

CHAPEL HILL HISTORIC DISTRICT COMMISSION

Rules of Procedure

(Adopted 4/14/77; Amended 5/26/77; 2/8/79; 2/22/79; 6/11/81; 9/22/83; 9/27/84; 12/14/06; 3/8/16; 5/9/2017; 4/10/2018; DATE OF ADOPTION)

I. PURPOSE

To establish procedures for processing applications for Certificates of Appropriateness for ~~(1) any changes in the external appearance of existing structures; (2) design of new structures; and (3) for demolition of existing erecting, altering, restoring, moving, or demolishing exterior portions of buildings or other~~ structures within the Chapel Hill Historic Districts.

II. GENERAL RULES

The Chapel Hill Historic District Commission shall be governed by the terms of the relevant provisions of the Town's Land Use Management Ordinance, including, but not limited to Sections 3.6.2 and 8.4, as amended, the Chapel Hill Advisory Board Policy, and Chapel Hill Historic District Ordinance as contained in the Code of Ordinances for the Town of Chapel Hill, North Carolina and by the terms of the relevant provisions of G.S. Chapter 160D of the North Carolina General Statutes, including, but not limited to 160A-388 and 160D-940 160A-400.1 through 160D-963 160A-400.14, as amended they may be amended or revised.

III. JURISDICTION

The Historic Districts shall be delineated on the official zoning map on file in the Office of Planning & Sustainability Planning Department. As provided by the Town's Land Use Management Ordinance, a Certificate of Appropriateness is required for most development within any of the Town's Historic Districts.

IV. MEMBERS, OFFICERS, AND DUTIES

- A. General. The Commission shall be composed of ~~10~~9 members having the qualifications set forth in the Town's Land Use Management Ordinance. ~~the majority of whom shall have demonstrated special interest, experience, or education in history, or architecture All members shall reside within the planning jurisdiction of Chapel Hill.~~
- B. Chairperson. A chairperson shall be elected by the voting members of the Historic District Commission. His/her term shall be for one year, and he/she may serve for no more than two consecutive terms. The Chairperson shall decide all points of order and procedure, subject to these rules, unless otherwise directed by a majority of the Commission in session at the time.

C. Vice-Chairperson. A Vice-Chairperson shall be elected by the Commission from among its members in the same manner as the Chairperson and shall be eligible for re-election. His/her term shall be for one year, and he/she may serve for no more than two consecutive terms. He/she shall serve as Acting Chairperson in the absence of the Chairperson, and at such times he/she shall have the same powers and duties as the Chairperson.

D. Deputy Vice-Chairperson. A Deputy Vice-Chairperson shall be elected by the Commission from among its members in the same manner as the Chairperson and shall be eligible for re-election. He/she shall serve as Acting Chairperson in the absence of the Chairperson and Vice-Chairperson, and at such times he/she shall have the same powers and duties as the Chairperson.

~~Maximum Service as an Officer. No one shall serve more than a total of four (4) consecutive terms as officer. An individual is eligible to serve again as an officer after one year in a non-officer role or one year not serving on the Commission.~~

E. Secretary. A member of the planning staff, designated by the Town Manager, shall serve as Secretary to the Commission. The Secretary, subject to the direction of the Chair of the Commission, shall prepare meeting agendas, shall keep all records, shall conduct all correspondence of the Commission, and shall generally supervise the clerical work of the Commission.

F. Elections. The Commission shall elect officers at its next meeting following September 1 each year.~~second meeting following the Council's annual appointment of members to new terms.~~ The Secretary shall notify members of elections in writing at least thirty (30) calendar days prior to the meeting at which elections are held.

G. Maximum Service as an Officer. No one shall serve more than a total of four (4) consecutive terms as officer. An individual is eligible to serve again as an officer after one year in a non-officer role or one year not serving on the Commission.

H. Terms of Appointments. Members shall be appointed to serve terms of three (3) years and until their respective successors have been appointed and qualified. Vacancies shall be filled for the unexpired term only. Members shall serve a maximum of two consecutive terms.

I. Attendance at Meetings. Any member of the Commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year ~~may shall be removed-replaced~~ by the Town Council, ~~be replaced as appropriate, provided that special~~ extenuating circumstances may be considered by full membership of the Commission and/or the Council prior to automatic removal, on a case by case basis. ~~, or reappointed by the Town Council.~~ Absence due to sickness, death, or other emergencies of like nature shall be recognized

as excused absences and shall not affect the member's status on the Commission, except that in the event of a long illness or other such cause for prolonged absence, the member may be replaced. The Commission's Chair and Secretary shall notify a member ~~when he or she is approaching the maximum number of unexcused absences who has two consecutive unexcused absences~~ to alert the member of the attendance clause. Notification shall also be sent to Mayor and Council and Town Clerk. Upon the third consecutive regular meeting absence, the chair or staff liaison shall send another notification to the member, Mayor and Council, and Town Clerk. When a member has exceeded the maximum number of unexcused absences, the Secretary shall notify the full Commission and the Town Council.

- J. Applications Involving Conflicts of Interest Members. As provided by G.S. 160D-109 388(e)(2), a Commission member shall not participate in or vote on any application in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. No Commission member shall take part in the hearing, consideration or determination of any case in which he/she is a party ~~or has a financial interest.~~
- K. No Commission member shall vote on any matter deciding an application or a request to reconsider unless he or she shall have attended the Commission's previous deliberations on such application or shall otherwise have the approval of the Chairperson to vote on such matter. The Chairperson's approval shall be contingent on the assurance by the member that he/she has familiarized him/herself with the application and the minutes of any meetings at which the application was discussed.
- L. No Commission member shall in any manner discuss any application with any ~~parties~~ person prior to the Commission's deliberations on such application, except as specified elsewhere in the Commission's Rules of Procedure ~~or as authorized in advance by the Chairperson~~; provided, however, that members may seek and/or receive information pertaining to the application from Town ~~any other member of the Commission or its staff~~ prior to the hearing if the information is provided to all Commission members and to all parties. A Commission member shall disclose at the hearing any ex parte communications that took place prior to the hearing.
- M. Members of the Commission shall not express individual opinions on the proper judgement of any application or any condition applicable thereto with any persons prior to the determination of that application except in accordance with these Rules of Procedure. Violation of this rule shall be cause for dismissal from the Commission.

- N. Each member of the Commission shall thoroughly familiarize him/herself with all statutes, laws, ~~and~~ the Town's Land Use Management Ordinance ~~the ordinance~~ and these Rules of Procedure relating to the Historic District and quasi-judicial proceedings as time and circumstances permit.
- O. Members of the Commission may be removed by the Town Council for cause.

V. MEETINGS

- A. Regular meetings of the Commission are typically held ~~shall be held~~ on the second Tuesday of each month at 6:30 p.m. in the Chapel Hill Town Hall; provided that meetings may be held by any other legally permissible location or method if the Chair or Secretary so directs after providing all required notices. If necessary to complete business, a second monthly meeting may be held on the fourth Tuesday of the month at 6:30 p.m. in the Town Hall. Meetings may be held at some other convenient place in the Town if directed by the Chairperson in advance of the meeting. The Secretary shall make a schedule of the Commission's regular meetings available to the public, such as posting to the Town website.
- B. Special Meetings. Special meetings of the Commission may be called at any time by the Chairperson. At least forty-eight (48) hours notice of the time and place of special meetings shall be given, by the Secretary or by the Chairperson, to each member of the Commission and to the public.
- C. Cancellation of Meetings. Whenever there is no business for the Commission, or if so many members of the Commission indicate that they cannot attend that a quorum will not be available, the Chairperson may dispense with ~~a regular~~ the meeting by giving notice to all the members as soon as practical given the circumstances not less than twenty-four (24) hours prior to the time set for the meeting.
- D. Quorum. A quorum of the Commission, necessary to take any official action, shall consist of six (6) members. The concurring vote of a majority of the membership of the Commission shall be necessary to take any official action to approve or deny an application or permit. Vacant positions on the Commission and members who are disqualified from voting shall not be considered members of the Commission for the calculation of the requisite majority. shall consist of five (5) sitting members of the Commission. The concurring majority vote of the quorum shall be necessary to conduct other business including making a recommendation on an application to be considered by the Council. vote of a majority of those members present shall be sufficient to decide matters before the Commission, provided a quorum is present.
- E. Conduct of Meetings.
 - (a) All meetings shall be open to the public. Except where otherwise agreed to by the Commission, the order of business at regular meetings

shall be as follows: (1) announcements, reports and updates; (2) petitions; (3) approval of minutes from previous meetings; (4) approval of the consent agenda; (53) old business; (64) new business; (75) courtesy reviews; (6) adjournment.

- (b) The Historic District Commission pledges its respect to the citizens of Chapel Hill. The Commission asks its citizens to conduct themselves in a respectful, courteous manner, both with the Commission and with fellow citizens. Should any member of the Commission or any citizen fail to observe this public charge at any time, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until a genuine commitment to this public charge is observed.

- F. Review Criteria. ~~In reviewing applications for Certificate of Appropriateness the Commission shall take into account the review criteria required by State Law and by Town ordinances specified by the Commission's Design Guidelines. The Commission shall also take into account the historic and architectural significance of the structure and maps showing the historic and architectural significance of structures within the District as provided in Section 3.6 of the Land Use Management Ordinance.~~

When considering the application, the Commission shall apply the Design Principles and Standards and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact indicating the extent to which the application is or is not in compliance with the Design Principles and Standards, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the Commission based its decision. The applicant has the burden of presenting competent, material, and substantial evidence showing the proposed project is not incongruous with the special character of the district.

- G. Consideration of Applications. Any party may appear in person or by ~~agent~~ or attorney at the meeting. The Commission understands that architects, landscape architects, land use planners, and engineers play a vital role during the Commission's quasi-judicial proceedings by presenting necessary facts and information on behalf of their clients. However, the Commission notes the NC State Bar has issued an opinion that an appearance on behalf of another person, firm, or corporation in a representative capacity for the presentation of evidence through others, cross examination of witnesses, and argument on the law at a quasi-judicial proceeding is the practice of law. Consequently, it is the NC State Bar's opinion that it is the unauthorized practice of law for someone other than a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation that is a party to a quasi-judicial proceeding. The order of business for consideration of applications for Certificates of Appropriateness shall be as follows:

- (a) All persons planning to offer testimony on an application shall be sworn-in;
- (b) The Chairperson, or such person as he/she shall direct, shall give a preliminary statement concerning the application;
- (c) Any person, other than an applicant, asserting he or she has standing to participate as a party to the application shall identify themselves and provide evidence of standing so the Commission can make a determination as to whether or not they have standing to participate as a party. (See N.C. Gen. Stat. 160D-1402 for additional information on who has standing to participate as a party.);
- (d) Commission members shall disclose any ex parte communications, conflicts of interest, and site visits related to the property at issue or any of the parties;
- (e) The applicant shall present the evidence and arguments in support of his or her application.
- (f) Parties determined to have standing may cross-examine witnesses, if any, and present evidence and arguments in support of his or her position;
- (g) Members of the public wishing to offer information may present competent evidence comment on the application shall present the evidence and arguments regarding the application subject to cross examination of the parties;
- (h) Evidence Statements or arguments submitted by any official, commission, or department of the Town of Chapel Hill, any state agency, or any local historical, preservation of neighborhood association shall be presented as directed by the Chairperson ~~man~~;
- ~~(i) Testimony shall be sworn;~~
- (j) The Chairperson or such person as he/she shall direct shall summarize the evidence and arguments which have been presented, giving all parties and witnesses an opportunity to make objections or corrections;
- (k) The Commission shall thereafter proceed to deliberate on the application ~~whether to grant the application or to deny it;~~
- (l) Procedures may be modified by concurrence of all parties and the Commission itself; and
- ~~(l) Commission members should disclose any material information so obtained prior to recessing the hearing.~~

The Commission may, in its discretion, view the premises and obtain additional facts concerning any application before arriving at a decision.

(m) All decisions of the Commission shall be supported by appropriate findings of fact, and, where necessary, shall be accompanied by such reasonable conditions and/or recommendations necessary to carry out the purposes of Part 4 of Chapter 160D-940, et. seq. of the North Carolina General Statutes. ~~as it may determine to be reasonable under the circumstances.~~

(n) In addition to the foregoing, the Commission shall follow the quasi-judicial procedures outlined in G.S. 160D-406. ~~In considering applications, witnesses may be called and factual evidence may be submitted, but the Commission shall not be limited to consideration of such evidence as would be admissible in a court of law.~~

H. Reconsideration of Applications Which Have Been Denied.

The process ~~order of business~~ for reconsideration of applications for Certificates of Appropriateness which previously have been denied shall be as follows:

(a) If the Commission denies an application for a Certificate of Appropriateness and the Town Manager accepts a new application affecting the same property Town staff shall outline the substantial changes with respect to the reasons for its denial, made in the plans for the proposed construction, reconstruction, alteration, restoration, or moving for a Certificate of Appropriateness permitting the consideration of the new application. The Chairperson shall entertain a motion from a member of the Commission that the applicant be allowed to present evidence in ——— support of the request for reconsideration. Such evidence shall be limited to that which is necessary to enable the Commission to determine whether or not there has been a substantial change in the facts, evidence or conditions relating to the application; provided, however, that the applicant shall be given the opportunity to present any other additional supporting evidence if the Commission decides to reconsider his or her application.

(b) After receiving the evidence, the Commission shall proceed to deliberate whether or not there has been a substantial change in the facts, evidence or conditions relating to the application which would warrant reconsideration. If The Commission finds that there has been such a change, it shall thereupon treat the request as a new application received at that time, following the procedures set forth in Sections V.G. and IV for notice and deliberation.

I. Modifications Amendments of Pending Applications. An approved or pending application for a Certificate of Appropriateness may be modified amended either during the evidentiary hearing or by a written request from the applicant to the Commission. Such a request shall include a description of the proposed change and shall be accompanied by elevations, plans, or sketches, where necessary.

Amendments to Approved Applications. ~~An approved application shall be amended in If the Commission finds that the — modification constitutes a substantial change which might affect surrounding property owners, it shall request the applicant to notify affected property owners following the procedures set out in Section VI.B. before taking action on the modification. The Commission shall thereupon treat the request in~~ the same manner as any other application as outlined in Section V.G.

- (a) Amendments to a previously approved project element (i.e. material replacement, changes to window and door configurations) shall be treated as an amendment to the previously approved Certificate of Appropriateness.
- (b) Introduction of new elements not previously considered as part of the approved Certificate of Appropriateness shall be treated as a new application.

J. Minor Works. Delegation to staff is limited to those items specifically listed in the Historic District Design Principles and Standards as provided by Section 3.6.2(b)(4) of the Land Use Management Ordinance. Minor works are defined as those exterior changes that do not involve substantial alterations, and do not involve additions or removals that could impair the integrity of the property and/or the district as a whole. All approvals by staff shall be reviewed by the Commission as soon as practical.

K. Conflicts of Interest. No Commission member shall participate in the decision of any matter in which he or she has a personal or financial interest per G.S. 160DA-109 and Section IV.J.

If an objection is raised to a Commissioner's participation at or prior to the hearing or vote on a particular matter and that Commissioner does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

K. Abstention. ~~Except as provided herein, no~~ member of the Commission may be excused from voting on any matter before the Commission ~~except in matters involving the consideration of his or her own financial interest or official conduct. In most other cases,~~ The failure to vote by a member who is physically present, is qualified to vote, or has withdrawn without being excused (preferably by a majority vote of the remaining members present) shall be recorded as an affirmative vote.

L. Tie Votes. In the event that voting on an item being deliberated ~~for the first time~~ results in a tie, and the Commission is unable to break the tie or take alternative action, then the tie vote shall have the same consequence as if the Commission took no action on the item being deliberated. ~~then the item is carried over for consideration at the next regular meeting. If that same item receives a tie vote at its second, third, fourth, etc., consideration with one or more members of the Commission absent, the item is again carried over. Should any consideration of an item, after the first consideration, result in a tie vote when all members are~~

~~present (one or more excused from voting), the item is removed from the agenda as if it had never been before the Commission.~~

- M. Site Visits. Any on-premise site visits shall be coordinated with Town Staff based on quasi-judicial limitations for contact with applicants and the safety of Commissioners.

VI. APPLICATION PROCEDURES

- A. An application must be filed in the Office of Planning and Sustainability at least 30 calendar days before the meeting date as provided in Section 3.6.2(d)(1) of the Land Use Management Ordinance. The Secretary may consent to accepting an application after the deadline provided the application request is noticed and made accessible to the public per the provisions listed in Section VI. ~~Application Procedures, B.~~ An application shall not be deemed filed until it has been accepted by the Secretary and deemed complete.

B. Public notice and public accessibility of applications

1. The Secretary shall make application materials accessible to the public via the Town's website not less than ten ~~working-business~~ days prior to the meeting at which the matter is to be heard.
2. The Secretary shall mail notices of requests for Certificates of Appropriateness, not less than ten (10) ~~business working~~ days prior to the meeting at which the matter is to be heard, to all owners of property within:
 - a. 100 feet on all sides of the subject property for applications which involve a use by right or an existing Special Use Permit not requiring a modification;
 - b. 500 feet on all sides of the subject property for applications which involve a Special Use Permit, a modification to an existing Special Use Permit, Conditional Zoning Application, or would require a zoning amendment because of the exterior changes being proposed.
3. Not less than ten (10) ~~working-business~~ days prior to the meeting at which the matter is to be heard, the Secretary shall prominently display 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.
4. The Secretary shall maintain a list of individuals wishing to receive email notifications of the public meetings of the Historic District Commission. Individuals subscribing to the list shall receive one emailed notice at least ten (10) ~~working business~~ days prior to each public meeting of the Historic District Commission alerting the subscriber that a meeting agenda has been posted to the Town's website. Individuals may subscribe to the email notice list by providing their name and email address to the Secretary to the Historic District Commission in writing along with a

statement that they wish to subscribe to the Historic District Commission Meeting Email List.

5. The time periods outlined above shall include the day of the meeting.

~~B. The applicant and meeting attendees shall be given an opportunity to be heard at the meeting at which the application is presented.~~

~~C. The Commission may make the policy in regard to applications involving new structures or extensive alterations and/or additions to existing structures that a subcommittee of the Commission shall be available to meet with representatives of the persons or organization involved in the coming application at some early stage in the design process in order to advise them informally concerning the Commission's guidelines, the nature of the area where the proposed construction is to take place, and other relevant factors. This subcommittee, collectively and individually, shall refrain from any indication of approval or disapproval, but shall not, for that reason, be barred from a reasonable discussion of the applicant's proposals. No advice or opinion given, or reported as having been given, by any member of the subcommittee at such an informal meeting shall be in any way official or binding upon the Historic District Commission at any time. Notice of the need for such a conference should be given future applicants by the Town at the earliest appropriate time.~~

D. In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

E. As provided by Section 3.6.2(d)(4) in the Land Use Management Ordinance, the Commission ~~must issue or deny a Certificate of Appropriateness within one hundred eighty (180) days after acceptance of the application, except when the time limit has been extended by mutual agreement between the applicant and the Commission. Acceptance is defined to be the time at which the Secretary certifies the application to be "filed" or "accepted" based on the inclusion of all required elements and records the date of acceptance pursuant to Section 3.6.2(d)(1)(D) in the Land Use Management Ordinance~~ shall approve the application, approve the application with conditions, or deny the application for a Certificate of Appropriateness by the end of the next commission meeting following ninety (90) days after the application is filed; provided, if timely action is not taken, and the time of taking action is not extended by the Commission and consented to by written notice from the applicant, the certificate of appropriates shall be deemed to have been approved as submitted and shall be issued administratively.

The Commission may extend the time for consideration and deliberation for a period or for periods up to a total of one-hundred-eighty (180) days from the date of acceptance of the application as complete, where it finds such action to be necessary:

1. Because of meeting cancellations or postponements, quorum shortages, or backlogs of pending applications with priority by filing date, or other practical considerations; or
2. To receive additional information requested by the Commission, or to deliberate fully on memoranda submitted by one or

more parties, or to seek resolution of outstanding questions, issues, or goals.

Nothing herein shall prevent extensions by and with the consent of the Applicant. The time periods for action by the Commission shall be stayed during periods of appeal to the Board of Adjustment by any party.

Under no circumstances shall the time period for which the Commission or staff may take action on an application for Certificate of Appropriateness be extended beyond 180 days from the date an application is filed. An application is considered filed when it has been submitted, deemed complete by the town manager, and the requisite application fee has been received by the town. .

- F. Subsequent to Commission action on an application, the Secretary shall notify the applicant of the ~~disposition of the application, including the reasons for such action, and shall file a copy of the decision in the Office of Planning & Sustainability. If an application is denied, the Secretary shall notify the applicant of the disposition of the application, including a copy of the minutes of the meeting and written reasons for denial, by certified mail with return receipt requested.~~ decision in writing and shall file a copy of it with the Town's Planning Department. If the application is denied, the notice shall include reasons for such action.

- G. A Certificate of Appropriateness shall be valid for ~~180~~365 calendar days from date of issuance or, in the case of a Certificate of Appropriateness for demolition, from the effective date. If the authorized work has not commenced within that period, or has been discontinued for more than 365 calendar days from the date of issuance, such Certificate of Appropriateness shall immediately expire and the applicant shall be required to reapply.

VII. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of the membership of ~~not less than seven (7) members of~~ the Commission, provided that such amendment shall have been first presented to the membership in writing at a regular or special meeting preceding the meeting at which the vote is taken. Whenever reference is made in these rules to any North Carolina statute, Town ordinance, or other regulation such reference shall be deemed to apply, and be made, to the corresponding section or provision of any successor or amended statute, ordinance or regulation.

ADDENDUM

Guidance for Virtual Meetings

I. APPLICABILITY OF VIRTUAL MEETINGS

Regular meetings of the Commission are typically held on the second Tuesday of each month at 6:30 p.m. in the Chapel Hill Town Hall; provided that meetings may be held by any other legally permissible location or method if the Chair or Secretary so directs before the meeting and adequate notice is given to the public.

In extenuating circumstances, the Commission may be required to meet virtually.

II. GENERAL RULES

A. Consent for Virtual Meeting. Applicants must be made aware that the commission is meeting virtually. Those with standing shall provide consent to the virtual meeting format.

B. Notice. The Secretary shall include a statement regarding the virtual meeting on all meeting materials and mailing notices.

C. Attendance at Meetings

(a) Commissions shall have access to a camera and microphone to participate in the meeting.

(b) Should a commissioner be recused from an item, he/she shall turn off his/her camera and microphone to signal that they are not participating in the public hearing.

D. All other Rules of Procedure apply to virtual meetings.

III. HELPFUL TIPS

A. Look your best.

(a) The camera sees everything. You are never alone.

B. Be Present

(a) By turning off your microphone and video, you are no longer present for quorum.

(b) If you need a break, ask the Chair to take a brief recess.

C. Evidence

(a) Review application materials ahead of time and be prepared to discuss.