

# ARTICLE 2

## ADMINISTRATIVE AGENCIES

### SUMMARY

*This Article describes the various agencies involved in administration of the CDO. The jurisdiction, powers, and duties of each agency are described. These agencies include: the Planning and Neighborhood Development Department and Administrator, the Board of Adjustment, the Planning and Zoning Commission, the City Council, the Historic Preservation Commission, and the City staff, acting as the Development Review Committee.*

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## **2.1. PLANNING AND NEIGHBORHOOD DEVELOPMENT DEPARTMENT AND ADMINISTRATOR**

### **2.1.1. ESTABLISHMENT OF PLANNING AND NEIGHBORHOOD DEVELOPMENT DEPARTMENT**

Pursuant to NCGS § 160D-301, the City hereby establishes the Planning and Neighborhood Development Department of the City. The Planning and Neighborhood Development Department shall perform the planning review functions for the City and shall provide technical support and guidance for action on all plan and ordinance amendments and on applications for development approval. The Planning and Neighborhood Development Department shall perform other functions as may be requested by the City Council or authorized by this Ordinance.

### **2.1.2. ESTABLISHMENT OF ADMINISTRATOR**

The City hereby authorizes the Planning and Neighborhood Development Director to function as the administrator of this Ordinance (the "Administrator"). The Administrator is charged with the authority and the duty to enforce this Ordinance. The Administrator is authorized to establish and delegate when appropriate Department standards of operation and procedures consistent with the intent of this Ordinance. The Administrator or his delegee may also consult with other officials, boards or agencies with needed technical expertise (such as the Director of Engineering or the Fire Chief). "Administrator" shall include staff authorized by the Administrator.

### **2.1.3. APPEALS FROM THE DECISION OF THE ADMINISTRATOR**

Appeals from the decisions of the Administrator in which it is alleged there is an error in an order, requirement, decision, or determination made by the Administrator in the enforcement of this Ordinance shall be made to the Board of Adjustment in accordance with Sections 2.2 and 6.3.

### **2.1.4. INSPECTION**

Pursuant to NCGS § 160D-402 et seq., the Administrator and the Code Enforcement Officers are hereby designated the Zoning and Subdivision Inspectors for the City. The Inspectors are empowered to enter or inspect any building, structure, premises, or real property in the City upon which, or in connection with which, a development or land use is located or proposed for the purpose of inspection to ensure compliance with the provisions of this Ordinance including but not limited to compliance with building permits. Such inspections shall be carried out during business hours and upon presenting credentials unless the Administrator or Inspectors determine that an emergency exists. Entry onto private property for the purpose of inspection shall be made only after securing permission from the owner. Application for any development approval shall constitute permission to inspect a property.

Failing permission, no inspection shall be undertaken without an order from a court of competent jurisdiction.

**2.1.5. ENFORCEMENT**

The Administrator may hereby commence an action to enforce the provisions of this Ordinance pursuant to NCGS § 160D-404(c), and Section 1.5 of this Ordinance.

## 2.2. BOARD OF ADJUSTMENT

### 2.2.1. ESTABLISHMENT

Pursuant to NCGS § 160D-1-9(d) et seq., there is hereby established the Board of Adjustment of the City of Concord.

### 2.2.2. POWERS AND DUTIES

A. Pursuant to NCGS § 160D-1-9(d) et seq., the Board of Adjustment shall have the following powers, duties and authority:

1. to hear and decide appeals from the decisions of the Administrator in which it is alleged there is an error in an order, requirement, decision, or determination made by the Administrator in the enforcement of this Ordinance (NCGS § 160D-1-9(d) et seq.);
2. to hear and decide on applications for variances from the terms of the zoning ordinance pursuant to Section 2.2 of this Ordinance and NCGS § 160D-1-9(d) et seq. The Board shall have the authority to place conditions, including time limits, on variances;
3. to exercise such other powers as may be granted by this Ordinance.

#### B. Quasi-judicial Procedures

The consideration of any appeal, variance or interpretation, as provided above, shall be in accordance with the quasi-judicial procedures as set forth in Sections 6.2 and 6.3 of this Ordinance and NCGS § 160D-102.

1. Any quasi-judicial matter pertaining to property in the extra-territorial jurisdiction of the City shall only be considered by the Commission with the extra-territorial jurisdiction member present.
2. The Board of Adjustment shall adopt all rules and procedures necessary or convenient for the conduct of its business, consistent with the North Carolina General Statutes. All Board of Adjustment rules and procedures will be maintained by the clerk or other appointed official and an up-to-date version of the rules and procedures will be posted to the City's website.

#### C. Limitations of Board

The Board of Adjustment shall not have power, jurisdiction, or authority to perform any of the following actions:

1. make any changes in permitted uses on any zoning classification or zoning district; or
2. grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

### 2.2.3. MEMBERSHIP

- A. The City Council shall solicit applications for, review applications for, and appoint seven (7) persons to the Board of Adjustment as provided in this Ordinance. The membership shall include proportional representation for extraterritorial areas based on a frequently updated ETJ population estimate, as provided in NCGS § 160D-307. (The Cabarrus County Board of Commissioners shall appoint one representative from the extraterritorial jurisdiction as required by NCGS § 160D-307.) The City Council shall appoint two (2) alternate members to serve on the Board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board and serving in the temporary absence of any regular member, shall have and may exercise all the powers and duties of a regular member.
- B. All members shall serve a term of three (3) years. A member may be reappointed for a second consecutive term. After two (2) consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of the second term.
- C. The City Council may remove any member of the Board of Adjustment for just cause, as may be permitted by law. The City Council shall provide the member with a public hearing, if requested.
- D. If any member of the Board of Adjustment shall fail to attend three consecutive (3) regular meetings of the commission within any three-month period, it will be sufficient grounds for termination of the member's appointment. The City Council may, by appropriate action, terminate the appointment of such person and fill the vacancy as soon as possible. Absence due to sickness, death, or other emergencies shall be recognized as approved absences. In the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- E. Upon a vacancy in the regular membership, City Council may first consider appointing the "senior" alternate member to the vacancy. City Council may appoint any qualified person to a vacancy.
- F. The Board of Adjustment shall adopt and publish to the City's website rules of procedure for the conduct of its business.

- G. At an annual organizational meeting, the members of the Board shall elect one (1) of their members as chair and one (1) as vice-chair. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both, the Board shall elect a temporary chair to conduct the meeting.

#### **2.2.4. MEETINGS, HEARINGS AND PROCEDURES**

- A. The Board shall establish a regular meeting schedule by rule. Special meetings may be requested by the City Council, the chair of the Board, a majority of the members of the Commission, or the Administrator.
- B. If a matter is postponed due to lack of a quorum, the chair of the Commission shall continue the meeting to the next commission meeting. The recording secretary shall notify all members and all appropriate parties of the date of the continued meeting.
- C. No meeting of the Commission may be called to order, nor may any business be transacted by the commission, without a quorum consisting of a majority of the appointed membership of the commission. The chair shall be considered for purposes of establishing a quorum and shall act as a voting member. All Commission actions shall require the concurring vote of a majority of the members of the Commission.

#### **2.2.5. RECORDING SECRETARY**

The Administrator shall appoint a recording secretary to serve the Board of Adjustment. The secretary shall keep minutes to summarize all proceedings, all attested to by a majority of the members of the Board of Adjustment voting. Minutes of the proceedings of the Board of Adjustment showing the vote of each member and records of its examinations and other official actions shall be filed in the office of the Board as a public record. The Development Services Department is hereby designated as the office of the Board for purposes of this subsection. In addition, the secretary shall maintain all records of Board of Adjustment meetings, hearings and proceedings, as well as the correspondence of the Board of Adjustment.

#### **2.2.6. STAFF**

The Administrator shall be the professional staff of the Board of Adjustment.

## 2.3. PLANNING AND ZONING COMMISSION

### 2.3.1. ESTABLISHMENT

Pursuant to NCGS § 160D-301, there is hereby established a planning agency known as the Planning and Zoning Commission of the City of Concord.

### 2.3.2. POWERS AND DUTIES

The Commission shall provide an advisory function to assist in making decisions pertaining to amendments to the Comprehensive Plan and this Ordinance, and applications for development approval. The Commission shall have the following powers and duties to:

- A. exercise any of the powers and/or duties assigned pursuant to NCGS §§ 160D-301 and 160D-107 et seq. including, but not limited to, the preparation of a comprehensive plan;
- B. prepare amendments to the plan and its elements and to submit the amendments to the City Council;
- C. initiate, hear, review, make recommendations to the City Council on applications for amendments to the text of this Ordinance;
- D. initiate, hear, review, make recommendations to the City Council, and/or make final decisions on applications for amendments to the Official Zoning Map. As prescribed in Section 3.2 of this Ordinance, the Commission shall render a final decision (subject to appeal) on applications for amendments to the Official Zoning Map (including those with concurrent amendments to the Land Use Plan) with a super-majority vote of at least three-fourths of the Commission;
- E. adopt bylaws, policies, procedures, and regulations for the conduct of its meetings, the consideration of applications for development approval, and for any other purposes deemed necessary for the functioning of the Commission. All bylaws, policies, procedures, and regulations shall be consistent with this Ordinance and shall be approved by the City Council before taking effect. Upon City Council approval, the clerk or appointed official will maintain a record of all adopted bylaws, policies, procedures, and regulations and post the record to the City's website; and
- F. review and consider issuing special use permits.

**2.3.3. MEMBERSHIP**

The City Council shall solicit applications for, review applications for, and appoint seven (7) persons to the Planning and Zoning Commission as provided in this Ordinance. The membership shall include proportional representation for extraterritorial areas, as provided in NCGS § 160D-307. (The Cabarrus County Board of Commissioners shall appoint one representative from the extraterritorial jurisdiction as required by NCGS § 160D-307.) The City Council shall appoint two (2) alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

- A. All members shall serve a term of three (3) years. A member may be reappointed for a second consecutive term. After two (2) consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of the second term.
- B. The City Council may remove any member of the Planning and Zoning Commission for just cause, as may be permitted by law. The City Council shall provide the member with a public hearing if requested.
- C. If any member of the commission shall fail to attend three (3) regular meetings of the commission within any consecutive three-month period, the chair or the vice-chair shall immediately file a notification of such nonattendance with the City Council for placement on the Council agenda. The City Council may, by appropriate action, terminate the appointment of such person and fill the vacancy as soon as possible. Absence due to sickness, death, or other emergencies shall be recognized as approved absences. In the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- D. Upon a vacancy in the regular membership, City Council may first consider appointing the “senior” alternate member to the vacancy. City Council may appoint any qualified person to a vacancy.
- E. The Planning and Zoning Commission shall adopt and publish to the City’s website rules of procedure for the conduct of its business.
- F. At an annual organizational meeting, the members of the Commission shall elect one (1) of their members as chair and one (1) as vice-chair. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both, the Commission shall elect a temporary chair to conduct the meeting.

#### **2.3.4. MEETINGS, HEARINGS AND PROCEDURES**

- A. The Commission shall establish a regular meeting schedule by rule. Special meetings may be requested by the City Council, the chair of the Commission, a majority of the members of the Commission, or the Administrator.
- B. If a matter is postponed due to lack of a quorum, the chair of the Commission shall continue the meeting to the next commission meeting. The recording secretary shall notify all members and all appropriate parties of the date of the continued meeting.
- C. No meeting of the Commission may be called to order, nor may any business be transacted by the commission, without a quorum consisting of a majority of the appointed membership of the commission. The chair shall be considered for purposes of establishing a quorum and shall act as a voting member. All Commission actions shall require the concurring vote of a majority of the members of the Commission.

#### **2.3.5 RECORDING SECRETARY**

The Administrator shall appoint a recording secretary to serve the Commission. The secretary shall keep minutes to summarize all proceedings, attested to by a majority of the members of the commission voting. Minutes of the proceedings of the Commission showing the vote of each member and record of its examinations and other officials' actions shall be filed in the office of the Commission as a public record. The Planning and Neighborhood Development Department is hereby designated as the office of the Commission for purposes of this subsection. In addition, the secretary shall maintain all records of commission meetings, hearings and proceedings, as well as the correspondence of the Commission.

#### **2.3.6 STAFF**

The Administrator shall serve as the professional staff of the Commission.

## 2.4. CITY COUNCIL

### 2.4.1. POWERS AND DUTIES

The City Council shall render final decisions pertaining to amendments to the Comprehensive Plan and this Ordinance, except where authority for a final decision is delegated to another agency by this Ordinance. The City Council shall render final decisions pertaining to applications for development approval where such authority is assigned pursuant to this Ordinance. The City Council shall have the following powers and duties to:

- A. initiate, adopt, and amend a Comprehensive Plan;
- B. initiate amendments to the text and map of this Ordinance and the Comprehensive Plan;
- C. review recommendations of the Planning and Zoning Commission, and make final decisions on applications for amendments to the text of this Ordinance;
- D. accept or decline offers of dedication or performance guarantees of infrastructure or real property. Offers of dedication are typically made in the course of developing subdivisions, but may be made in the course of other kinds of development, such as planned unit developments;
- E. hear, review, and approve, conditionally approve, or deny amendments to the Official Zoning Map after a recommendation of the Planning and Zoning Commission has been submitted pursuant to NCGS § 160D-604. In accordance with Section 3.2 of this Ordinance, such amendments shall only be heard by City Council if:
  1. the amendment was denied by Planning and Zoning Commission;
  2. the amendment was approved, but the affirmative votes represented less than three-fourths of the Commission;
  3. a decision of the Planning and Zoning Commission has been made pursuant to Section 3.3 of this Ordinance and an appeal has been filed;
  4. subsequent to the initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning and Zoning Commission for review and comment. If no written report is received from the Commission within thirty days of

- 5. referral of the amendment to the Commission, the City Council may proceed in its consideration of the amendment without the Commission's report. The City Council is not bound by the recommendations, if any, of the Planning and Zoning Commission; and
- G. take such other action not otherwise delegated, as the City Council may deem desirable and necessary to implement the provisions of this Ordinance and the Comprehensive Plan.

## 2.5. HISTORIC PRESERVATION COMMISSION

### 2.5.1. ESTABLISHMENT

Pursuant to NCGS § 160D-303 et seq., there is hereby established the Concord Historic Preservation Commission, hereafter referred to as the Historic Preservation Commission or Commission, to consist of seven (7) regular members and two (2) alternate members appointed by the City Council of the City of Concord. The City Council shall establish the Commission's compensation, if any.

### 2.5.2. POWERS AND DUTIES

The Commission shall seek to promote, enhance and preserve the character of the districts. The Historic Preservation Commission is authorized and empowered to undertake reasonable actions to discharge and conduct its duties and responsibilities as outlined in this Ordinance and Part 4, Article 9 of Chapter 160D of the NCGS including, but not limited to, the following:

- A. Recommend to the Planning and Zoning Commission areas to be designated by ordinance as "historic districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "landmarks".
- B. Recommend to the City Council that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
- C. Review and act upon (grant or deny) applications for Certificate of Appropriateness requests for alterations, demolition, or new construction within historic districts, or for the alteration or demolition of designated landmarks in accordance with Section 9.8. of this Ordinance.
- D. Give advice to property owners concerning the treatment of the historical and visual characteristics of properties located within the districts, such as color schemes, gardens and landscaping features, and minor decorative elements.
- E. Propose to the City Council changes to this or any related ordinance; propose new ordinances or laws relating to the historic districts, historic landmarks, or the development of the historical resources of the City of Concord and its environs.

- F. Cooperate with other City of Concord boards or commissions or with agencies of the City or other governmental units; offer or request assistance, aid, guidance, or advice concerning matters under its purview.
- G. Publish information about, or otherwise inform the owners of property within the districts of any pertinent matters. Such information may be in the form of standards, handbooks, pamphlets, brochures, etc.
- H. Conduct an educational program with respect to historic districts and landmarks within its jurisdiction.
- I. Undertake programs of information, research, or analysis relating to any matters under its purview.
- J. Report violations of this ordinance or related ordinances to the Planning and Neighborhood Development Director responsible for enforcement.
- K. Assist City staff in obtaining the services of private consultants to aid in carrying out programs for research or analysis.
- L. To secure appropriate rights of public access and promote the preservation of the property.
- M. Accept funds granted to the Commission from private or nonprofit organizations.
- N. Contract, with the approval of the City Council, for services or funds from the State of North Carolina and agencies or departments of the United States government.
- O. Recommend to the City Council and the State of North Carolina structures, sites, objects, or districts worthy of national, state or local recognition.
- P. Establish standards under which the Planning and Neighborhood Development Director or his designee may approve minor modifications on behalf of the Commission. No application shall be denied without first being considered by the Commission.
- Q. Conduct public hearings on applications for Certificates of Appropriateness where the Commission deems that such a hearing is necessary.
- R. Organize itself and conduct its business by whatever legal means it deems proper.

- S. Exercise such other powers and perform such other duties as are required elsewhere by this Ordinance, the General Statutes of North Carolina, or by the City Council.

### 2.5.3. MEMBERSHIP

- A. The City Council shall solicit applications for, review applications for, and appoint seven (7) persons to the Historic Preservation Commission as provided in this Ordinance. If any districts or landmarks are designated within the Extraterritorial Jurisdiction (ETJ), proportional representation for the ETJ will be included on the Commission. The membership shall include territorial representation and a majority of the members shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. The City Council shall appoint two (2) alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.
- B. All members shall serve a term of three (3) years. A member may be reappointed for a second consecutive term. After two (2) consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of the second term.
- C. The City Council may remove any member of the Historic Preservation Commission for just cause, as may be permitted by law. The City Council shall provide the member with a public hearing, if requested.
- D. If any member of the Historic Preservation Commission shall fail to attend three (3) consecutive regular meetings of the commission within any three-month period, it will be sufficient grounds for termination of the member's appointment. The City Council may, by appropriate action, terminate the appointment of such person and fill the vacancy as soon as possible. Absence due to sickness, death, or other emergencies shall be recognized as approved absences. In the event of a long illness or other such cause for prolonged absence, the member shall be replaced.
- E. Upon a vacancy in the regular membership, City Council may first consider appointing the "senior" alternate member to the vacancy. City Council may appoint any qualified person to a vacancy.
- F. The Historic Preservation Commission shall adopt and publish on the City's website rules of procedure for the conduct of its business. All adopted rules of procedure shall be maintained by the clerk or appointed official.

- G. At an annual organizational meeting, the members of the Commission shall elect one (1) of their members as chair and one (1) as vice-chair. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both, the Commission shall elect a temporary chair to conduct the meeting.

#### **2.5.4. MEETINGS, HEARINGS, AND PROCEDURES**

- A. The Commission shall establish a regular meeting schedule by rule. Special meetings may be requested by the City Council, the chair of the Commission, a majority of the members of the Commission, or the Administrator.
- B. If a matter is postponed due to a lack of a quorum, the chair of the Commission shall continue the meeting to the next commission meeting. The recording secretary shall notify all members and all appropriate parties of the date of the continued meeting.
- C. No meeting of the Commission may be called to order, nor may any business be transacted by the commission, without a quorum consisting of a majority of the appointed membership of the commission. The chair shall be considered for purposes of establishing a quorum and shall act as a voting member. All Commission actions shall require the concurring vote of a majority of the members of the Commission.

#### **2.5.5. RECORDING SECRETARY**

The administrator shall appoint a recording secretary to serve the Historic Preservation Commission. The secretary shall keep minutes to summarize all proceedings, all attested to by a majority of the members of the Historic Preservation Commission voting. Minutes of the proceedings of the Commission showing the vote of each member and records of its examinations and other official actions shall be filed in the office of the Commission as the public record. The Planning and Neighborhood Development Department is hereby designated as the office of the Commission for purposes of this Subsection. In addition, the secretary shall maintain all records of the Commission meetings, hearings and proceedings, as well as the correspondence of the Commission.

**2.5.6. STAFF**

The administrator shall be the professional staff of the Historic Preservation Commission.

## **2.6. CITY STAFF - DEVELOPMENT REVIEW COMMITTEE**

### **2.6.1. ESTABLISHMENT**

The City Manager shall appoint a committee of staff members consisting of department heads who have particular expertise in the development of real property as the Development Review Committee (DRC). The Committee shall be chaired by the Planning and Neighborhood Development Director. At a minimum, the DRC members shall consist of the Director of Engineering, the Fire Chief, the Director of Transportation and the Director of Water Resources (or their designees). Other departments that shall serve on the committee on an ad hoc basis, depending on the nature, size and complexity of the development project to be reviewed include, but are not limited to: Parks and Recreation, Electric Systems, Solid Waste, Legal, Transit, and Police.

### **2.6.3. REVIEW OF OTHER DEVELOPMENT PLANS**

The DRC shall meet periodically to review and comment on all plans to be reviewed and/or approved by any other body listed in this Article, including the City Council, Planning and Zoning Commission, Board of Adjustment, and Historic Preservation Commission and all request for permits, for conformity with the City Code and with City Council resolutions.

- A. The DRC shall develop rules of procedure and schedules to ensure that plans submitted shall be reviewed and comments returned to developers in a timely manner. These rules of procedure shall be maintained by the clerk or other appointed official and be posted to the City's website.
- B. The DRC shall develop unified comments and the Chair shall submit one written set of comments to each applicant.
- C. The DRC shall keep written records of any action taken, or comments made.