



**City of Southport
Historic Preservation Commission
Minutes September 4, 2024
Indian Trail Meeting Hall, 113 W. Moore St.**

Member's Present: Vice-Chair Rick Pukenas, Bonnie Bray, Joanne Wesson, Alexis-Gore Graves, Josh McGee, and Jim McKee

Members Absent: Charles Drew, Bonner Herring, and Tal West.

Staff Present: Historic Preservation Planner Penny Tysinger

Aldermen Liaison: Robert Carroll

The meeting was scheduled for the Indian Trail Meeting Hall, 113 W. Moore St., but had to be relocated to the Library due to new equipment being installed in the building.

A. Vice Chair Pukenas called the meeting to order at 4:10 p.m.

The meeting began without a quorum present. Introductory Agenda Items were out of order.

B. Public Comment: None

C. Old Business: None

D. Approval of the Agenda

Mr. McKee made a motion to approve the agenda. Seconded by Ms. Graves. Unanimous Vote; Motion Carried. ***Unanimous Vote.***

E. Approval of the Minutes

Mr. McKee made a motion to approve the July 24, 2024, minutes. Seconded by Ms. Wesson. ***Unanimous Vote; Motion Carried.***

F. New Business:

1. Southport History Write Up

Ms. Tysinger presented the initial draft written by Consultant Andrea Radford on the Historic Context for the Southport Local Historic District. She mentioned that Ms. Radford had some questions regarding certain aspects of the context and would appreciate further input from the Commission. Ms. Tysinger then proceeded to discuss the specific questions raised.

1. Finding conflicting dates about when Governor Gabriel Johnston established the fort. 1745? After further research, Ms. Tysinger was able to provide the Consultant with the information.
2. Original 100 lots- Were they drawn in 1793? Ms. Tysinger said that she was able to provide Ms. Radford with the information.
3. St. Philips Episcopal Church – plaque says 1851, National Register nomination, and all resources state ca. 1860, 1894-96. Ms. Wesson said that she could inquire with the church for more information.
4. Are the homes surrounding the St. James AME Zion Church part of the northeast section of African American neighborhoods? Do we know who lived there? Is there any other information we can include

in the history write-up? It was suggested to talk to Mr. Donner Joyner, the Frink family, Eugene Gore, James White, and Gwendolyn Wilson.

5. Are there any catalog homes left in Southport? Ms. Radford had heard there was one on Atlantic, but she may have missed it. There was a discussion of one at 105 S. Atlantic Avenue.
6. Where is the Cottage Place neighborhood? Ms. Tysinger retrieved this information and provided it to the Consultant.
7. Where is the Pyke and Weeks subdivision? The Weeks Subdivision has been identified, but there is still no evidence of the Pyke Subdivision.

Ms. Tysinger will send the draft to the Historical Society for review. She recommends that the Commission review it as well to see if they have any information to add or corrections to make to continue.

2. Discussion on who has "Standing" in a Quasi-Judicial Hearing

Ms. Tysinger went over the rules of "Standing."

Standing

In contrast to participation, relatively few individuals have legal standing in the quasi-judicial decision. A party with standing is an aggrieved party that would suffer special damages from the outcome of the matter. They are distinct from the general public and enjoy certain due process rights that must be protected. General Statute 160D-406 outlines the rights and procedures for appealing a quasi-judicial decision. It sets forth the following persons that have standing to appeal. This guidance is also instructive for determining standing in the initial quasi-judicial hearing.

- A person with a legal interest in the subject property (this might include ownership, lease interest, an option or contract to purchase the property, or an interest created by an easement, restriction, or covenant)
- The applicant before the decision-making board
- The city or county when the governing board believes the decision was made in error
- A person who will suffer special damages as a result of the decision
- An association organized to promote the interests of a particular area (such as a homeowners association or community association) so long as at least one member would have standing as an individual and the association was not created in response to the development at issue

When does standing matter?

A party must have due process rights in the proceeding to take certain actions. So, standing matters when an individual wants to assert one of those legal rights. Otherwise, the proceedings could infringe on the constitutional due process rights of the individuals who do have standing in the matter.

An individual must have standing to:

- Appeal a staff decision to the board of adjustment
- Appeal a preservation commission decision to the board of adjustment
- Act as a party in the quasi-judicial hearing, including:
 - ❖ cross-examine witnesses
 - ❖ object to evidence

- ❖ offer rebuttal
- ❖ challenge the impartiality of a decision-maker
- ❖ Appeal a quasi-judicial decision to the superior court
- ❖ Intervene in an appeal to the superior court.

§ 160D-406. Quasi-judicial procedure

- **Process Required.** - Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- **Notice of Hearing.** - Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- **Administrative Materials.** - The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
- **Presentation of Evidence.** -The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive, as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

- **Appearance of Official New Issues.** -The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local

government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

- **Oaths.** - The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- **Subpoenas.** - The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request the issuance of a subpoena, the applicant, the local government, and any person notwithstanding under G.S. 160D-1402(c) may make a written request G.S. 160D-406.
- **Appeals in Nature of Certiorari.** - When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).
- **Voting.** - The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- **Decisions.** - The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- **Judicial Review.** - Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-168, S. 3(a).)

G. Other Business:

Ms. Graves discussed the issue with the John C. Smith Cemetery from the last meeting. Rather than including them in the district, she felt the purpose of their attending was to discuss assistance with the maintenance of the Historical Cemetery. She understands that it is not a City Cemetery, and the contracted maintenance for the City Cemeteries does assist with mowing. However, she said it would be helpful if there could be assistance with picking up large limbs and debris since most of the members are elderly and are unable to do so. Discussion then centered around the current maintenance performed by the City. Ms. Tysinger will relay the Commission's concerns to the appropriate Staff and report back at the next meeting with the next steps needed.

H. Announcements:

The Historic Preservation Commission's next meeting will be on Oct. 2nd.

The Historic Resilience Workshop, offered by the UNC School of Government, will be held on October 30th in Wilmington. Members who would like to register should contact Tanya Shannon, Deputy Clerk.

I. Adjournment

Being there was no further business, Mr. McKee made a motion to Adjourn, seconded by Ms. Wesson. ***Unanimous Vote; Motion Carried.*** —4:52 p.m.

Rick Pukenas, Vice Chair

Tanya Shannon, Deputy Clerk