

October 22, 2003

AN ORDINANCE

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

WHEREAS, the Board of Commissioners of DeKalb County has determined that the historical, cultural and aesthetic heritage of DeKalb County is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity and general welfare of the people; and

WHEREAS, the Board of Commissioners of DeKalb County adopted an ordinance in furtherance of that determination to enhance the opportunities for federal and state tax benefits under relevant provisions of federal law and state law and to provide for the designation, protection, preservation and rehabilitation of historic properties and districts and to participate in federal and state programs to do the same; and

WHEREAS, the Board of Commissioners of DeKalb County established a uniform procedure for use in providing for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, objects, landscape features and works of art having special historical, cultural or aesthetic interest or value, in accordance with the provisions of this chapter.

NOW THEREFORE, be it ordained by the Board of Commissioners of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 13.5 of the Code of DeKalb County, be and the same is hereby amended as follows:

PART I. ENACTMENT

By deleting Section 13.5-8 in its entirety and substituting in lieu thereof the following new Section 13.5-8 to read as follows:

Sec. 13.5-8. Certification 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 or work of art within such historic district shall be made or be permitted to be made by the owner or 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. Notarized 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 one thousand five hundred (1,500) 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 Historic Preservation Projects, including the Standards for Rehabilitation, shall be used as a guideline.

- (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 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. Certificates of appropriateness shall be issued for a period of eighteen (18) months and 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 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.* Any person adversely affected by any decision made by the preservation commission relative to the issuance or denial of a certificate of appropriateness (i.e. the applicant or any owner of adjoining property or owner of property whose property line is within one thousand five hundred (1,500) feet of the applicant's property according to the DeKalb County tax records) may appeal such decision 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 forty-five (45) 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 thirty (30) days of the first appearance of the appeal on the board of commissioners' agenda.
- (13) *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.
- (14) *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.

PART II. SEVERABILITY.

Should any part, portion or paragraph of this Ordinance be declared unconstitutional or void by a court of competent jurisdiction, such declaration shall not affect the remaining portions of this Ordinance not so declared to be invalid, but the same shall remain of full force and effect as if separately adopted.

PART III. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

ADOPTED by the Board of Commissioners of DeKalb County, Georgia, on this 28th day of October, 2003.



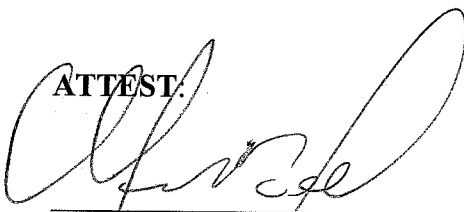
BURRELL ELLIS
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, Georgia, on this 28th day of October, 2003.



VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

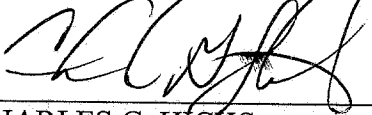
ATTEST:



MICHAEL J. BELL
Ex-Officio Clerk to the
Board of Commissioners and the
DeKalb County, Georgia
Chief Executive Officer

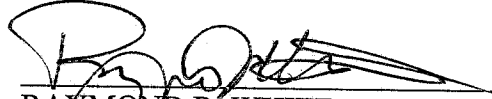
October 22, 2003

APPROVED AS TO FORM:



CHARLES G. HICKS
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:



RAYMOND R. WHITE
Director of Planning
DeKalb County, Georgia