

Guilford County

**Historic Preservation
Commission**

Rules of Procedure

Approved by HPC ~~May 17, 2022~~ Revised and readopted on ~~March 5,~~
~~2024~~ August 20, 2024

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TABLE OF CONTENTS

1.0 PURPOSE AND DUTIES.....	1
1.1 Purpose of the Rules of Procedure.....	1
1.2 Duties of the Historic Preservation Commission	1
1.3 Jurisdiction.....	1
2.0 GENERAL GOVERNING STATUTES, ORDINANCES AND RULES	1
3.0 ORGANIZATION OF THE HPC	1
3.1 Membership	1
3.2 Term of Office	2
3.3 Officers.....	2
3.4 Staff Assistance	3
3.5 Special Committees.....	3
3.6 Attendance.....	3
3.7 Vacancies	4
3.8 Resignations and Removal.....	5
4.0 MEETING STRUCTURE.....	5
4.1 Open Meetings	5
4.2 Regular Meetings.....	6
4.3 Special Meetings.....	6
4.4 Continued Meetings	7
4.5 Cancellation of Meetings	7
4.6 Agendas and Meeting Order of Business	7
4.7 Hearings	8
4.8 Public Testimony.....	9
4.9 Advisory Review	9
5.0 CONDUCTING BUSINESS	11
5.1 General Expectations of Members	11
5.2 General Conduct of Members.....	11
5.3 Violation of Due Process / Conflict of Interest	12
5.4 Motions.....	13
5.5 Deliberation.....	14
5.6 Decisions.....	15
6.0 RECORD KEEPING	16
7.0 REHEARING OF DENIED APPLICATIONS	17
8.0 MODIFICATIONS TO APPLICATIONS.....	17
9.0 APPEALS.....	17

10.0 AMENDMENT OF THE RULES OF PROCEDURE 17

GUILFORD COUNTY HISTORIC PRESERVATION COMMISSION RULES OF PROCEDURE

Section 1. Purpose of the Rules of Procedure and Duties of the Historic Preservation Commission

1.1. Purpose of the Rules of Procedure

To establish procedures for organizing and conducting the business of the Historic Preservation Commission in executing its duties and responsibilities.

1.2. Duties of the Historic Preservation Commission

There is hereby created, pursuant to G.S. § 160D-303 a Guilford County Historic Preservation Commission (hereinafter referred to as HPC). The powers and duties of the HPC shall be those listed in Article 2 - Administration, Section 2.6. of the Guilford County Unified Development Ordinance (hereinafter referred to as UDO).

1.3 Jurisdiction

The HPC's jurisdiction for approval of Certificates of Appropriateness within designated Historic Districts shall be delineated on the official zoning map.

Section 2. General Governing Statutes, Ordinances and Rules

The HPC is governed by the applicable provisions of the NC General Statutes 160D, Article 19; the current UDO and all amendments thereto; other relevant policies established by the Guilford County Board of Commissioners (hereinafter referred to as *BOC*); and by these Rules to the extent that they do not conflict with the law. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable, and in which they are not inconsistent with applicable law and these rules. Additionally, the Guilford County Historic Preservation Commission shall operate in accordance with the Guilford County Board of Commissioners' Resolution Establishing Policy and Procedures for Appointments [to County Boards, Commissions, Committees and Councils], as well as by any other resolutions of the Board of County Commissioners relating to historic preservation in Guilford County. Furthermore, the HPC may also consult the most recent edition of *Suggested Procedural Rules for Local Appointed Boards*, published by the University of North Carolina School of Government. In instances where the HPC conducts quasi-judicial proceedings (i.e., Certificates of Appropriateness), the HPC will operate according to provisions of North Carolina General Statute 160D-406.

All Board members shall become thoroughly familiar with the provisions of the statutes

concerning historic preservation.

Section 3. Organization of the Historic Preservation Commission

3.1. Membership

The HPC shall be made up of eleven (11) members (collectively, "members").

3.1.1. Residency, Appointment and Qualification of Members

All members shall be residents of the County and shall be appointed by the Guilford County BOC. Members representing Town or City jurisdictions shall be recommended by the pertinent governing body and appointed by the BOC. Members shall be trained in the fields of architecture; history; planning; archaeology or a related discipline; or have demonstrated experience or interest in preservation of historic structures.

3.1.2. Quorum

A majority of the membership of the HPC constitutes a quorum. Vacant (i.e. unappointed) seats shall not be considered for purposes of determining a majority of the membership. Appointed seats which are filled but for whom members are absent shall be counted in the total number of commission members for calculation of a quorum. A quorum of the HPC shall consist of a majority of the set membership, excluding vacant seats, but not excluding absentees. A quorum must be present for the HPC to take any official action. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he or she shall be counted as present for the purposes of determining whether a quorum is present.

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3.2. Term of Office

Members' four (4)-year terms of office are set by the BOC and the City and Town Councils of participating jurisdictions. Members may be appointed to fill an unexpired term of a previous member. Member terms should be staggered such that a similar number of members are appointed or reappointed each year. The terms of all members shall not expire at the same time. Terms are limited to two (2) consecutive four (4)-year terms; except, however, consecutive terms exceeding two (2) may be served if the incumbent is re-appointed by the BOC to represent a different jurisdiction. Additionally, the BOC may waive the two (2)-term limit at their its discretion.

3.3. Officers

3.3.1. Election of Officers

The HPC shall elect from its membership a Chair and Vice Chair. Election of officers shall occur as the last item of business before adjournment of the December meeting in each calendar year. Should the regularly scheduled meeting not be held for any reason, then the next regularly scheduled meeting shall include the election of officers as an agenda item in accordance with these Rules of Procedure. The HPC shall elect one of its members to serve as Chair and preside over the meetings and one member to serve as Vice Chair. The candidate for each office receiving a majority vote of the HPC members present shall be declared elected. Vacancies in these offices may be filled for the unexpired terms only. The newly elected officers shall assume their duties at the July meeting following the election or at the next regular or called meeting of the HPC if the election is conducted in July or later. Voting may be done by acclamation (if only one member is nominated), show of hands, voice, or secret ballot and a majority vote.

3.3.2. Chair

The Chair shall be elected by the HPC from among its members and shall have the following duties:

1. The Chair shall serve and preside over the Commission's meetings for a term of one year, beginning as of the first meeting of January, and may be re-elected.

2. The Chair shall decide all matters of order and procedure, subject to these rules, unless directed otherwise by a majority of the Commission in session at the time.

3. The Chair shall appoint any committees ~~found necessary~~ deemed necessary by a majority vote of the Commission to investigate any matter before the Commission.

4. On all Quasi-Judicial matters (e.g., Certificates of Appropriateness), the Chair or any member acting as Chair is authorized to administer oaths to witnesses in any matter coming before the Commission. Additionally, the Commission through the Chair, or in the Chair's absence, anyone acting as Chair, may subpoena witnesses and compel the production of evidence. The Chair shall issue requested subpoenas he/she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to question or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Commission.

5. The Chair shall perform such other duties as may be directed by a majority of the Commission.

6. In the absence of the Chair, the Vice Chair shall preside. In the absence of both the Chair and Vice Chair, the members present shall elect a temporary Chair.

7. The Chair's term of office shall be one (1) year, ending on June 30, but the incumbent shall be eligible for re-election. The Chair shall preside at all meetings, supervise the affairs of the Board, call special meetings as necessary, and subject to these rules, shall decide all points of procedure unless otherwise directed by a majority vote of the members. The Chair shall have the same voting privileges as any other member.

3.3.3. Vice Chair

The Vice-Chair shall be elected by the HPC from among its members and shall

have the following duties:

1. The Vice-Chair shall serve for a term of one year, beginning as of the first meeting of January, and may be re-elected.

2. The Vice-Chair shall preside in the absence of the Chair, fill any unexpired term of the Chair, and assume all duties and responsibilities delegated by the Chair.

3. In the event the office of Chair becomes vacant, the Vice-Chair shall serve the unexpired term of the Chair and a Vice-Chair shall be elected to serve the unexpired term of the former Vice-Chair as provided in Section 3.7.1 herein.

4. The Vice-Chair shall perform such other duties as may be directed by a majority of the Commission. The Vice-Chair's term of office shall be one (1) year, ending on June 30, but the incumbent shall be eligible for reelection. The Vice-Chair shall preside at any meeting in the absence of the Chair and shall exercise all duties of the Chair.

3.4. Staff Assistance

3.4.1. Secretary

The Planning Director shall serve as Secretary to the HPC and may designate a Planning Department staff member for that purpose. The Secretary, subject to the direction of the Chair, shall have the following duties:

1. The Secretary shall keep all minutes and records of the HPC, provide notice of the regular and special meetings to members, and any other such duties normally carried out by the Secretary. The minutes shall show the record of all-important facts pertaining to every meeting and hearing, every resolution acted upon by the Commission, and all votes of Commission members upon any resolution or upon the final determination of any question, indicating the names of members abstaining from voting.

2. The Secretary shall conduct all correspondence of the Commission, and generally supervise the clerical work of the Commission and its *ad hoc* committees.

3. The Secretary shall not be eligible to vote.

4. On all quasi-judicial (e.g., Certificates of Appropriateness) matters, the Secretary to the HPC may also administer oaths to all witnesses.

~~A staff member of the Planning and Development Department, assigned and supervised by the Planning and Development Director (hereinafter, Director), shall serve as Secretary to the HPC. The Secretary's primary duties are to assure preparation of minutes of the meetings, maintain attendance and other official records of the HPC, and to certify and file signed decisions of the HPC, but may include other clerical and administrative duties as assigned by the Director or designee.~~

3.4.2. Additional Staff Support

The Director or designee shall provide professional and technical support to the HPC, which may include preparation of meeting materials, presentations, recommendations, conducting official correspondence, and other staff support as requested by the HPC and determined appropriate by the Director or designee.

3.5. Special Committees

Special committees may be established by a majority vote of the HPC to assist in studying specific issues. Special committee members shall be appointed by the Chair or a designated member. Special committees may contain persons who are not members of the HPC. The HPC may not delegate its official powers and duties to a special committee.

3.6. Attendance

Persons accepting appointment to the HPC have made a commitment to serve the citizens of Guilford County. Applicants coming before the HPC deserve a full complement of members to be present to review and recommend/decide matters. Consistent attendance at meetings of the HPC is expected.

3.6.1. Reporting Absences

~~A member~~Any member who anticipates not being able to attend a meeting of the HPC must contact the Secretary upon receipt of the agenda (or earlier, if possible) and indicate the reason for the absence. In the event of an unforeseen emergency or illness, notification to the Secretary shall be given as early as is feasible.

3.6.2 ~~Approved-Excused Absences~~

Excused Absences due to sickness, death in the family, or other emergencies of a similar nature, as well as unexpected/unplanned work-related obligations, shall be regarded as ~~approved-excused~~ absences and shall not affect the member's status on the HPC so long as the member the Board Chair and/or the County Staff liaison to the HPC in advance. Failure to inform the Board Chair or staff liaison as described here-in shall result in an unexcused absence unless extenuating circumstances prevent the advance notice. -In the event of a long-term illness or other situation resulting in a prolonged absence, the member may be replaced by the BOC.

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3.6.3. Attendance Requirement

A member who misses three (3) consecutive regular meetings 33% or more of the regular meetings held in a fiscal year due to unapproved absences loses status as a voting member until reinstated by the BOC and may be replaced by the BOC. Attendance records shall be periodically reviewed by the Director, who shall inform the member of any noncompliance with the attendance requirement.

3.6.4. Absence of Officers

In the absence of both the Chair and Vice Chair, the HPC membership in attendance shall vote to determine an acting Chair for the meeting.

3.7. Vacancies

3.7.1. Filling Vacancies

A vacancy in the office of Chair shall be filled by the Vice Chair, succeeding to the office for the remainder of the unexpired one-year term of the Chair. A vacancy in the office of Vice Chair shall be filled by election of a new Vice Chair from the membership for the remainder of the one-year unexpired term of the Vice Chair. Member vacancies shall be filled by a new member appointed by the governing body to fill the remainder of the unexpired term.

3.7.2. Member Continuing Service Beyond Term

Members completing a term of office, who have not been reappointed and for whose seat a new appointment has not been made by the governing body, may continue to serve until reappointment or a new appointment is made.

3.8. Resignations and Removal

3.8.1. Resignation

- A.** HPC members who choose to resign before the expiration of their term must notify the Director or designee in writing (letter or email). This notice shall include the date upon which the resignation is effective, which should be at least thirty (30) days from the date of the notice.

- B.** If a member of the HPC relocates their residence outside of the County, the relocation constitutes a resignation effective upon the date of the move.

- C.** The Director shall promptly inform the County Clerk of any vacancy on the HPC.

3.8.2. Removal

- A.** HPC members may be removed by the governing body Guilford County Board of Commissioners for cause, including but not limited to documented violation of these Rules.

- B.** The HPC may, by unanimous vote of the other members, recommend that a member be removed for cause and a replacement be appointed by the BOC. Such a recommendation shall be communicated in writing by the Director to the jurisdiction's governing body, to the BOC Guilford County Board of Commissioners, and to the HPC member in question.

Section 4. Meeting Structure

4.1. Open Meetings

It is the public policy of North Carolina that the hearings, deliberations, and actions of public bodies that administer the legislative, ~~policy-making~~ polycymaking, quasi-judicial, administrative and advisory functions of political subdivisions conducting the people's business, be conducted openly. Therefore, all official meetings of the HPC, with a very few exceptions that are allowed by state law, shall be open to the public, and any person is entitled to attend. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting. An official meeting means a gathering together at any time or place, or the simultaneous communication by conference telephone or other electronic means, of a majority of the members of the HPC for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business that is within the jurisdiction, real or apparent,

of the HPC.

4.2. Regular Meetings

4.2.1. Date, Time, and Place

Regular meetings of the HPC shall ~~will~~ typically be held on the third Tuesday of each month at 6:00 p.m. Regular meetings may be established at an alternate time and date at the discretion of the HPC, as approved by the Chair, due to holidays or other reasons. The meetings shall be held in a location within the County as properly and legally advertised.

4.2.2. Meeting Schedule

Regular meetings for the calendar year shall be made available to the public in paper or electronic format and posted on the Department's website. Changes in the regular meeting schedule shall follow the notice requirements of North Carolina law.

4.2.3. Meeting Notice

Notices of meetings shall be provided in accordance with the notice requirements of current North Carolina law.

4.3. Special Meetings

A special meeting of the HPC may be called at any time by the Chair or by a majority of the membership. Notice of the date, time and place of the special meeting, along with the purpose of the meeting, shall be provided by the Director to each member at least forty-eight (48) hours in advance of the meeting. Only those items of business specified in the Notice may be transacted at the special meeting. The Notice must be posted on the Planning & Development Department website and shall comply with all other applicable notice requirements of North Carolina law.

4.4. Continued Meetings

Any regular or special meeting may be continued or postponed to another specific date, time and place without additional public notice by a majority vote of the HPC, in accordance with the deferral and continuance provisions of the Unified Development Ordinance, as applicable, and these Rules.

4.5. Cancellation of Meetings

Whenever there is no business for the HPC, the Director or designee may recommend that the Chair cancel a meeting with the presence of good cause, including a known lack of a quorum. Notice shall be given by the Director or designee at least twenty-four (24) hours before the meeting is scheduled to take place to all members and the press, applicants and other interested persons. In the case of severe weather, notice of cancellation shall be given at the earliest practical time.

4.6. Agendas and Meeting Order of Business

4.6.1 Agendas

Meeting Agendas and appropriate materials and reports shall be prepared by the Director and distributed to all members. No business may be considered by the HPC unless such item properly appears on the Agenda. A matter of business not subject to public notice requirements may be discussed as a non-agenda item if the HPC approves for consideration.

4.6.2 Meeting Order of Business

- Call to Order
- Roll Call
- Agenda Amendments
- Approval of Minutes of Previous Meeting(s)
- Chair's Remarks and Instructions
- Old Business (continued cases; items previously discussed for which action was held or delayed; or work session items)
- New Business
- Announcements
- Adjournment

The order of the Agenda may be changed if there is no objection by any of the members.

4.7 Hearings

4.7.1 Application Submittal

In accordance with the Unified Development Ordinance, the Director or designee shall establish specific submittal requirements and review schedules for applications heard by the HPC.

4.7.2 Attendance by Applicant

The Director or designee shall notify the applicant of the date, place and time of the hearing in accordance with the public notification requirements of the Unified Development Ordinance. The applicant, or a knowledgeable representative delegated to and authorized by the applicant in writing, is expected to attend the hearing to support the application. This attendee should be capable of addressing issues and answering questions. If no one is present to represent the application, the HPC may, in its discretion, continue the hearing to its next regular meeting. Should a property owner be an LLC or incorporated business entity, they shall be represented by an attorney authorized to practice law in the State of North Carolina.

4.7.3 Type of Hearing

The HPC follows a quasi-judicial, evidentiary hearing process for formal review of Certificates of Appropriateness, which requires all testimony to be sworn, and which requires the HPC to conclude certain findings of fact before approving a Certificate of Appropriateness.

4.7.4 Hearing Procedure

The HPC shall conduct its hearings in accordance with the quasi-judicial, evidentiary hearing procedures of the Unified Development Ordinance outlined below:

- Chair announces the item from the Agenda
- Swear-in or affirm witnesses
- Hear staff presentation and recommendation
- Hear applicant testimony
- Hear testimony from the public (for and against the application)
- Rebuttal/cross-examination of proponents/opponents
- Summary of the evidence by the Chair or by such persons appointed by the Chair
- Closing of testimony from the public by the Chair
- HPC asks questions of staff, applicant, persons who have testified
- Deliberation and decision

4.7.5 Evidence

A. In considering applications, witnesses may be called, and factual evidence may be submitted; however, the HPC is not bound by all the rules of evidence followed in judicial proceedings. Evidence upon which decisions are based should be material (directly related to the matter and likely to influence the decision), substantial (of real value, worth or importance) and competent (having legal capacity or qualification).

B. The HPC may, in its discretion, view the premises and obtain facts concerning any application before arriving at a decision. All decisions of the HPC shall be supported by appropriate Findings of Fact. Findings of Fact may not be based on hearsay evidence. Hearsay is a statement not made at the hearing that the proponent seeks to have admitted as evidence of the truth of the matter asserted in that statement.

C. The HPC, in order to make a defensible decision, should not rely on the opinion testimony of laymen to support a finding that requires information from those with expertise in the matter.

4.8 Public Testimony

The Chair may limit repetitive testimony on any item and may restrict anyone from making inappropriate or malicious remarks or remarks not pertinent to the matter under consideration.

4.9. Advisory Review by Historic Preservation Commission

For larger or more complex projects, such as new construction or certain accessory structures, an Advisory Review by the HPC is offered. The purpose of an Advisory Review is to provide helpful feedback to the applicant early in the design process.

There is no fee for this review. Projects that would benefit from an Advisory Review include but are not limited to:

- construction of an addition
- construction of accessory structure greater than 120 sq. ft. or 2 stories
- new construction
- relocation of a structure
- alternatives to original materials

4.9.1 Scheduling an Advisory Review

Advisory Reviews are held at the end of a regularly scheduled HPC public meeting which begin at 6:00 p.m. and occur on the third Tuesday of every month. An Advisory Review request form and required materials must be submitted according to the same application submittal deadlines as for formal Certificate of Appropriateness applications. Advisory Review submittals are advertised along with the regular HPC public meeting agenda.

4.9.2 Completing an Advisory Review

An Advisory Review request form must be completed, signed and submitted with drawings depicting a minimum of overall dimensions and design to the conceptual level (preferably printable at 8.5" x 11"). The Secretary may request that the following materials be included:

- site plan indicating proposed building footprint and setbacks with dimensions if known;
- photographs of the proposed site for any relocation of a structure including available historic photos and aerials;
- photographs of each façade of an existing structure; labeled with name of property, situs address, and viewpoint keyed to the site plan;
- elevation drawings of new construction/changed façades as needed with *at least overall* dimensions (drawings depicting three-dimensional views and physical models are optional);
- specifications and/or samples for materials, architectural details, and elements such as windows and doors (for applications to relocate a structure, provide information on proposed revisions to the structure that would result from the relocation); and
- while not required, a 3-D or modeling study of a streetscape if infill construction is proposed in a Historic District is helpful in the HPC's review.

4.9.3 Advisory Review Public Meeting

Although it is the goal of the HPC to provide comments that will help to result in a project that will be approved, comments provided during the Advisory Review are non-binding, and the final decision of the HPC shall not be based on these comments. The informal review format is as follows:

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- Staff will make a brief presentation (5 minutes) identifying aspects of the project that should be addressed by the HPC.
- Applicant will make a presentation (5 minutes) describing the project.
- The HPC will consider whether or not the project is consistent with the provide general guidance regarding applicable Review Standards and the Secretary of Interior's Standards related to the project presented and provide reasons to the applicant.
- The HPC Chair will summarize aspects that were identified as not meeting applicable Review Standards and the Secretary of Interior's Standards.

Section 5. Conducting Business

5.1. General Expectations of Members

- Be generally familiar with the laws and ordinances relating to the work of the HPC, and with these Rules of Procedure;
- Be prepared for meetings by examining the information provided in the meeting packet, consulting staff with questions, and independently visiting each site to observe from right-of-way. At no point should a majority of the HPC convene for the purpose of HPC related business unless such convening has been properly noticed in accordance with open meetings laws;
- Ask questions as appropriate during the hearing and actively participate in deliberations;
- Consider all information on each matter as presented to the HPC to make an informed decision; and
- Make a decision in a fair, ethical, consistent and non-arbitrary manner.

5.2. General Conduct of Members

When quasi-judicial decisions (e.g., Certificates of Appropriateness) are being considered, Commission members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision-maker. Impermissible conflicts 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. If an objection is raised to a member's participation and that member does not recuse himself/herself, the remaining members shall by majority vote rule on the objection. Members of the Commission shall request to be recused from discussion, citing a conflict consistent with G.S. 160D-109(b) or 160D-109(d) when the Commission is sitting as a quasi-judicial Commission. Upon such a request, the

Commission shall vote on the recusal. Members of the HPC participating in a hearing and making a decision or a recommendation are expected to act in accordance with the following:

5.2.1. No Prejudice

Members shall consider the application/request without prejudice.

5.2.2. No Commitment Prior to Review

Members shall take no public position on an application or on any proposed condition prior to the meeting at which the application is heard.

5.2.3. No Deliberation or Formulation of Decision Prior to Meeting

Members shall refrain from deliberation with other members or formulation of a judgment or decision prior to the meeting at which the application is heard.

5.2.4. No Ex-Parte Communication

No HPC member shall, in any manner, discuss any Certificate of Appropriateness application with the applicant, other HPC members, or any other parties prior to the HPC's deliberations on the matter during the hearing. The HPC's quasi-judicial procedures are designed to ensure that all information and discussions regarding the matter under consideration take place during the HPC's evidentiary hearing, so that all parties hear the same testimony at the same time, and so that persons giving testimony can be questioned in person by the HPC and by opposing parties. Any communication regarding a pending application that does occur outside of the hearing must be fully disclosed by the member or members involved before the start of the appropriate hearing. Members may, however, seek or receive explanatory information or clarification pertaining to the application from the Director or designee prior to the hearing. Any such explanation or clarification shall be provided by the Director or designee to *all* members.

5.2.5. Acknowledgement of Relationship or Association with an Applicant or Other Party

Members ~~should~~shall, prior to or at the beginning of the public hearing, disclose any past or present close familial [spouse, parent, child, brother, sister, grandparent, or grandchild (and step, half, and in-law relationships)], business or associational relationship with an applicant or other party to the matter when any of the following circumstances occur:

- A. When the member is the applicant before the HPC;
- B. When the member owns property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or

C. When the member has a financial interest in the subject property or improvements to be undertaken thereon.;

5.3. Violation of Due Process / Conflict of Interest

- A member shall not participate in or vote on any matter that has a substantial and readily identifiable financial impact on the member, nor participate in or vote on any matter in a way that would violate the applicant's or an affected person's constitutional right to an impartial decision-maker.
- A member should not convey an opinion about a quasi-judicial decision by the HPC to any person or agency, including the press, until ~~after the fifteen (15)-day appeal period has expired and the decision has not been appealed~~ all appeal rights have expired.
- Members should consult the Director or designee regarding situations that may be considered an actual or perceived conflict of interest. If a member has a conflict of interest regarding any matter before the HPC, the member should inform the Director or designee as soon as possible in advance of the meeting to allow time for an alternate member to be contacted to participate as the regular member's replacement if necessary.

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5.3.1. Recusal (Excuse from Participation)

No Commission member shall take part in any hearings, consideration, determination or vote concerning a property in which the Commission member or a close relative (spouse, parent, child, brother, sister, grandparent, or grandchild, including the step, half, and in-law relationships):

- A. Is the applicant before the Commission;
- B. Owns property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or
- C. Has a financial interest in the subject property or improvements to be undertaken thereon.

In addition, a Commission member may request a vote of the Commission excusing the member from taking part in any hearing, consideration, determination or vote concerning a property in which a business associate or employer of the Commission member:

- A. Is the applicant before the Commission or;

- B. Owens property within close proximity of the subject property (this shall be interpreted as being within the required notification area); or
- C. Has a financial interest in the subject property or improvements to be undertaken thereon.

~~When a Commission member concludes that a matter before the Commission involves or could involve a conflict of interest on his or her part or his or her voting might not be in the public interest, he/she should promptly inform the Commission Chair. The Commission member shall physically vacate his or her seat during consideration of the matter, then refrains from any discussion or comment on the particular case, and abstains from voting. If a member realizes at the meeting that he or she may have a conflict of interest concerning a matter on the agenda, a request for recusal must be made immediately before the start of the hearing and must be voted on (recognized) by the HPC for the record. A member with a recognized conflict of interest relative to any matter shall not participate in the hearing, deliberation or voting on the matter. A recused member shall physically vacate his or her seat while the matter is being considered. If there is a challenge to a member's participation in a matter due to an alleged conflict of interest, the member shall be given the opportunity to request recusal or to refute the allegation. The remaining members of the HPC shall then, by majority, vote in order to decide the issue.~~

5.4. Motions

The HPC shall proceed in all matters by motion. Any member, including the Chair, may make or second a motion. A motion may be amended by any member, subject to the agreement of the member who made the motion. A motion may be withdrawn by the member making the motion at any time before a vote. Unless withdrawn, all seconded motions must be voted upon. A motion that does not receive a second fails automatically and is not voted upon.

5.4.1. Substantive and Substitute Motions

Substantive motions are non-procedural motions that result in final disposition of the matter under consideration. The HPC motions are:

- Approval as submitted (no changes to the application)
- Approval as amended (with specific conditions or additions stated)
- Denial

All substantive motions are debatable and require a majority vote of members present to approve. While a substantive motion is pending, meaning that it has been seconded but not voted upon, a substitute motion regarding the same issue may be introduced. If seconded, the substitute motion shall be voted upon first. If the substitute motion is approved, the

original motion is automatically deemed denied. If the substitute motion fails, then the original motion is voted upon, or another substitute motion can be made. Only one substitute motion can be under consideration at a time.

5.4.2 Procedural Motions

Procedural motions in the collective provide a structure for conducting the business of the HPC and promote propriety of behavior. Below are procedural motions that may be utilized in meetings of the HPC:

- Approval of minutes
- Postpone consideration (to a date and time certain, with reasons stated)
- Take a recess (a short break)
- Call the question (to end discussion among HPC members)
- Refer to committee (where an appropriate committee exists)
- Re-open public testimony (after the Chair has closed it)
- Reconsider (re-open a case decided at the same meeting)
- Adjourn
- Excuse from participation (recuse) (voluntary - exclusion from participation in a matter)
- Remove from participation (involuntary - when an objection to participation is raised by another HPC member or a party to the matter and is found to be valid by the HPC)
- To consider an item not on the meeting agenda (if not subject to evidentiary notice requirements)
- To change the order of agenda items (when the Chair does not have unanimous consent).

All procedural motions are open to discussion with the exception of a motion to recess, adjourn or call the question, which are all voted on immediately. All motions require a majority vote of the members present.

5.5. Deliberation

When a motion is introduced and seconded, the Chair should state the motion for the purpose of clarity and understanding, and then open the floor for discussion by the HPC members. The member who introduced the motion is entitled to speak first, and all members should be given the opportunity to speak. Any member may move to call the question when it appears that deliberations are concluded, or there is an impasse. A majority vote will then end deliberations. A vote is then taken on the original motion.

5.6. Decisions

Provided a quorum is present, all decisions of the HPC shall be made by a majority of the members present.

5.6.1. Qualification to Vote

No HPC member shall vote on any matter before the HPC unless that member shall have attended the previous deliberations on such matter or shall otherwise have the approval of the Chair to vote on such matter. The Chair's approval shall be contingent on the assurance by the member that the member has read or reviewed all material distributed to the HPC related to the matter, including any material presented by the applicant during the previous deliberations and the minutes of any meeting at which the matter was discussed.

5.6.2. Voting

Forms of decisions:

- A.** No member attending the presentation and hearing on a matter shall be excused from voting except for cause by majority vote of the HPC.
- B.** A failure to vote by a member who is physically present at the hearing, or who has withdrawn without having been excused or recused by the HPC, shall be recorded as an affirmative vote.
- C.** A tie vote constitutes disapproval of the motion.
- D.** The method of voting shall be decided upon by the Chair, and may be by show of hands, "yes" or "no", or roll call. Any member may motion for a roll call vote on a matter, which shall require a majority vote to conduct.

5.6.3. Certificate of Appropriateness Decisions

Certificate of Appropriateness (COA) decisions shall be certified and filed by the Director or designee and communicated to the applicant in writing within ten (10) business days of the decision. Decisions regarding COA applications must be based on whether the proposed activity is congruous with the special character of the historic district or historic landmark. Notification shall include any instructions or conditions relative to the action taken.

- A.** If an application for a COA is approved, the Secretary shall transmit to the applicant a COA in memo form clearly describing the nature of the work which has been

approved. Also, a copy of the COA shall be provided to the City or Town permits/ inspections department and notification given to the County Tax Supervisor.

- B. For properties within historic districts, the Secretary shall attach a placard form of a COA to be displayed on the property.
- C. If an application or Certificate of Appropriateness is denied, a copy of the minutes of the meeting and written reasons for denial shall be made available to the applicant.

5.6.4 Expiration of Decisions

A COA shall expire and become null and void if construction, any approved change, relocation, or demolition has not commenced for projects approved by the COA within 1 year (365 days) of its issuance.

Section 6. Record-Keeping

The minutes of all meetings and other records of the HPC shall be maintained by the Secretary or other designee of the Director. Minutes of meetings shall be prepared by the Secretary or designee and should be transmitted to the HPC prior to the next regular meeting. Minutes are not official until approved by the HPC, at which time they become the official public record of the HPC's actions.

6.1. Minute Contents:

Minutes shall include the following:

- Date, time and place of the meeting
- Names of members in attendance and names of absent members
- Names of staff members in attendance
- Names and addresses of owner(s), agent(s), applicant(s) and others that spoke on each matter
- A summary of evidence presented to the HPC on each matter
- A summary of the discussion on each matter
- The wording of each motion or resolution, including which members made the member seconded the motion; and
- All votes of the HPC.

All application records and supporting materials are to be retained electronically by the Director in accordance with North Carolina records retention rules.

Section 7. Rehearing of Denied Applications

The HPC has no legal authority or jurisdiction to hear the same matter a second time. Therefore, if an applicant desires to submit a second application regarding a previously denied request, the applicant must first appear before the HPC to present evidence that there has been a substantial change in the application, relevant ordinance provisions, evidence or material site conditions in the matter that presents new issues, hence allowing a second application to be heard as an entirely new proceeding. If the HPC determines no substantial change exists, it shall deny a rehearing on the matter. If the HPC determines that there has been a substantial change, it shall thereupon treat a subsequent application in the same manner as any other application.

Section 8. Modifications to Applications

An approved or pending application for a COA may be modified by a written request from the applicant to the HPC. Such a request shall include a description of the proposed change and shall be accompanied by elevations, plans or other drawings, where necessary. If the HPC finds that the modification constitutes a substantial change which might affect surrounding property owners, it shall notify affected property owners following the procedures set out in Section 4 of these Rules before taking action on the modification. The HPC shall thereupon treat the request in the same manner as any other application as outlined in Section 4 of these Rules.

Section 9. Appeals

~~An appeal from an HPC decision shall be taken to the Board of Adjustment. Appeals from the HPC 1) may be taken may be requested by any aggrieved party, 2) shall be taken An appeal shall be requested in accordance with procedures outlined in the UDO within fifteen thirty (3015) days after the decision from receipt of the written notice of determination of the HPC, and 3). An appeal shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of Guilford County.~~

Commented [AL7]: 160D-947(e) provides " All decisions of the commission in granting or denying a certificate of appropriateness may, if so provided in the regulation, be appealed to the board of adjustment in the nature of certiorari within times prescribed for appeals of administrative decisions in G.S. 160D-405(d). To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the board of adjustment. "

G.S. 160D-405(d) provides "The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. "

Section 10. Amendment of the Rules of Procedure

~~These Rules of Procedure may be amended, within the limits allowed by law, at any time by an affirmative vote of the majority of current members of the Historic Preservation Commission, excluding any vacancies, provided that such amendment is presented in writing at a regular or special meeting. These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of members present, provided a quorum of members exists, and provided that the amendment to be voted on was presented in writing and entered into the minutes at a regular or special meeting preceding the meeting at which the vote is taken. Amendments adopted as above shall become effective at the next regular meeting of the HPC, following any required review and/or approval by the BOC.~~

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