

## STAFF REPORT

Town Council, June 26, 2014

### Establishment of a Cary Historic Preservation Commission (PL14-029b)

Consideration of the establishment of a Cary Historic Preservation Commission and associated amendments to the Town Code and Land Development Ordinance (LDO)

Speaker: Ms. Anna Reading

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### EXECUTIVE SUMMARY

This staff report follows up on council's direction to take steps to create a Cary Historic Preservation Commission. Currently, staff attempts to negotiate preservation solutions on a case-by-case basis with owners of historic properties during the rezoning process, but the ability to do more than that is limited by the lack of a formal regulatory program.

The NC General Statutes recognize that regulation is a necessary component of an effective historic preservation program, thus enabling local governments to appoint historic preservation commissions to recommend and oversee the regulation of landmarks and/or local historic districts. Though Cary does not have an historic preservation commission, the Town does have an inter-local agreement with the Wake County Historic Preservation Commission (HPC) to act on the Town's behalf. Through the Wake County HPC, Cary regulates six officially-designated Historic Landmark properties.

In addition, Cary received special enabling legislation in 2007 that allows the Town, through a certified preservation program, to regulate the demolition of non-landmarked properties outside of historic districts. This authority has not yet been exercised because of practical and legal concerns related to administering such an ordinance through the inter-local agreement with the Wake County HPC.

With the goal of achieving a more robust and effective preservation program, staff is presenting a series of proposed amendments to the Cary Town Code and to the Land Development Ordinance (LDO) as the first steps in establishing a Cary Historic Preservation Commission.

### ACTION STEPS AND TENTATIVE SCHEDULE FOR PHASES I, II, AND III:

#### Phase I: Code amendments to establish a Cary HPC and adopt a preservation ordinance

Call for Public Hearing	April 24, 2014
Town Council Public Hearing on Code/LDO amendments	May 8, 2014
Planning and Zoning Public Hearing	June 16, 2014
Final Action by Town Council	June 26, 2014
Notify Wake County; begin 90-day notice period	July 1, 2014
Call for applicants to serve on an HPC	July 1, 2014
Council appointments to HPC	September 2014

#### Phase II: Transition of the Cary Landmark program from Wake County to Cary

Commissioner training to facilitate transition of landmark program from Wake Co. to Cary	October - December 2014
HPC adopts by-laws and rules of procedure	
HPC adopts design principles and guidelines for review of COAs	

HPC assumes full regulatory oversight of landmarks	January 2015
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**Phase III: Code amendments to codify delay of demolition authority; application for CLG status (Preliminary Schedule – Subject to Change)**

Staff and HPC evaluate and prioritize historic resources	January – February 2015
Staff drafts LDO amendments to regulate demolition of other historic resources on local inventory list*	February - April 2015
Town Council Public Hearing	May 2015
Planning and Zoning Board Public Hearing	June 2015
Final Action by Town Council	July 2015
Demolition delay regulation for other historic resources takes effect	2016 (Upon achieving CLG status)**

\* “Other historic resources” refers to resources listed on the local inventory that are not designated Landmarks and are not located within a local historic district zoning overlay.

\*\* After one year of operating the landmark program, the Town will be eligible to apply to the State Historic Preservation Office and U.S. Dept. of the Interior for certified local government (CLG) status.

**SUMMARY OF PROCESS AND ACTIONS TO DATE**

May 8, 2014 Town Council Public Hearing

No citizens spoke at the public hearing.

Council members requested text stating that the penalty for unauthorized demolition of an historic property could be waived by the Town Council – not the Historic Preservation Commission, as was first drafted. A council member also expressed concern that owners of non-contributing structures in any future historic districts should not need to request permission to paint or otherwise maintain their houses.

May 12, 2014 Planning & Zoning Board Work Session

Major comments and concerns:

Board members asked staff to add some background to the staff report on landmarks and local historic districts, including any financial incentives available.

Several members felt the proposed text amendments weren’t clear as to whether a property can be designated a Cary Historic Landmark without the owner’s permission. Staff will add text that clarifies that owners must first give their permission.

Regarding questions about an Historic Preservation Commission’s jurisdiction, staff explained that State statutes allow a municipality’s HPC to conduct historic surveys and designate landmarks and historic districts within its zoning jurisdiction. Cary’s zoning jurisdiction includes its Town limits and its extra-territorial jurisdiction (ETJ); therefore, any historic property outside of Cary’s Town limits or ETJ wouldn’t be subject to Cary’s preservation ordinance unless it was annexed into Cary or made a part of its ETJ.

Members asked staff to explain the potential length of a demolition delay for an historic building. Staff explained that under the proposed ordinance, the HPC must act on a request for a demolition certificate of appropriateness within 180 days of the date the application is filed. The HPC can’t deny a request unless the building is determined by the State as having state-wide significance, but the HPC could approve the demolition and then delay the effective date of the demolition certificate by up to 365 days in order to allow time to negotiate with the owner to find a means for preserving the building.

Staff clarified that a penalty for demolishing a landmark would be incurred if the owner demolished it without first getting a demolition certificate of appropriateness as required by the preservation ordinance. In such a case, the penalty would be that no redevelopment plans could be submitted for the property for 48 months from the date of notice of the violation.

Staff verified that Cary HPC would not need Wake County's review or approval to act on landmark nominations or certificates of appropriateness.

#### June 16, 2014 Planning & Zoning Board Public Hearing

No citizens spoke at the public hearing.

#### Board Discussion:

Board members were generally in favor of the amendments establishing a Cary HPC. One member believes a potential 365-day delay for demolition of historic properties is too long. He would prefer no more than six months. Another member noted that under the proposed ordinance, landmarking a property would require the owner's permission; therefore he believes historic district zoning should also require landowner permission. The Board voted 8-1 in favor of forwarding the amendments to Town Council with a recommendation for approval.

*(Staff comment: State enabling legislation allows up to a 365-day demolition delay so that there is adequate and meaningful time to explore and execute alternatives to demolition, which could include one or more of the following: negotiating a revised plan, locating a buyer, identifying funds for rehab, or executing a building re-location which could include identifying/creating a receiving parcel. The HPC may elect a shorter-term delay based on individual circumstances.)*

#### Changes To Proposed Text Since the May 8, 2014 Town Council Public Hearing:

1. Text clarified: Major COAs require a public hearing.
2. Text added such that:
  - An owner's consent is required for landmark designation.
  - COAs must require changes to be congruent with the special character of the landmark or district.
3. Text Changed To Read: Waiver of a demolition delay shall be granted by Town Council.

At the request of a P&Z Board member, staff also added additional background on landmarks and historic districts to the staff report (see attachment C).

### **BACKGROUND**

The first goal of the Historic Preservation Master Plan is to "Establish fair and effective processes and policies for preservation," with one of the implementation actions under that goal being to "Develop an ordinance for Town Council review and adoption establishing a Cary historic preservation commission." At its July 25, 2013 council meeting, Council directed staff to investigate the formation of a Cary historic preservation commission. Staff subsequently prepared and submitted a background report to the Operations Committee at its December 11, 2013 meeting. Then at its December 19, 2013 meeting, Council unanimously directed staff to move ahead with the steps necessary to create a Cary historic preservation commission.

State enabling legislation grants local governments the ability to regulate historic properties through appointed historic preservation commissions and the designation of [local landmarks and local historic district zoning](#). Once designated, owners of landmarks or properties in historic districts who are planning a construction/demolition project must first apply to the commission for a "certificate of appropriateness," or COA, which is a type of permit that indicates that the property owner's project is "appropriate" and will not have a detrimental effect on the aesthetics or architectural integrity of the building or the district. Without that certificate, the property owner cannot move forward with the proposed project.

#### Cary's Agreement With The Wake County Historic Preservation Commission

Under an inter-local agreement created in 1991-92, the Wake County Historic Preservation Commission (Wake County HPC), serves as Cary's preservation commission and regulates historic properties in Cary through the historic landmark program. The Wake County HPC reviews and nominates potential Cary historic landmark properties, and then forwards the nomination and a recommendation to Cary Town

Council for its review and approval. Since 1993, Wake County has nominated and recommended six landmarks to Cary, and Council has approved them all. Landmark owners are required to apply for a COA from the Wake County HPC if they desire to change or alter the exterior appearance of their landmarked property. The Wake County HPC uses the Wake County Design Guidelines to review proposed changes or alterations to the exteriors of these landmark properties. The inter-local agreement also gives Wake County HPC design review authority over changes to buildings within local historic districts in Cary, but because Cary has no *local* historic district zoning (this is not the same as national register historic districts), this does not occur. The Wake County historic preservation program and commission are staffed by Capital Area Preservation, Inc., a nonprofit preservation organization based in Raleigh that advocates for historic preservation and provides professional preservation consulting services. The Wake County HPC is an 11-member board, one member of which is a Cary representative.

Wake County has funded the nominations of many of Cary's six landmarks, and funds the review and enforcement of landmark COAs, but according to the inter-local agreement, if the Wake County HPC were asked to oversee regulation of a local historic district in Cary, the Town would need to provide the County with the necessary funding. The agreement also states that "Any Participating Municipality may withdraw from this agreement by providing the County 90-day written notice of its withdrawal."

Cary's Special "Delay of Demolition" Enabling Legislation: As a part of the general historic preservation enabling legislation that has been in place for decades, State statutes allow for the regulation of demolition of local Historic Landmarks and properties located in *local* historic districts. The statutes allow a delay of demolition of up to 365 days for these properties. In 2007, the General Assembly passed House Bill 827, which allows the towns of Cary and Wake Forest to adopt ordinances regulating demolition of historic structures that aren't either Historic Landmarks or located within local historic districts. The properties included in House Bill 827 are those in National Register Historic Districts, and other historic structures "individually listed in a local inventory of historic places in communities with historic preservation programs that have been certified by an approved State program (including certified local governments)." A local government may achieve certification as a "certified local government" (CLG) through application to the State Historic Preservation Office and the U.S. Department of the Interior. These entities review the local government's preservation program and certify that the local government has adopted a preservation ordinance and established a preservation commission and is carrying out a preservation program meeting federal and state standards. Under current arrangements, since Cary is not a certified local government, Cary can only exercise the authority granted by House Bill 827 through Wake County, which is a certified local government. Staff has not acted yet on the authority granted by House Bill 827 because of concerns about the practical and legal ramifications of administering demolition delay regulation through a third-party (Wake County HPC) and still providing the clearest and most efficient route of negotiation and relief for citizens who want to appeal a potential demolition delay ruling.

Actions Proposed: In order to proceed toward a more robust, complete preservation program; in order to take advantage of the powers granted to Cary under House Bill 827 in the most fair and efficient way for our citizens; and ultimately to provide property owners with a more predictable preservation approach, staff proposes withdrawing from the inter-local agreement with Wake County, establishing a local Cary Historic Preservation Commission, and gaining the powers and privileges of certified local government status.

Further, considering the complexity of establishing a HPC and the existing arrangements with Wake County, staff proposes that establishment of a HPC and certified local government status be achieved through a three-phase process, beginning with this first set of code and text amendments.

The three proposed phases are: Phase I – code amendments to establish a Cary Historic Preservation Commission and codify its duties and powers; actions to withdraw from the inter-local agreement with Wake County and seat a Cary commission; Phase II – transition of Cary landmarks from Wake County oversight and regulation to a Cary HPC, including training of Cary commission members; and Phase III – LDO text amendments to implement and enforce delay of demolition regulations for other historic properties not already subject to demolition delay.

## OVERVIEW OF PHASE I CODE AMENDMENTS

A brief summary of proposed amendments is provided below or see [complete ordinance text](#).

1. **Chapter 2, Article V of the Town Code - Boards and Commissions and Authorities.** These amendments establish a Historic Preservation Commission, its membership, terms of office, and educational requirements according to guidelines established for certified local governments.
2. **Land Development Ordinance.:**
  - A. **Chapter 1 (General Provisions).** These amendments clean up general language in the General Provisions chapter by :
    - 1) Adding the Historic Preservation Master Plan to the LDO as an official element of the Comprehensive Plan.
    - 2) Changing the reference to the Open Space and Historic Resources Plan to simply The Open Space Plan. (This change was approved by Council when the Historic Preservation Master Plan was adopted).
  - B. **Chapter 2 (Review and Decision-Making Bodies).** These amendments:
    - 1) Add Historic Preservation Commission to the list of entities that have a role in administering the LDO.
    - 2) Amend a table summarizing Ordinance Administration and Review Roles to include the role of the Historic Preservation Commission.
    - 3) Add the review and decision-making responsibilities as well as other powers and duties of a historic preservation commission.
  - C. **Chapter 3 (Review and Approval Procedures).** These amendments:
    - 1) Amend a table summarizing the public notice requirements of various procedures to include those related to historic landmark and historic district designations and public hearings to grant certificates of appropriateness.
    - 2) Add a requirement for certificates of appropriateness when altering, changing or demolishing historic landmarks or properties in local historic districts.
    - 3) Add detailed procedures for applying for both major and minor certificates of appropriateness; and detail the procedures for review, approval, and appeal.
  - D. **Chapter 4 (Overlay Zoning Districts).** These amendments:
    - 1) Establish the Historic Preservation Overlay as a type of overlay zoning district.
    - 2) Outline the purpose, intent, and applicability of such an overlay.
  - E. **Chapter 11 (Enforcement).** These amendments:
    - 1) Amend the Violations section to include actions contrary to the historic preservation ordinance.
    - 2) Amend the Remedies and Penalties sections to add a penalty disallowing redevelopment of a site for 48 months for unauthorized demolition of landmarks or properties in local historic districts.

Note: As indicated in the complete ordinance text, language further defining “minor works” will be inserted under *3.27.2 (B) Certificate of Appropriateness – Minor Works* before the May 8 public hearing. Additional minor revisions to the overall text may also be made.

#### **FISCAL IMPACT**

An additional 15-20 hours of Planning staff time per month will be required to prepare for, attend and handle follow-up from Historic Preservation Commission (HPC) meetings; provide administrative support to property owners seeking COAs; and support the education and outreach activities of the HPC. (An estimated 0.5 of an FTE is already devoted to historic preservation and related issues.) HPC meetings will also require staff time from Public Works to open/close facilities on meeting days. On occasion, legal and administrative support will be necessary to conduct and document quasi-judicial hearings. Funding for the work, materials and educational opportunities necessary to support the HPC and achieve and

maintain certified local government status will need to be included in the planning department operating budget.

**STAFF RECOMMENDATION**

Staff recommends approval of these proposed amendments to the Town Code and the Land Development Ordinance.