherwise require a certificate of appropriateness, so as to allow the preservation commission an opportunity to comment. All applications for certificates of appropriateness shall be accompanied by drawings, photographs, plans and documentation as required by the preservation commission. Written authorization of the property owner shall be required if the applicant is not the owner of record.

(2) *Public notice.* Prior to reviewing an application for a certificate of appropriateness, the preservation commission shall take such action as may reasonably be required to inform the owners of any property likely to be affected materially by the application (i.e. any owner of adjoining property or owner of property whose property line is within two-hundred fifty (250) feet of the applicant's property according to the DeKalb County tax records) and shall give the applicant and such owners an opportunity to be heard. In cases where the preservation commission deems it necessary, or upon the written request of the applicant or an abutting property owner, the preservation commission shall hold a public hearing concerning the application. A request for public hearing must be made by the applicant at the time of filing the application or by an abutting property owner within three (3) days of receipt of notice that an application is pending before the commission. Written notice of a public hearing shall be mailed by the preservation commission to all owners and occupants of the proposed property and all abutting property owners as shown by the DeKalb county tax records not less than ten (10) nor more than twenty (20) days prior to the date set for hearing of the application.

(3) *Review of applications.* When reviewing applications for certificates of appropriateness, the preservation commission shall consider, in addition to any other pertinent factors, historical and architectural value and significance; architectural style; scale; height; setback; landscaping; general design; arrangement; texture and materials of the architectural features involved and the relationship thereof to the exterior architectural style; and pertinent features of other properties in the immediate neighborhood. When considering applications for existing buildings, the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guideline for Preserving, Rehabilitating, Restoring and

Reconstructing Historic Buildings, shall be used as a guideline. All local guidelines must be adopted in accordance with federal guidelines.

(4) *Interior changes.* In its review of applications for certificates of appropriateness, the preservation commission shall not consider interior arrangements or uses having no effect on exterior architectural features. The preservation commission may delegate the responsibility for determining the extent of interior change and its effect on the exterior appearance to the planning director or his designee.

(5) *Demolition.* A decision may be made by the preservation commission approving or denying a certificate of appropriateness for the demolition of buildings, structures, sites or objects.

(6) *Ordinary maintenance and repair.* Ordinary maintenance or repair of any exterior architectural feature in or on a historic property, that does not involve a material change in design, material, or outer appearance thereof, is excluded from review.

(7) *Approval.* The preservation commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed material change(s) in appearance would not have a substantial adverse effect on the aesthetic, historic or architectural significance and value of the historic property or the historic district. The preservation commission may approve the application as proposed, approve it with modifications, or deny the application. The preservation commission shall approve, approve with modifications or deny an application for a certificate of appropriateness within forty-five (45) days after the filing thereof by the applicant unless an extension is requested by the applicant and granted by the preservation commission. Evidence of approval shall be by certificate of appropriateness issued by the preservation commission. Failure of the preservation commission to act within said forty-five (45) days shall constitute approval and a certificate of appropriateness shall be issued.

(8) *Final action.* The preservation commission's decision, whether to accept or reject an application shall be in writing. The written decision shall be signed by the chair, or the vice-chair, or a designee and must clearly set forth the reasons for the decision, including whether the guidelines have been met and specifically which factors, as set forth in section 13.5-8(3), were considered in reaching the decision. Approval of an application shall also result in the issuance of a certificate of appropriateness. Notice of the issuance or denial of a certificate of appropriateness shall be sent to the applicant and all other persons who have filed a written request for such notice with the preservation commission. All work performed pursuant to a certificate of appropriateness shall conform to the requirements of such certificate and by other applicable laws. In the event work is performed which is not in accordance with such certificate or laws, the county shall issue a cease and desist order and all work shall cease. A certificate of appropriateness shall become void unless construction is commenced within twelve (12) months of the date of the

issuance and completed within eighteen (18) months of the date of issuance. Certificates of appropriateness are not renewable.

(9) *Revised applications.* The preservation commission may suggest alternative courses of action if it denies the application submitted. The applicant may make modifications to the plans and may resubmit the application at any time after making such modifications as suggested by the preservation commission.

(10) *Prohibition on issuance of development permits.* In cases where the application covers a material change in the appearance of a property or structure, which would require the issuance of a permit of any kind, the denial of the application for a certificate of appropriateness shall be binding upon the county and no permit related to the rejection of the application for a certificate of appropriateness shall be issued by the county.

(11) *Official record.* The preservation commission shall keep a public record of all applications for certificates of appropriateness and of all the preservation commission's proceedings in connection with applications. Such records shall be maintained by the planning director. In the event of an appeal to the governing authority, the official record of the preservation commission's decision shall consist of the application, any accompanying drawings, renderings or photographs, written comments from planning department staff, written comments of any participant at the hearing before the commission and the preservation commission's written decision. Such records shall be available for review in the planning department within ten (10) days of a final decision by the preservation commission on the certificate of appropriateness.

(12) *Appeal to the governing authority.* The applicant or any-owner of property whose property line is within one thousand five hundred (1,500) feet of the applicant's property may appeal any decision made by the preservation commission to the governing authority. The appeal shall be limited to a review of the record of the proceedings before the preservation commission. The standard of review shall be an abuse of discretion. An abuse of discretion exists where the record presented to the governing authority shows that the preservation commission exceeded the limits of its authority or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or the guidelines adopted by the preservation commission pursuant to section 13.5-6 or that the preservation commission's decision was otherwise arbitrary and capricious. If the governing authority finds no abuse of discretion, then it may affirm the decision of the preservation commission. If the governing authority finds that the preservation commission abused its discretion in reaching a decision, then it may reverse the preservation commission's decision, or it may reverse the preservation commission's decision and remand the application to the preservation commission with direction. All appeals must comply with the procedures set forth below:

- a. Any appeal must be filed in writing with the clerk to the board of commissioners using an appeal form provided by the planning director, within fifteen (15) days

after the date of issuance or denial of the certificate of appropriateness. The appellant shall also deliver copies of the appeal to the planning department and the county attorney.

- b. In the written appeal, the appellant must describe how the preservation commission's decision constitutes an abuse of discretion. Specifically, the appellant must, citing to the preservation commission's written decision, show at least one of the following: that the preservation commission exceeded the limits of its authority, or that the preservation commission's decision was not based on factors set forth in the section 13.5-8(3) or on the guidelines adopted by the preservation commission pursuant to section 13.5-6, or that the preservation commission's decision was otherwise arbitrary and capricious.
- c. In addition to the appeal form, the appellant may submit a written supplementary explanation in support of the appeal. The supplementary explanation shall be submitted with the appeal. The supplementary explanation may not exceed three pages and must be typewritten and double-spaced using a twelve-point font with a one-inch margin on all four sides. The governing authority will not consider text in excess of the page limit set forth herein.
- d. Any adversely affected person may also submit a written supplementary explanation that must comply with all of the requirements set forth in Section 13.5-8(12)c, in support of, or in opposition to the appeal. All written supplementary explanations authorized by this subsection must be filed within five (5) days after the appeal is filed. Such written supplementary explanations must be filed with the clerk to the board of commissioners with copies to the planning director, and the county attorney.
- e. The planning department shall submit appeals of the decisions of the historic preservation commission to the governing authority for consideration at any of the board of commissioners' regularly scheduled meetings within sixty (60) days of the issuance of the decision from the preservation commission.
- f. The agenda item shall set forth the standard of review to be used by the governing authority in deciding the appeal. The official record of the preservation commission's decision together with the appeal and all properly filed written supplemental explanations in support and in opposition to the appeal, will be attached to the governing authority's agenda item. The governing authority may not consider any written document that is not attached as the official record to the governing authority's agenda item for the appeal. The appellant and any person who has filed a statement in opposition to, or in support of the appeal may attend the meeting and may be called upon by any member of the governing, authority to provide information or answer questions. There shall be no other public participation in the appeal.

g. The governing authority shall render a decision on the appeal within forty-five (45) days of the first appearance of the appeal on the board of commissioners' agenda.

(1) *Appeals to Superior Court.* An appeal from a decision of the governing authority shall be made by a petition for writ of certiorari to the Superior Court of DeKalb County.

(2) *Court action.* The governing authority is authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or district, except those changes made in compliance with the provisions of this chapter, or to prevent any illegal act or conduct with respect to such historic property or district.

Sec. 13.5-9. Acquisitions

The preservation commission may, where such action is authorized by the governing authority, enter into negotiations with the owners of historic properties or of properties within historic districts for the acquisition by gift or purchase of ownership of the property or any interest therein. Final approval and ownership of these properties would be by the governing authority.

Sec. 13.5-10. Failure to Maintain Historic Property

Property owners of historic properties or properties within historic districts shall not allow their buildings to deteriorate by failing to provide ordinary maintenance or repair. The preservation commission shall monitor the condition of historic properties and existing buildings, structures, sites and works of art located in historic districts to determine if they are being allowed to deteriorate by neglect.

If the preservation commission or preservation staff determine a failure to provide ordinary maintenance and repair, the preservation staff shall notify Code Compliance, who will notify the owner of the property and set forth the steps which need to be taken to remedy the situation. The owner of such property shall have thirty (30) days to initiate the appropriate repairs.

In the event that efforts to correct the condition are not commenced within thirty (30) days, the owner shall be considered in violation of this ordinance and shall be subject to penalties as provided by Sec. 1-10 of this Code.

Sec. 13.5-11. Exceptions

Where by reason of unusual circumstances, the strict application of any provision of this Ordinance would result in exceptional practical difficulty or undue hardship upon any owner of any specific property; the preservation commission in passing upon applications shall have power to vary or modify strict adherence to

said provisions or to interpret the meaning of said provision so as to relieve such difficulty or hardship; provided such variance, modification, or interpretation shall remain in harmony with the general purpose and intent of said provisions so that the architectural or historical integrity or character of the property shall be conserved and substantial justice done. In granting variations, the preservation commission may impose such reasonable and additional stipulations and conditions as will, in its judgment, best fulfill the purpose of this Ordinance. An undue hardship shall be a situation beyond the control of the applicant, which is a problem unique to a specific property or in order to comply with this Ordinance, the person will violate another Ordinance of DeKalb County. The burden of demonstrating the existence of the hardship by a preponderance of evidence shall be with the applicant.

Sec. 13.5-12. Application Fees

Each application for a certificate of appropriateness shall be accompanied by a fee in an amount established by the governing authority, a copy of which will remain on file in the planning department, to partially defray the public expense in processing such application. The fee shall not be required for an application filed by the county.

Sec. 13.5-13. Penalties

Violations of this chapter shall be punishable in accordance with Sec. 1-10 of the code as it now exists or as it may hereafter be amended.

Sec. 13.5-14. Severability

In the event that any section, subsection, sentence, clause, or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sentences, clauses, or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

Sec. 13.5-15. Repeal of Conflicting Ordinances

This chapter is the Historic Preservation Ordinance of the DeKalb County, and all other conflicting ordinances or resolutions are hereby repealed.

ADOPTED by the DeKalb County Board of Commissioners, this 10th day of September, 2019.



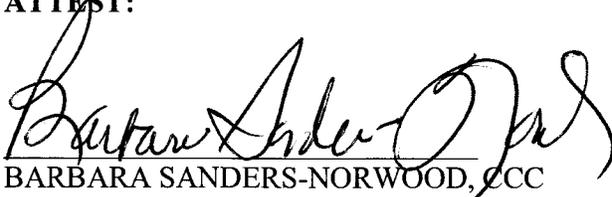
JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this 12th day of September, 2019.



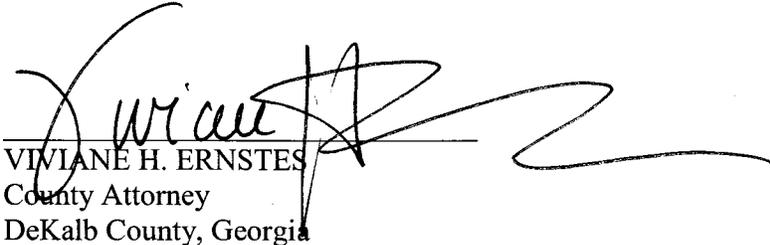
MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:



BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:



VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia