

Article 2 Development Review Procedures

Sec. 2.1 General

2.1.1 Authority to File Applications

Unless otherwise expressly stated elsewhere in this article, any application including text amendments and zoning map amendments required under this article may be filed by any city department, review or decision-making body, the owner of property that is the subject of the application, or by the authorized agent of the subject property owner. In the case, of subdivision plats, site plan review, planned developments, conditional zoning, and special uses, only property owners or authorized agents may submit an application. In the case of appeals, applications may be filed by the subject property owner or by any affected person aggrieved by the decision being appealed. When a decision-making body initiates an application it does so without prejudice toward the outcome.

2.1.2 Pre-application Conference (*TA 14-01*)

Pre-application conferences are intended to provide a forum for the discussion of proposed development projects. These conferences include relevant City and County staff, developers, architects, engineers, contractors and other design professionals. The intent of these conferences is to provide preliminary comments and observations regarding development projects; and to further provide developers, architects, contractors and other design professionals with the opportunity to ask questions and receive feedback before formally submitting applications for development review. The Planning Department will be responsible for facilitating pre-application conferences.

Development projects with any of the following shall be required to participate in a pre-application conference prior to submittal for any applications:

- A. any development project proposing to construct or erect a single structure, or addition to an existing structure(s), which has a gross floor area of fifteen-thousand square feet (15,000 ft²) or greater;
- B. any development project proposing renovations to an existing structure, where such activities involve improvements and/or alterations to fifteen-thousand square feet (15,000 ft²) or more of the existing floor area of the structure(s);
- C. any development project which involves the construction of more than one (1) structure on a single parcel of property;
- D. any development project which involves the construction of an additional structure(s) on a parcel of property which already contains a structure (This shall not apply to incidental accessory structures.);
- E. any development project which involves the construction of new, or relocation of existing public or private streets;
- F. any development project, which upon completion, would be expected to increase traffic by seven hundred fifty (750) vehicle trips per day, as outlined in the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual; and
- G. any development project which requires the extension of utility services.

For all other development projects, applicants are encouraged to request a pre-application conference with the appropriate city staff.

2.1.3 Form of Application

Applications required under this Land Development Code must be submitted in a form and in such numbers as noted on the application as required by the official responsible for accepting the application. Application forms and checklists of required submittal information are available from the official responsible for accepting the application.

2.1.4 Application Filing Fees

Applications must be accompanied by the required fee amount as established by the City of Hickory Annual Fee Schedule available from the Planning Department. Fees are not required with applications initiated by a city department or by review or decision-making bodies. Unless otherwise expressly stated in this Land Development Code, application fees are nonrefundable. In addition to required application fees, applicants shall also be responsible for paying the direct costs of mailing and publishing required notices.

2.1.5 Application Completeness

An application will be considered complete if it is submitted in the required number and form, includes all requested information and is accompanied by the applicable fee. A determination of application completeness shall be made within 10 days of application filing. If an application is determined to be incomplete, the official responsible for accepting the application shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected.

2.1.6 Application Deadlines

Each year, staff shall prepare a calendar of application deadlines. Applications shall be submitted prior to the deadline and determined to be complete within the prescribed period. Any application submitted after the deadline or found to be incomplete within the prescribed time frame shall be held until the next deadline.

2.1.7 Notices (*TA 14-01*)

A. Content

Notices required under Subsections (1) and (3) below shall: (1) indicate the date, time and place of the public hearing or date of action that is the subject of the notice; (2) describe the property involved in the application by street address and by Property Identification Number (PIN) or by legal description; (3) describe the nature, scope and purpose of the application or proposal; and (4) indicate where additional information on the matter can be obtained.

B. Types

(1) Newspaper Notice (N)

When the provisions of this Land Development Code require that "Newspaper Notice" be provided, the official responsible for accepting the application shall ensure that notice is published at least twice in a newspaper of general circulation in Hickory. The notice shall appear in the newspaper for 2 successive weeks with the first notice appearing not less than 10 calendar days nor more than 25 calendar days before the date of the public hearing. Prior to final action on the application, the official responsible for accepting the application shall certify that notices have been published.

(2) Posted Notice (P)

When the provisions of this Land Development Code require that “Posted Notice” be provided, the official responsible for accepting the application shall post notice on the subject property. Such posted notice shall be in the form of official signs provided by the Planning Department and be done in a manner that makes the notice clearly visible to neighboring residents and passers-by from each public street bordering the subject property. At least one sign shall be prominently posted along each street frontage. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel shall not be required, but the city shall post sufficient notices to provide reasonable notice to interested persons. Unless otherwise expressly provided in state statutes or this Land Development Code, required posted notice shall be in place at least 10 days before the public hearing, meeting, or date of action that is the subject of the notice. Prior to final action on the application, the official responsible for accepting the application shall certify that notices have been given.

(3) Mailed Notice (M)

(a) When the provisions of this Land Development Code require that “Mailed Notice” be provided, the official responsible for accepting the application shall mail notice to the owner of the subject property and all owners of property within 500 feet of the subject property. Ownership information shall be based on the most recent county tax records. Unless otherwise expressly provided in state statutes or this Land Development Code, required notices shall be deposited in the U.S. mail at least 10 days before and not more than 25 days before the public hearing, meeting, or date of action that is the subject of the notice. Prior to final action on the application, the Planning Director shall certify that notices have been given.

(b) The first class mail notice required under subsection (a) shall not be required if a zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least 50 different property owners. In this instance the may city, as an alternative, elect to publish a notice of public hearing as required by NCGS 160A-364, but provided that each advertisement shall not be less than on-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a).

(c) Except for a city-initiated zoning map amendment (i.e. an amendment initiated by any city department, review or decision-making body), when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. For the purposes of this subsection, “actual notice” of the proposed amendment and a copy of the notice of public

hearing shall be by any manner permitted under G.S. § 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. § 1A-1, Rule 4(j1).

- (d) In the event of appeals of administrative decisions, the notice will be mailed to the person or entity whose appeal, application or request is the subject of the hearing, and to the owner of the property that is subject to the hearing if the owner did not initiate the hearing.

2.1.8 Continuation of Public Hearings

Whenever the provisions of this Land Development Code require that a review or decision-making body take action on an application, the review or decision-making body shall be authorized to postpone action on the matter until a later date. A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Land Development Code, provided that the continuance is set for a date and time certain which is announced in open session during the originally noticed meeting. If a public hearing is tabled or deferred for an indefinite period of time or postponed more than 6 months from the date of the originally scheduled public hearing, new public notice shall be required prior to the rescheduled public hearing. The cost of such re-notification shall be borne by the party requesting the postponement.

2.1.9 Action by Decision-Making Bodies

Unless otherwise expressly stated in this Land Development Code, decision-making bodies may take any action on an application that is consistent with any notice given, including, but not limited to, approving such application, approving the application with modifications or conditions or denying the application. The decision-making body may impose conditions on the application or allow amendments to the pending application if the effect of the conditions or amendments is to allow a less intensive use or zoning district than indicated in the application or to reduce the impact of the development or to reduce the amount of land area included in the application. Decision-making bodies may not approve a greater density of development; a more intensive use or a more intensive zoning district than was indicated in any required notice.

2.1.10 Burden of Proof or Persuasion

In all cases, the applicant shall have the burden of establishing that an application complies with applicable review or approval criteria of this Land Development Code.

2.1.11 Conditions of Approval

In approving development applications for Special Use Permits and Conditional Zoning, decision-making bodies shall be authorized to impose such conditions upon the premises benefited by the approval as outlined within Article 2.

2.1.12 Inaction by Review/Decision-Making Bodies

When a review or decision-making body fails to take action on an application within any time frame that is specified in this article or by statute, such inaction shall be interpreted as a recommendation of approval without conditions or approval of the application without conditions, respectively. Time frames for action may be extended if the applicant consents to the extension. When a review body fails to take action on an application within the time required, the decision-making body shall be free to proceed with its own action on the matter without further awaiting the recommendation of the review body.

2.1.13 Summary of Procedures (TA 14-01)

The following table provides a summary of the procedures in this article. In the event of conflict between this summary table and the detailed procedures in this article, the detailed procedures shall govern.

Procedure	Decision-Making Authority [1]						Notice [2]
	Staff	PD	PC	BOA	HPC	City Council	
Text Amendments	R	—	R	-----	—	<DM>	N
Zoning Map Amendments	R	—	R	-----	—	<DM>	N, P, M
Subdivision Plats							
Minor Subdivision							
Preapp. Conf./Sketch Plan	R	—	—	—	—	—	—
Final Plat	R	DM	—	—	—	—	—
Major Subdivision							
Preapp. Conf./Sketch Plan	R	—	—	—	—	—	—
Preliminary Plat	R	DM	—	—	—	—	P, M [4]
Final Plat	R	DM	—	—	—	—	—
Special Uses	R	—	<DM>	—	—	—	N, P, M
Alternative Sign Plans	R	DM	—	—	—	—	—
Certificates of Appropriateness							
Minor	DM	—	—	A	—	—	—
Major	R	—	—	A	<DM>	—	M, N, P
Sign Permits/Common Sign Plan	DM [3]	—	—	—	—	—	—
Zoning Compliance Permits	DM [3]	—	—	—	—	—	—
Zoning Compliance Certificates	DM [3]	—	—	—	—	—	—
Variances	R	—	—	<DM>	—	—	N, P, M
Appeals of Admin. Decisions	—	—	—	<DM>	—	—	N, P, M

Notes: PD = Planning Director • PC = Planning Commission • BOA = Board of Adjustment • HPC = Historic Preservation Commission

When no local appellate body is specified, appeals are taken to the Superior Court.

[1] R = Review Body (Responsible for Review and Recommendation); DM = Decision-Making Body (Responsible for Final Decision to Approve or Deny); A = Authority to hear and decide appeals of Decision-Making Body’s action.

[2] Notices: N = Newspaper (published); P = Posted (signs); M = Mailed (See 2.1.7)

[3] Appeals processed as “Appeals of Administrative Decisions.”

[4] Residential Sub. Only <> = Public Hearing Required

Sec. 2.2 Land Development Code Text and Zoning Map Amendments

2.2.1 Amendments in general

- A. Amendments to the text of this ordinance or to the zoning map may be made in accordance with the provisions of this article.
- B. Conditional district zoning requests shall be made in accordance with the provisions of section 2.2.8.
- C. As provided in G.S. 160A-385(b), amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either:
 - (1) a building permit has been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422.
 - (2) a vested right has been established pursuant to G.S. 160A-385.1 and all provisions of this ordinance and such vested right remains valid and unexpired.
- D. The review process for an amendment to the text of this ordinance or to the zoning map shall include:
 - (1) Planning department staff review;
 - (2) Planning commission review and recommendation in accordance with section 2.2.5; and
 - (3) City Council review and action.

2.2.2 Initiation and Application Filing

- A. Any person or organization may petition the city council to amend this ordinance, with the exception that only the property owner or authorized agent may petition for rezoning to a Planned Development or Conditional Zoning District. The petition shall be filed with the planning director and shall include:
 - (1) The name, address, and phone number of the applicant;
 - (2) A scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
 - (3) Description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.
- B. Petitions for amendments shall be submitted to the planning director by the established deadline for the planning commission meeting at which the petition will be reviewed.

2.2.3 Public Hearing Notice

Notice of the City Council's hearing shall be provided in accordance with Sec. 2.1.7.

2.2.4 Staff Review/Report

The Planning Director shall review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7 and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the Planning Director shall provide a report on the proposed amendment to the Planning Commission and City Council.

2.2.5 Planning Commission's Review/Recommendation

The Planning Commission shall review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7 and recommend that the City Council approve, approve with modifications or deny the proposed amendment. The Planning Commission shall make its recommendation to the City Council within no more than two consecutive meetings. If no written report is received from the Planning Commission within thirty days of referral of the amendment to that board, the City Council may proceed in its consideration of the amendment without the Planning Commission report. The Planning Commission shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.

2.2.6 City Council Hearing and Decision

After receiving the Planning Commission's recommendation or after having allowed the time required for the Planning Commission's consideration, the City Council shall hold at least one public hearing to review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7. Following the public hearing (at the same or subsequent meeting), the City Council shall take action to approve, approve with modifications or deny the proposed amendment. Prior to approving or denying any proposed amendment, the City Council shall adopt a statement describing whether its action is consistent with any adopted relevant plans and explain why the Council considers the action taken to be reasonable and in the public interest.

2.2.7 Review Criteria

In reviewing and making recommendations on proposed text and map amendments, review bodies shall consider all of the following factors:

A. Zoning Map Amendments

- (1) consistency of the proposed amendment with the Hickory Comprehensive Land Use and Transportation Plan and the stated Purpose and Intent of this Land Development Code (See Sec. 1.7);
- (2) existing land uses within the general vicinity of the subject property;
- (3) the zoning classification of property within the general vicinity of the subject property;
- (4) the suitability of the subject property for the uses permitted under the existing zoning classification;
- (5) the extent to which the proposed amendment will detrimentally affect properties within the general vicinity of the subject property;
- (6) the extent to which the proposed amendment will cause public services including roadways, stormwater management, water and sewer, fire and police protection to fall below acceptable levels; and
- (7) whether the proposed amendment will protect the public health, safety and general welfare.

B. Text Amendments

- (1) Whether the proposed amendment corrects an error or inconsistency in the Land Development Code or meets the challenge of a changing condition;

- (2) Whether the proposed amendment is consistent with the Hickory Comprehensive Land Use and Transportation Plan and the stated purpose of this Land Development Code; and
- (3) Whether the proposed amendment will protect the public health, safety and general welfare.

2.2.8 Conditional Zoning

- A. Purpose. Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a general use district. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.
- B. Conditional zoning districts. Conditional zoning is available for any of the general zoning classifications enumerated in this ordinance. The conditional zoning designation shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" (e.g. R-1 (CZ); C-2 (CZ)). All applications for rezoning to a Planned Development (PD) zoning district, as described in Article 5, shall be processed as conditional zoning applications.
- C. General requirements. The following provisions shall apply to the administration of conditional zoning.
 - (1) A conditional zoning application shall be considered only upon request of the owners of all the affected property or their duly authorized representative.
 - (2) Prior to submittal of the application, it is strongly recommended that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development, and include a report of any such meetings in its application.
 - (3) All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive than the general use standards, and/or where the requirements are modified in accordance with subsection 2.2.8(c)(6).
 - (4) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.
 - (5) The conditions agreed upon pursuant to the conditional zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.
 - (6) Minor modifications to the approved conditional zoning ordinance may be approved by the planning and development director. Such modifications shall be limited to the following:

- (a) An increase of up to 10 percent in the number of parking spaces required by Sec. 9.2.2.
- (b) An increase in floor area of up to 500 square foot or 15%, whichever is less.

Any other modifications shall be approved by the City Council as an amendment to the conditional zoning ordinance, and shall be referred to the Hickory Regional Planning Commission. The Planning Director shall in every case have the discretion to decline to exercise the power to approve or deny minor modifications as provided for herein, and may require the applicant to seek an amendment to the conditional zoning ordinance.

- (7) Any violation of a provision of a conditional zoning ordinance shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any other such violation.
- (8) If for any reason any provision of a conditional zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the city council.

D. Application procedure

When applying for conditional zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for conditional zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in this article for zoning map and zoning text amendments, except as provided below:

- (1) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.
- (2) The application and supporting materials shall be reviewed by the planning department in accordance with its procedures for reviewing applications for special use permits and zoning map amendments prior to the meeting of the planning commission at which the application is to be considered. The recommendations and comments of the planning department shall be reported to the planning commission, which shall be reported at the public hearings on said applications.
- (3) Following review by the planning department, the Hickory Planning Commission shall make a recommendation on applications for conditional zoning. The hearing, the Planning Commission may recommend approval, approval with conditions or denial.
- (4) Upon receipt of the recommendations from the planning commission, the city council shall hold a public hearing on the application for conditional zoning. Notice of the public hearing shall be provided in accordance with the provisions of Sec. 2.1.7 of this chapter and the North Carolina General Statutes.
- (5) The city council's consideration of an application for conditional zoning is legislative in nature, and the council may consider any relevant information in its deliberations, including the criteria for considering special use permits and zoning map amendments. Consideration shall be given to adopted land use plans

for the area, small area plans, corridor plans, and other land use policy documents, and to surrounding land uses. The council may adopt or not adopt a conditional zoning ordinance, or may continue its consideration of the application as necessary or appropriate.

- (6) During the adoption of a conditional zoning ordinance, specific conditions may be proposed by the petitioner, city council, planning commission or city staff, but only those conditions mutually approved by city council and the petitioner may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed shall be limited to those that address the conformance of the development and use of the site to city ordinances, an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
- (7) Specific findings of the city council are not required for action on an application for conditional zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared and adopted by City Council.
- (8) Prior to the issuance of any permits, the applicant must submit detailed plans to the planning department for final review.
- (9) Upon adoption of a conditional zoning ordinance, the official zoning map of the City of Hickory shall be amended to add the conditional zoning district. The planning director shall maintain a book or file for conditional zoning ordinances, and each conditional zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.
- (10) The conditional zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this chapter.
- (11) Conditional zoning ordinances are legislative in nature, and judicial review of conditional zoning ordinances shall be as provided by law for zoning ordinances.

2.2.9 Citizen Comment (*TA 15-01*)

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal of this Land Development Code or official zoning map to the City Clerk at least two (2) business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-288, the City Clerk shall provide only the name and address of the individual providing written comment, and the provision of such names and addresses to all of the City Council shall not disqualify any member of the Council from voting.

2.2.10 Notice of Decision

Within 10 days after a final zoning map amendment decision is made by the City Council, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.2.11 Withdrawal of Application

An applicant may withdraw the application at any time by written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

2.2.12 Deferral of Applications

An applicant may defer the application by written notice to the Planning Director prior to the first public hearing notice. An application shall not be deferred for a period longer than thirty (30) days, at which time the application shall proceed to public hearing or be withdrawn.

2.2.13 Successive Applications

When the City Council denies an application or the applicant withdraws an application after the first public hearing notice has been published in the newspaper, the City Council shall not consider another application for the same or similar amendment affecting the same property or a portion of it until the expiration of a 1-year period, extending from the date of denial by the City Council or withdrawal by the applicant.

Sec. 2.3 Subdivision Plats

2.3.1 Applicability

Unless otherwise expressly stated, review and approval in accordance with the procedures of this section shall be required for all divisions of a tract or parcel of land into two or more lots, building sites or other division for the purpose of sale or building development, whether immediate or future, including all divisions of land involving the dedication of a new street or a change in existing streets.

2.3.2 Exemptions

A. The following shall not be subject to the review and approval procedures of this section:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the requirements of the subdivision regulations of this Land Development Code;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition of strips of land for the widening or opening of streets; or
- (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than 3 lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the subdivision regulations of this Land Development Code.

Any subdivision plat that qualifies as exempt pursuant to this section must be reviewed and confirmed by City staff to be exempt, and no exempt subdivision plat may be recorded until the City staff has confirmed the exempt status by written notation on the plat.

B. In interpreting paragraph (A)(1) above, the term “previously subdivided” shall mean platted and approved if such lots were created in accordance with subdivision regulations in effect at the time of their creation, or created as a result of a recorded land division prior to existence of applicable subdivision regulations.

C. In interpreting paragraphs (A)(2) and (A)(4) above, the phrase “where no street right-of-way dedication is involved” shall be construed as meaning that any such parcel shall be served by a private driveway or an existing street that has been accepted for dedication and maintenance by the City of Hickory or the North Carolina Department of Transportation.

2.3.3 Minor Subdivisions

The expedited review and approval procedures of this subsection shall apply to “Minor Subdivisions,” as that term is defined in Article 14. The procedures for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest. The main difference between the Minor and Major Subdivision processes is that Minor Subdivisions do not require a preliminary plat. After completion of a Preapplication Conference and Sketch Plan review, the applicant may apply directly for approval of a final plat.

A. Preapplication Conference

Before submitting a Minor Subdivision application, the applicant shall confer with the Planning Director to discuss the proposal and applicable regulations. The purpose of the required Preapplication Conference is for the applicant to become familiar with applicable subdivision procedures and standards. Prior to or as part of the Preapplication Conference, the applicant shall submit a Sketch Plan of the proposed subdivision showing the approximate size of the property, the tentative street layout, proposed lot sizes, watercourses and the location of the property in relation to existing streets and surrounding areas. The Planning Director and other administrative officials shall review the Sketch Plan. Following their review, the reviewing officials shall confer with the applicant to discuss any matters that will assist the applicant in preparing a Preliminary Plat. No review fee shall be required for Preapplication Conferences or Sketch Plans.

B. Final Plat

After completing the Preapplication Conference and Sketch Plan review, applicants for Minor Subdivision approval shall proceed to the Final Plat review stage, which shall be carried out in accordance with Sec. 2.3.4C.

C. Approval Criteria

Minor subdivision plats shall be approved only when the Planning Director finds that all of the following conditions exist:

- (1) The plat complies with the standards of Article 8 and the other applicable requirements of this Land Development Code;
- (2) The plat indicates that all subject lots will have frontage on existing approved streets;
- (3) New or residual parcels will conform to the requirements of this Land Development Code and other applicable regulations;
- (4) No new streets are required or are likely to be required for access to interior property;
- (5) No extension of public sewerage or water lines will be required;
- (6) The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property;
- (7) Appropriate right-of-way for widening has been offered for reservation or dedication where the lots front on an existing approved street indicated in the official major street plan as intended for widening. In general, such right-of-way offered for dedication or reservation shall be adjacent to the existing right-of-way, and of such width as to provide a total of half of the projected right-of-way width indicated on the street plan, as measured from the center of the existing street provided, however, that in cases of projected changes in the alignment of

the centerline, greater or lesser amounts may be required as appropriate. In no case shall right-of-way offered for dedication for such purposes be required to be more than an average of 25 feet in width;

- (8) All necessary drainage easements have been provided and stormwater management as required by this Land Development Code.

D. Notice of Decision

Within 10 days after a minor subdivision plat decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

E. Appeals

Any party aggrieved by a decision approving or denying a plat may seek to have the decision reviewed by filing an action in Superior Court seeking appropriate declaratory or equitable relief. Such action must be filed within thirty days after the written decision is rendered.

2.3.4 Major Subdivisions

The procedures of this subsection shall apply to all “Major Subdivisions,” as that term is defined in Article 14.

A. Preapplication Conference

Before submitting a Preliminary Plat for a proposed subdivision, the applicant shall confer with the Planning Director to discuss the proposal and applicable regulations. The purpose of the Preapplication Conference is for the applicant to become familiar with applicable subdivision procedures and standards. Prior to or as part of the Preapplication Conference, the applicant may submit a Sketch Plan of the proposed subdivision showing the approximate size of the property, the tentative street layout, proposed lot sizes, watercourses and the location of the property in relation to existing streets and surrounding areas. The Planning Director and other administrative officials shall review the Sketch Plan. Following their review, the reviewing officials shall confer with the applicant to discuss any matters that will assist the applicant in preparing a Preliminary Plat. No review fee shall be required for Preapplication Conferences or Sketch Plans.

B. Preliminary Plats

(1) Application

A complete application for Preliminary Plat approval shall be submitted to the Planning Director on forms available in the Planning Department.

(2) Notice

Each application for Preliminary Plat approval shall contain the name and address of the person who is to receive all notices pertaining to the application.

(3) Staff Review/Report

The Planning Director shall prepare a report that reviews the Preliminary Plat in light of the standards of Article 8 and the other applicable requirements of this Land Development Code. The Planning Director shall provide a copy of the report to the applicant and any interested parties.

- (4) **Required Intergovernmental Coordination**
The Planning Director shall provide copies of all applications for Major Subdivision preliminary plat approval to the Superintendent of the public school system for which the subject property is located for their review and comment.
- (5) **Public Input**
Prior to preliminary approval of any subdivision, any member of the public wishing to do so may comment on the matter. The Planning Director shall consider all public comments received during the comment period prior to taking final action on any requested subdivision.
- (6) **Planning Director's Review/Action**
The Planning Director shall review the Preliminary Plat to determine if it complies with the standards of Article 8 and the other applicable requirements of this Land Development Code. If the Planning Director determines that the Preliminary Plat does not comply with applicable standards, the Planning Director shall require that modifications be made to bring the Preliminary Plat into compliance with such regulations and standards. After consideration of the Preliminary Plat, the Planning Director shall act to approve, approve with modifications to bring the Preliminary Plat into compliance with this Land Development Code or deny the Preliminary Plat.
- (7) **Notice of Decision**
Within 10 days after a Preliminary Plat decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- (8) **Effect of Approval**
Approval of the Preliminary Plat shall constitute acceptance of the overall planning concept for the subdivision and is a prerequisite for the filing of a Final Plat. After approval of the Preliminary Plat the applicant may proceed with the preparation of Construction Plans and submittal for a Land Development Permit.
- (9) **Lapse of Approval**
If no Final Plat of a subdivision for which Preliminary Plat approval has been given is submitted within 12 months of the date of Preliminary Plat approval or if more than 12 months elapses between the recording a Final Plat on one phase of the subdivision and the submittal of a Final Plat for another phase, all unrecorded portions of the Preliminary Plan shall lapse and be of no further effect.
- (10) **Appeals**
Any party aggrieved by a decision approving or denying a plat may seek to have the decision reviewed by filing an action in Superior Court seeking appropriate declaratory or equitable relief. Such action must be filed within thirty days after the written decision is rendered.
- (11) **Land Development Permit**
After approval of the Preliminary Plat and prior to submittal of the Final Plat, the subdivider shall work directly with the City Engineer in the preparation and final design of Construction Plans for the installation of the improvements required by Article 8 and the Manual of Practice. Upon satisfactory completion of the Construction Plans and specifications and the posting any required financial

guarantees, the City Engineer shall issue a Land Development Permit for the installation of required improvements in accordance with the approved Preliminary Plan and the improvement and design standards of Article 8 and the Manual of Practice. Unless a financial guarantee is offered in accordance with this Land Development Code, installation of all required improvements must be completed by the subdivider and approved by the City Engineer prior to the submittal of a Final Plat. No land development activities shall be commenced until a Land Development Permit is issued.

C. Final Plats

(1) Improvements or Financial Guarantees

Prior to approval of a Final Plat, the subdivider shall install all required improvements or post a financial guarantee of performance, in accordance with this Land Development Code.

(2) Applicant Notice

Each application for Final Plat approval shall contain the name and address of the person who is to receive all notices pertaining to the application.

(3) Planning Director's Review/Action

The Planning Director shall review the Final Plat to determine if it complies with the approved Preliminary Plat, the standards of Article 8 and all other applicable requirements of this Land Development Code. Final Plats shall be approved only when the Planning Director determines that all of the following criteria have been met:

(a) The Final Plat conforms substantially to the approved Preliminary Plat and conforms to all other standards and requirements lawfully established under this Land Development Code;

(b) All required improvements shall be completed by the applicant or his agents and inspected and approved by appropriate public officials or agencies or a financial or performance guarantee has been offered and accepted in accordance with Sec. 8.16;

(4) All required offers to dedicate, or to reserve for future dedication, shall be made clear of all liens and encumbrances on the property and public improvements thus dedicated; and

(5) All required maintenance guarantees have been made.

(6) If the Planning Director determines that the Final Plat conforms substantially to the approved Preliminary Plat and all other standards and requirements lawfully established under this Land Development Code, the Planning Director shall approve the Final Plat.

(7) If the Planning Director determines that the Final Plat does not comply with the approved Preliminary Plat or other applicable standards, the Planning Director shall require that modifications be made to bring the Final Plat into compliance with this Land Development Code. Upon completion of any required modifications to the Final Plat, the Planning Director shall act to approve the Final Plat.

- (8) Appeals
Any party aggrieved by a decision approving or denying a plat may seek to have the decision reviewed by filing an action in Superior Court seeking appropriate declaratory or equitable relief. Such action must be filed within thirty days after the written decision is rendered.
- (9) Notice of Decision
Within 10 days after a Final Plat decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.
- (10) Effect of Approval; Recording
Within 90 days of the date of Final Plat approval, the final plat shall be recorded with the County Register of Deeds.

D. Official Acceptance of Dedications

- (1) The approval of a final plat shall not be deemed to constitute or affect an acceptance by the city or the public of the dedication of any street or other ground shown upon the plat. Acceptance of such dedications within the City of Hickory shall be only by resolution of the City Council. The City Council shall consider such resolutions only when the City Engineer determines that all required improvements have been properly installed and all applicable conditions met.
- (2) Pursuant to North Carolina General Statutes, the City Council may, by resolution, accept the dedication of all lands and facilities for streets, parks, public utilities or other public purposes that have been approved by the City Engineer for public dedication. The City Council shall not accept the dedication of such lands and facilities until it determines, based upon recommendation of the City Engineer, that: (i) all lands and facilities have been properly dedicated through recorded plats, deeds, or deeds of easements; (ii) all lands and facilities meet all applicable standards and have been inspected and approved by the affected departments; (iii) the subdivider has requested that the lands and facilities be accepted as public; (iv) the subdivider has provided a valuation of all lands and facilities to be dedicated to the public; and (v) the subdivider has (or shall provide) as-built drawings for all required improvements.

E. Terms and Conditions of Acceptance

The acceptance of any lands and facilities through resolution of the City Council shall be subject to the following terms and conditions:

- (1) The subdivider shall guarantee all materials and workmanship for a period of 18 months from the date of official acceptance by the City Council;
- (2) The acceptance by the City Council shall not be interpreted in any way to relieve any developer, contractor, subcontractor, insurance company, owner, or other person of his individual or several obligations under any ordinance, policy, or contract or to otherwise reduce or eliminate the rights of the city, its agents and employees against any other party connected with or in any way related to the development of the subdivision and facilities. The acceptance shall not be interpreted as a waiver of any defense or immunities that the city, its agencies or employees may assert or be entitled to;

- (3) All rights, privileges and warranties of whatsoever nature and kind, for equipment, supplies, materials, goods, and services shall be assigned to the city and any and all benefits derived there from shall inure to the city, its agents, and employees. The acceptance of the lands and facilities shall be conditioned upon the owners covenanting and warranting that they are lawfully seized and possessed of all the lands and facilities dedicated to the public; that they have good and lawful authority to dedicate the same to the public for the stated purpose; that the lands and facilities are free and clear of any deed of trust, mortgage, lien or assessments and that the dedicators for their heirs, successors, executors, administrators, and assigns, covenant that they will warrant and defend the dedication of such land and facilities against any and all claims and demands whatsoever;
- (4) Acceptance of dedication of lands and facilities shall not obligate the city to construct, install, maintain, repair, replace, extend, improve, build or operate any public facilities or utilities which are not in existence as of the date of the acceptance of the lands and facilities. Such acceptance shall not obligate the city to construct any main, line, pipe, lateral, or other extension or permit connection to the city's water, sanitary sewer, storm sewer, drainage or other public utilities systems.

Sec. 2.4 Special Uses

Special uses are those uses that require, because of their inherent nature, intensity, and external effects, special care in the control of their location, site design and methods of operation.

2.4.1 Application Filing

Special Use applications shall be submitted to the Planning Director on forms available in the Planning Department. Incomplete applications shall not be fully evaluated until all necessary items outlined on the application have been submitted as prescribed.

2.4.2 Public Hearing Notice

Newspaper, posted and mailed notice of the Planning Commission's hearing shall be provided in accordance with Sec. 2.1.7. Written notice shall also be mailed to the applicant.

2.4.3 Staff Review/Report

The Planning Director shall review each proposed Special Use application in light of the Review Criteria of Sec. 2.4.5. Based on the results of those reviews, the Planning Director shall provide a report on the proposed special use to the Planning Commission.

2.4.4 Planning Commission Hearing and Decision

After receiving the Planning Director's recommendation, the Planning Commission shall hold a public hearing on the proposed Special Use. Following the public hearing (at the same or subsequent meeting), the Planning Commission shall take action to approve, approve with modifications or deny the proposed Special Use. The Planning Commission's decision shall be based on the Review Criteria of Sec. 2.4.5. In order to approve any special use petition a majority of the members of the Planning Commission must vote in favor of the petition. For the purposes of this section, vacant positions on the Commission and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Commission" for calculating the requisite majority.

2.4.5 Review Criteria

Special Use applications may be approved by the Planning Commission only if they find that all of the following criteria have been met:

- A. the proposed use is consistent with the Hickory by Choice 2030 Comprehensive Plan and the stated Purpose and Intent of this Land Development Code
- B. the proposed use complies with all applicable provisions of this Land Development Code;
- C. the proposed use is compatible with adjacent uses in terms of scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
- D. any significant adverse impacts on neighboring properties and/or the natural environment resulting from the use will be mitigated or offset;
- E. the proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located;
- F. public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development; and
- G. adequate assurances of continuing maintenance have been provided;

2.4.6 Conditions of Approval

The Planning Commission may impose such reasonable conditions, as it deems necessary (so long as the conditions do not conflict with existing state or federal law) to address the impacts of the proposed development on:

- A. surrounding property;
- B. the existing natural and man-made features of the site;
- C. off site and on site traffic flow;
- D. public utilities; and
- E. such other public services or goals of the Land Use and Transportation Plan that may be negatively impacted by the proposed development.

2.4.7 Quasi-judicial Hearing

The public hearing in front of Planning Commission to consider the Special Use shall be a quasi-judicial hearing and shall proceed as provided in the Planning Commission's Rules of Procedure.

2.4.8 Findings of Fact

The decision of the Planning Commission shall be accompanied by written findings of fact specifying the reasons for the decision. The findings shall be based upon substantial evidence contained in its proceedings.

2.4.9 Notice of Decision

Within 10 days after a final decision on a Special Use is made by the Planning Commission, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.4.10 Withdrawal of Application

An applicant may withdraw the application at any time by written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

2.4.11 Successive Applications

When the Planning Commission denies an application or the applicant withdraws an application after the first public hearing notice has been published in the newspaper, the Planning Commission shall not consider another application for the same or Special Use affecting the same property or a portion of it until the expiration of a 1-year period, extending from the date of denial by the Planning Commission or withdrawal by the applicant.

When the Planning Commission denies an application, the applicant may not submit another application for the same or similar Special Use affecting the same property, unless the applicant can demonstrate that either changes in the applicable ordinances or material changes in site conditions or conditions near the property would support new findings of facts and conclusions by the Planning Commission.

2.4.12 Appeals

A. Authority to Appeal Special Use

Final decisions of the Planning Commission on Special Use matters may be appealed by any person having standing to challenge the decision as defined in NCGS § 160A-393.

B. Authority to Hear Appeal

Appeals of Special Use Permit decisions shall be taken to Superior Court. In order to obtain judicial review of a final decision by the Planning Commission, the person seeking review must file a petition in the Superior Court within 30 days after the final written decision has been filed in the Office of the Planning Director, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Planning Commission Secretary or Chairman at the time of the hearing on the matter, whichever comes later.

2.4.13 Final Plan Approval

The Planning Director shall review all final Special Use plans for compliance with all requirements of this Land Development Code, conditions of approval and the Special Use plan presented to the Planning Commission prior to issuance of a building permit or other development permit. The Planning Director may require a final Special Use plan to be reviewed by the other departments if he finds that there are technical issues that should be addressed by other departments of the City.

2.4.14 Minor Changes and Modifications

The Planning Director is authorized to approve minor changes in approved Special Use plans as long as they are in harmony with action of the decision-making body. The Planning Director shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the decision-making body having jurisdiction and shall be handled as a new application. The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification:

- A. Any change in location or any increase in the size or number of signs shall constitute a modification.

- B. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area greater than 300 square feet, an increase in number of dwellings, or change in the type of dwelling or an increase in outside land area devoted to sales, displays or demonstrations.
- C. Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the decision-making body shall constitute a modification. In no case shall the Planning Director reduce the minimum number of spaces below the minimum required by this Land Development Code.
- D. Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building, as shown on the approved plan, shall be considered a modification.
- E. Substantial change in the amount or location of open space, recreation facilities or landscape screens shall constitute a modification.
- F. A change in use shall constitute a modification.
- G. Substantial changes in pedestrian or vehicular access or circulation shall constitute a modification.

The Planning Director shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the special use.

If the Planning Director determines that the proposed action is a modification, they shall require the applicant to file a request for approval of the modification, which shall be submitted to the decision-making body that approved the original application. The decision-making body may approve or disapprove the application for approval of a modification and, prior to its action, may hold a public hearing thereon.

Sec. 2.5 Certificates of Appropriateness

2.5.1 Purpose and Intent

The City of Hickory's historic districts and landmarks are among the City's most valued and important assets. Historic Districts Overlay Zoning helps to preserve these districts and landmarks by regulating changes to buildings. In a historic district and for landmarks designated by the City Council, certain exterior work must be approved in advance by the Historic Preservation Commission. Approval is in the form of a Certificate of Appropriateness.

2.5.2 Applicability

- A. From and after designation as an historic landmark or district no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission except as otherwise noted herein.
- B. A Certificate of Appropriateness is to be issued by the Historic Preservation Commission prior to the issuance of a building permit for the purposes of constructing, altering, moving or demolishing structures. A Certificate of Appropriateness may be issued subject to reasonable conditions necessary to carry out the purposes of this section and any applicable guidelines.

- C. A Certificate of Appropriateness shall be required whether or not a building permit is required, and any building permit or such other permit not issued prior to the issuance of a required Certificate of Appropriateness not in conformity with said certificate shall be invalid.
- D. The State of North Carolina, the City of Hickory, and other State political subdivisions and agencies and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the City of Hickory or public utility companies.

2.5.3 Ordinary Maintenance Permitted

Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in H-O districts that does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Building Inspector or similar official shall certify in writing to the Historic Preservation Commission is required by the need to protect the public health and safety because of an unsafe or dangerous condition. Prior to beginning any exterior work in a H-O district, a property owner shall consult with the Planning Department to determine if the work qualifies as ordinary maintenance or repair or minor work or if it requires a Certificate of Appropriateness.

2.5.4 Application Filing

Applications for Certificates of Appropriateness shall be submitted to the Planning Director on forms available in the Planning Department.

2.5.5 Staff Review/Report

The Planning Director shall review each proposed Certificate of Appropriateness in light of the Review Criteria of Sec. 2.5.8 and, if deemed necessary, distribute the application to other agencies and reviewers. Based on the results of those reviews, the Planning Director shall provide a report on the Certificate of Appropriateness to the Historic Preservation Commission. Upon completion of the staff review, the Planning Director may determine that such work is ordinary maintenance and repair work or minor work as defined in the Historic Preservation Commission's Design Review Guidelines. In such cases the Planning Director may issue the Certificate of Appropriateness without further consideration of the Historic Preservation Commission, provided that no application may be denied without formal action of the commission. Should the Planning Director find that the work constitutes major work, as defined by the Historic Preservation Commission's Design Review Guidelines the procedures below shall be followed.

2.5.6 Public Notice

Prior to taking action on a Major Certificate of Appropriateness for major work, the Historic Preservation Commission shall hold a public hearing on the application. Newspaper, posted and mailed notice of the hearing shall be provided in accordance with Sec. 2.1.7. Written notice of the hearing shall also be mailed to the applicant.

2.5.7 Historic Preservation Commission's Decision

- A. Applications for Certificates of Appropriateness shall be considered by the Historic Preservation Commission at its next regular meeting, provided a complete application has been filed by the established deadline. Otherwise, consideration shall be deferred until the following meeting.

- B. The Historic Preservation Commission shall review each proposed Certificate of Appropriateness in light of the Review Criteria of Sec. 2.5.8 and take action to approve, approve with modifications or deny the proposed Certificate of Appropriateness.
- C. Prior to taking final action on an application, the Historic Preservation Commission shall make written findings of fact, based on the Review Criteria of Sec. 2.5.8 , indicating the extent to which the application is or is not compatible with the historic aspects of the district in which it is located and any applicable guidelines.
- D. The Historic Preservation Commission shall cause to be entered into the minutes of its meeting the reasons for its actions.
- E. If the Historic Preservation Commission fails to take final action upon any application within 90 days after the complete application is submitted to the Planning Director, the application shall be deemed to be approved without conditions. This time limit can be extended by mutual agreement between the applicant and the Historic Preservation Commission.

2.5.8 Review Criteria

- A. It is the intention of these regulations to ensure, insofar as possible, that buildings or structures in H-O districts shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of them or to impose architectural styles from particular historic periods. In considering new construction, the Historic Preservation Commission may encourage contemporary design that is harmonious with the character of the district or landmark.
- B. In granting a Certificate of Appropriateness, the Historic Preservation Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure or property, as well as the effect of such change or additions upon other structures or properties in the vicinity.
- C. The Historic Preservation Commission shall make no requirement except to prevent work that is incongruous with the historic district or landmark.
- D. Applicants for Certificates of Appropriateness shall consult the Historic Preservation Commission's Design Review Guidelines and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. These guidelines are used by the Historic Preservation Commission to administer these regulations and to answer frequently asked questions.
- E. Exterior Form and Appearance
The Historic Preservation Commission shall base its decision on Historic Preservation Commission's Design Review Guidelines and the criteria listed below.
 - (1) Building height.
 - (2) Setback, lot coverage, yards, orientation and positioning of the building, and spacing of buildings.
 - (3) Materials, surface textures and patterns.
 - (4) Architectural detailing.
 - (5) Roof shapes, forms, and materials.

- (6) Fenestration proportions, shapes, position and location, and pattern
- (7) General form and proportions of buildings and structures
- (8) Appurtenant features and fixtures including, but not limited to, lighting, walls, and fences.

2.5.9 Interior Arrangement Not Considered Without Permission of Owner

The Historic Preservation Commission shall not consider interior arrangement unless consent for interior review has been given by the owner in compliance with G.S. §160A-400.9(b). Said consent of an owner for interior review shall bind future owners and/or successors in title, provided written proof of the consent has been recorded in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indices. Any landmark designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

2.5.10 Delay in Demolition or Relocation of Buildings or Sites

- A. Except as provided in subsection 2.5.10(A), an application for a Certificate of Appropriateness authorizing the demolition or relocation of a historic landmark or a building, structure, or site within an H-O district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Historic Preservation Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the Historic Preservation Commission or its agent shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure, or site. If the Historic Preservation Commission finds that the building, structure or site has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

- B. If the Historic Preservation Commission has formally voted to recommend application of the H-O zoning designation to a property or district, and final designation has not been made by the City Council, the demolition of any building, structure or site located on the property of the proposed H-O, historic district may be delayed by the Historic Preservation Commission for a period of up to 180 days or until the City Council takes final action on the designation, whichever comes first.

2.5.11 Site Visits by Commission

As part of its review procedure, the Historic Preservation Commission may view the premises and seek the advice of the State Historic Preservation Office or such other expert advice as it may deem necessary under the circumstances.

2.5.12 Successive Applications

If the Historic Preservation Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

2.5.13 Appeals (TA 14-02)

Any aggrieved party may appeal the issuance or denial of a Major Certificated of Appropriateness to the Board of Adjustment. In order to obtain review of a final decision by the Historic Preservation Commission, the person seeking review must submit a petition in the form of a written request to the Planning Director and City Clerk within 30 days of the final written decision. Such appeals must include the reason the appeal is being sought. Appeals are in the nature of certiorari, which means that the Board of Adjustment will review the decision for legal errors, but no new evidence shall be taken. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court.

2.5.14 Lapse of Approval (TA 12-01)

All Certificates of Appropriateness shall expire one year from the date of issuance. The Historic Preservation Commission may grant an extension of up to one year, provided that the Commission finds that substantial progress has been made or that the recipient has encountered unforeseen difficulties that have caused the delay.

2.5.15 Compliance (TA 12-01)

- A. Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Planning Director. Failure to comply with a Certificate of Appropriateness shall be a violation of this Land Development Code and punishable as provided in Article 13.
- B. The discontinuance of work or the lack of progress toward achieving compliance with a Certificate of Appropriateness for a period of one year shall be considered as a failure to comply with a Certificate of Appropriateness. Nothing contained in this Land Development Code shall prohibit, impair, or limit in any way the power of the City of Hickory to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the historic (H-O) districts in violation of the provisions of this Land Development Code. The enforcement of any remedy provided herein shall not prevent the use of any other remedy or remedies provided herein or in other ordinances or laws. (See G.S. 160A-175 and 160A-389)

Sec. 2.6 Zoning Compliance Permits

2.6.1 Applicability

It shall be unlawful to begin the excavation, construction, moving, alteration, or repair, except ordinary repairs, for or any building or other structure, including an accessory structure, valued at more than \$25.00 or exceeding 100 square feet in area, until the Planning Director has issued for such work a zoning compliance permit. Also, it shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, including accessory structure; or to extend any use or any lot on which there is a nonconforming use, until the Planning Director has issued for such intended use a zoning compliance permit, including a determination that the proposed use does, in all respects, conform to the provisions of this Land Development Code.

2.6.2 Timing of Application

In all cases where a building permit is required, application for a zoning compliance permit shall be made coincidentally with the application for a building permit. In all other cases, application shall be made before initiating any of the activities that trigger compliance with this section (See “Applicability,” Sec. 2.6.1). Zoning compliance permits are required before work may begin on any project previously approved through subdivision plat approval, the issuance of a special use permit or conditional zoning district approval.

2.6.3 Application Filing

Zoning compliance permit applications shall be made in writing to the Planning Director on forms provided for that purpose and available in the Planning Department. The Planning Director shall keep a record of all such applications on file.

2.6.4 Contents of Application

Every application for a zoning compliance permit shall be accompanied by a written statement and plans or plats, drawn to scale, showing the following in sufficient detail to enable the Planning Director to ascertain whether the proposed work or use is in conformance with the provisions of this Land Development Code:

- A. the actual shape, location, and dimensions of the lot; if the lot is not a lot of record, sufficient data to locate the lot on the ground;
- B. the shape, size and location of all buildings or other structures to be erected, altered or moved and of any other buildings, or other structures already on the lot;
- C. the existing and intended use of the lot and of all structures upon it; and
- D. such other information concerning the lot, adjoining lots, or other matters as may be essential for determining whether the provisions of this Land Development Code are being observed including, but not limited to, parking, landscaping, screening, buffering, signage, flood hazards, and floor areas.

2.6.5 Planning Director’s Review and Action

- A. If the proposed activity is in conformity with the provisions of this Land Development Code, the Planning Director shall issue a zoning compliance permit, provided that all of the following conditions shall apply:
 - (1) issuance of a zoning compliance permit shall in no case be construed as waiving any provisions of this Land Development Code;
 - (2) the Planning Director shall not grant any exceptions to the actual meaning of any clause, standards, or regulation contained in this Land Development Code to any person making application to excavate, construct, move, alter or use buildings, structures or land;
 - (3) the Planning Director shall not make any changes to this Land Development Code or vary the terms of this Land Development Code;
 - (4) the Planning Director shall issue a permit when the imposed conditions of this Land Development Code are complied with by the applicant regardless of whether the use of the permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties.

- (5) The zoning compliance permit shall include a determination that plans, specifications and the intended use of such structure and land do, in all respects, conform to the provisions of this Land Development Code. Prior to the issuance of a Zoning Compliance Permit, the Planning Director shall consult with all applicable departments.
- B. If the proposed activity is not in conformity with the provisions of this Land Development Code, the Planning Director shall not issue a zoning compliance permit. If an application for a zoning compliance permit is disapproved, the Planning Director shall state in writing the cause of such disapproval and provide written notice to the applicant.

2.6.6 Lapse of Approval

Once a zoning compliance permit is issued, all activities pursuant to such permit shall be commenced within 12 months. If the proposed excavation, construction, moving, alteration or use of land, as set forth in an application for a zoning compliance permit is not commenced within 12 months and diligently pursued to completion, the zoning compliance permit shall lapse and be of no further force and effect.

Sec. 2.7 Zoning Compliance Certificates

No building, structure or zoning lot for which a zoning compliance permit has been issued shall be used or occupied until the Planning Director has, after final inspection, issued a certificate of zoning compliance indicating compliance has been made with all the provisions of this Land Development Code. The issuance of a certificate of zoning compliance shall in no case have the effect of nor be construed as waiving the provisions of this Land Development Code.

Sec. 2.8 Variances

2.8.1 Applicability

This section sets out the procedure for gaining approval of variances from the zoning-related standards of this Land Development Code. Variances are intended to address practical difficulties or unnecessary hardships resulting from strict application of zoning standards. The variance procedures of this section shall not be used to permit a use in a zoning district that is not otherwise allowed in that district, nor shall the procedures of this section be used to vary or waive the subdivision standards of this Land Development Code.

2.8.2 Application Filing

Applications for zoning variances shall be submitted to the Planning Director on forms available in the Planning Department.

2.8.3 Public Hearing Notice

Newspaper, posted and mailed notice of the Board of Adjustment hearing shall be provided in accordance with Sec. 2.1.7. Written notice of the hearing shall also be mailed to the applicant.

2.8.4 Board of Adjustment’s Review and Decision

The Board of Adjustment shall hold at least one public hearing on the proposed zoning variance. Following the hearing (at the same or subsequent meeting), the Board of Adjustment shall take action to approve, approve with modifications or deny the proposed zoning variance. An affirmative vote of a least 4/5 of the total membership of the Board of Adjustment shall be required to approve any zoning variance. For the purposes of this section, vacant positions on the board and members who are disqualified from voting shall not be considered “members of the

board” for the calculation of requisite supermajority if there are no qualified alternates to take the place of such members.

2.8.5 Approval Criteria (*TA 14-01*)

Zoning variances may be approved only when the Board of Adjustment finds substantial evidence in the official record and the application to support all the following findings:

- A. unnecessary hardship would result from the strict application of this Land Development Code. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- B. the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the area or the general public, may not be the basis for granting a variance;
- C. the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
- D. the requested variance is consistent with the spirit, purpose and intent of the Land Development Code, such that public safety is secured, and substantial justice is achieved.

2.8.6 Conditions

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

2.8.7 Quasi-judicial Hearing

The Board of Adjustment’s public hearing to consider the application shall be a quasi-judicial hearing and shall be conducted as provided in the Planning Commission’s Rules of Procedure.

2.8.8 Findings of Fact

All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the approval criteria of Sec. 2.8.5. Each such finding shall be supported by substantial evidence in the record of proceedings.

2.8.9 Notice of Decision (*TA 14-01*)

Within 30 days after a final zoning variance decision is made by Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.8.10 Appeals

Any person aggrieved by a zoning variance decision of the Board of Adjustment, may appeal the decision to the Superior Court of the county where the property is located. Such an appeal must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board of Adjustment at the time of the hearing of the variance request, whichever is later.

Sec. 2.9 Written Interpretations

2.9.1 Application Filing

Applications for written interpretations of this Land Development Code shall be submitted to the Planning Director on forms available in the Planning Department.

2.9.2 Planning Director's Review and Decision

Within 30 days of receipt of a complete application for a written interpretation, the Planning Director shall: (1) review and evaluate the application in light of this Land Development Code, the Hickory by Choice 2030 Comprehensive Plan and any other relevant documents; (2) consult with other staff, including the City Attorney, as necessary; and (3) render a written interpretation.

2.9.3 Form

The interpretation shall be provided to the applicant in writing and shall be filed in the official record of interpretations.

2.9.4 Official Record of Interpretations

An official record of interpretations shall be kept on file in the office of the Planning Department. The record of interpretations shall be available for public inspection in the Planning Department during normal business hours.

2.9.5 Appeals

Appeals of written interpretations of the Planning Director may be taken to the Board of Adjustment in accordance with procedures of Sec. 2.10. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations.

Sec. 2.10 Appeals of Administrative Decisions

2.10.1 Authority and Applicability

The Board of Adjustment shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code.

2.10.2 Application Filing (*TA 14-01*)

Appeals of administrative decisions in the form of a written request shall be submitted to the Planning Director and City Clerk. Appeals must include the reason the appeal is being sought. Appeals of administrative decisions shall be filed within 30 days of the date that the administrative official's decision is given to the applicant.

2.10.3 Effect of Filing (*TA 14-01*)

The filing of a complete application for appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Adjustment, after the appeal is filed, that, because of facts stated in the certification, (a) that a stay would cause immediate peril to life or property or (b) that the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Land Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings shall not be stayed other than by a restraining order, or by a court of record on application, on notice to the officer from whom the appeal is take and on due cause shown. Should enforcement action not be stayed, the appelland may file a request for an expedited hearing with the Board of Adjustment per NCGS §160A-388(b1)(6).

2.10.4 Record of Administrative Decision (*TA 14-01*)

The official whose decision is being appealed shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken. The official shall also provide copies of the record to the appellant and to the owner(s) of the property that is subject of the appeal if the appellant is not the owner.

2.10.5 Public Hearing Notice (*14-01*)

Newspaper, mail, and posted notice of the Board of Adjustment's hearing shall be provided in accordance with Sec 2.1.7. Written notice of the hearing shall be mailed to the applicant.

2.10.6 Board of Adjustment Review and Decision (*TA 14-01*)

- A. The Board of Adjustment shall hold a public hearing on the appeal and, following the close of the public hearing, take final action based on the procedures and requirements of this section.
- B. The zoning official who made the final determination shall be a witness at the hearing.
- C. In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed.
- D. If the Board of Adjustment determines that it is necessary to obtain additional evidence in order to resolve the matter, it shall remand the appeal to the official from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.
- E. An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official. Notwithstanding the foregoing and in accordance with G.S. § 63-33(c), the concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of any administrative official pertaining to the requirements of Sec. 4.6, "Airport Overlay District."

2.10.7 Approval Criteria; Findings of Fact

The Board of Adjustment may reverse an order, requirement, decision, or determination of any administrative official only when the Board of Adjustment finds substantial, factual evidence in the official record of the application that the administrative official erred. The decision of the Board of Adjustment shall be supported by written findings of fact.

2.10.8 Notice of Decision (*TA 14-01*)

Within thirty (30) days after a final decision on an administrative appeal is made by the Board of Adjustment, copies of the written decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.10.9 Appeals

Any person who is directly affected by a decision of the Board of Adjustment may appeal the decision to the Superior Court of the county where the property is located. An appeal to Superior Court must be filed within 30 days of the filing by the Secretary of the Board of Adjustment of the decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or

Chairman of the Board of Adjustment at the time of the hearing of the appeal request, whichever is later.

Sec. 2.11 Review and Decision Making Bodies

2.11.1 City Council

A. Powers and Duties

The City Council shall have the following powers and duties under this Land Development Code.

(1) Land Development Code Text and Zoning Map Amendments

The City Council shall review applications for amendments to the text or zoning map of this Land Development Code and make a decision in accordance with Sec. 2.2.

B. Conflicts of Interest

A City Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member.

2.11.2 Planning Commission

A. Powers and Duties

The Planning Commission shall have the following powers and duties under this Land Development Code:

(1) Land Development Code Text and Zoning Map Amendments

The Planning Commission shall review applications for amendments to the text zoning map of this Land Development Code and make recommendations on such amendments to the City Council in accordance with Sec. 2.2.

(2) Special Use Permits

The Planning Commission shall review and take final action on all Special Use Permits in accordance with Sec. 2.4.

B. Appeals of Planning Commission

Recommendations of the Planning Commission regarding text and map amendments are not appealable. Special use permit decisions may be appealed to the Superior Court by filing a petition for review in the nature of certiorari within 30 days of the filing of a written decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the board at the time of the hearing of the special use permit request.

2.11.3 Board of Adjustment

A. Composition

The Hickory Board of Adjustment shall be composed of the members of the Planning Commission. The City Council may appoint alternative members to serve on the Board of Adjustment in the absence or temporary disqualification 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 a meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

B. Administration

- (1) The Board of Adjustment shall adopt rules of procedures and regulations for the conduct of its affairs.
- (2) All meetings of the Board of Adjustment shall be open to the public.
- (3) The Board of Adjustment shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.
- (4) Pursuant to G.S. §160A-388(g), the Board of Adjustment may subpoena witnesses and compel the production of evidence.
- (5) The Chair of the Board of Adjustment rules on request for, and objections to subpoenas. Appeals to subpoenas shall go to the full board (NCGS §160A-388(g)).
- (6) The zoning official shall provide copies of all documents and exhibits related to a determination that is being appealed to the Board of Adjustment, the appellant, and the land owner.
- (7) In the event of an appeal the appellant may request an expedited hearing if the appellant's request for a stay of enforcement is denied.
- (8) The zoning official making the final determination that is being appealed must appear at the hearing as a witness.
- (9) The Board of Adjustment shall continue any hearing if issues are presented that were not included in the notice of appeal and immediate consideration would unduly prejudice a party or the City of Hickory.
- (10) When hearing an appeal to a decision of the Historic Preservation Commission, pursuant to G.S. § 160A-400.9(e), or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in G.S. § 160A-393(k).
- (11) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon, competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair, or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board, or the Planning Director. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any other person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide the notice shall certify that proper notice has been made.

C. Quorum and Vote Required (*TA 14-01*)

- (1) A quorum of the Board of Adjustment, necessary to conduct any business of the Board of Adjustment, shall consist of a simple majority.

- (2) The concurring vote of 4/5 of the full membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be necessary in order to grant a variance.
- (3) An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official.

For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered “members of the board” for calculation of requisite super-majority if there are no qualified alternates available to the place of such members.

D. Powers and Duties

The Board of Adjustment shall have the following powers and duties under this Land Development Code.

(1) Zoning Variances

The Board of Adjustment shall be responsible for reviewing and taking final action on Zoning Variance requests in accordance with Sec. 2.8.

(2) Appeals of Administrative Decisions

The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code. (See Sec. 2.10).

(3) Appeals of Certificates of Appropriateness Decisions

The Board of Adjustment shall hear and decide appeals of Certificates of Appropriateness by staff and the Historic Preservation Commission. Such appeals shall be heard in the nature of certiorari.

(4) Request for Waiver of Requirements

The Board of Adjustment shall consider requests for waivers of requirements in accordance with Secs. 4.4.8 and 4.4.9.

E. Appeals of Board of Adjustment Actions

Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by filing a petition for review in the nature of certiorari within 30 days of the filing of a written decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the board at the time of the hearing on the matter.

F. Conflicts on Quasi-Judicial Matters

A member of the Board of Adjustment 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 close 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 or herself, the remaining members shall by majority vote rule on the objection.

2.11.4 Historic Preservation Commission

A. Powers and Duties

The Historic Preservation Commission, as established in Chapter 6, Article VI of the Hickory City Code, shall have the following powers and duties under this Land Development Code:

(1) Certificates of Appropriateness

The Historic Preservation Commission shall review and take final action on such applications in accordance with Sec. 2.5.

(2) Historic District and Landmark Designation

The Historic Preservation Commission shall review and make a recommendation to the City Council on all proposed Historic Districts and Landmarks as described in Sec. 4.4.

(3) Authentic Restoration or Reconstruction

As described in Sec. 4.4.8, the Historic Preservation Commission may recommend that the Board of Adjustment grant a waiver of dimensional requirements of this Land Development Code for an activity that constitutes an authentic restoration or reconstruction.

(4) Parking Waiver

As described in Sec. 4.4.9, upon a finding that the number of parking spaces required by this Land Development Code would render the building incongruous with the special character of the historic district or landmark, the Historic Preservation Commission may recommend that the Board of Adjustment waive or reduce the required number of parking spaces.

(5) Special Use Permit Applications

When a Special Use Permit application affects a property that is located within an H-O district, the Historic Preservation Commission shall review and comment on the proposed application within 30 days of the receipt of said application.

B. Conflicts of Interest

(1) Quasi-Judicial Decisions

A member of the Historic Preservation Commission shall not participate in or vote on any Certificate of Appropriateness or request for a waiver requirements pursuant to Secs. 4.4.8 and 4.4.9 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 close 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 or herself, the remaining members shall by majority vote rule on the objection.

(2) Other Matters

A members of the Historic Preservation Commission shall not vote on any other matters where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member.