

City of Hendersonville Historic Preservation Commission  
Rules of Procedure  
Amended through 20 August 2008

**ARTICLE I  
NAME**

The name of the organization shall be the Hendersonville Historic Preservation Commission.

**ARTICLE II  
OBJECT, MISSION, AND PURPOSE**

The object of the Hendersonville Historic Preservation Commission, hereafter termed “Commission,” shall be to preserve the historical, prehistorical, architectural, archaeological; and cultural heritage of the City of Hendersonville, hereinafter sometimes referred to as the “City.”

The Commission serves as the City Council’s official historic advisory body to identify, preserve, protect and educate the public about Hendersonville’s historic resources.

The purpose of these rules shall be to establish procedures for organizing the business of the Commission and for processing applications for certificates of appropriateness as defined in the Hendersonville City Code, Chapter 28, as amended from time to time, or any successor ordinance.

**ARTICLE III  
POWERS**

The powers of the Commission shall be as set forth in the Hendersonville City Code, Chapter 28, as amended from time to time, or any successor ordinance as supplemented by these rules and limited by applicable law. The Commission shall have the following responsibilities and advisory functions which shall be in addition to any other powers, responsibilities and functions specified in these Rules.

1. Act as, establish, or designate a group, body, or committee to give advice to property owners concerning the treatment of the historical and visual characteristics of their properties, such as color schemes, gardens and landscape features, and minor decorative elements.
2. Propose to the City Council changes to this or any other ordinance, and propose new ordinances or laws relating to historic properties or relating to a total program for the protection and/or development of the historic resources of the City and environment.
3. Communicate with other City boards or commissions or with agencies of the local government or other governmental units to offer or request assistance, aid, guidance, or advice concerning matters under its purview or of mutual interest.

4. Publish information about or otherwise inform the public of any matters pertinent to its purview, duties, organization, procedures, responsibilities, functions, or requirements as its budget may allow.
5. Report violations of Chapter 28 of the City Ordinances, the zoning ordinances, or the building code with respect to historic properties to the zoning administrator.
6. Accept funds granted to the Commission for preservation purposes from private individuals and organizations.
7. Organize itself and conduct its business.

#### **ARTICLE IV GENERAL RULES**

The Commission shall be governed by Hendersonville City Code, Chapter 28, as amended from time to time, or any successor ordinance as supplemented by these rules. The Chair may from time to time refer to rules set forth in the current edition of *Robert's Rules of Order Newly Revised* to assist in the running of orderly meetings.

#### **ARTICLE V JURISDICTION**

The Commission's geographical jurisdiction shall be the City's zoning jurisdiction as delineated on the City's official zoning map.

#### **ARTICLE VI ORGANIZATION OF THE COMMISSION**

##### 1 - Membership

The Commission shall consist of such number of members as the City Council may determine from time to time. Members shall be as appointed by the City Council and shall serve at its pleasure. Subject to these limitations, the length of term of the members shall be no more than three years. All members shall be eligible for reappointment at the pleasure of the City Council. In the event of a vacancy, the Chairperson shall forthwith ask the City Council to fill the unexpired term.

The members shall serve without compensation.

##### 2 - Actions of the Commission

The Commission, meeting as a whole, shall exercise the powers enumerated in Article III, except when it explicitly authorizes an officer or committee to act for it in a specific instance. Such authorization shall be limited to (1) ministerial and administrative acts that the Commission is empowered to perform and (2) advice to the Commission on legislative acts it is empowered to perform. Without authorization in the form of a City ordinance the Commission shall not

delegate its quasi-judicial powers.

The Commission, meeting as a whole, shall elect its officers and adopt the annual operating and supplementary budgets for the Commission contingent upon actions by the City Council on appropriations requested by the Commission.

## **ARTICLE VII MEMBERS, OFFICERS, STAFF, AND, DUTIES**

### 1 - Personnel and Terms

The officers elected by the commission shall consist of a Chairperson, a Vice Chairperson and a Secretary whose initial terms shall be for one year. The terms of these officers shall begin on March 1.

### 2 - Chairperson

The Chairperson shall be the presiding officer of the Commission; and shall preside over the regular and special meetings of the Commission. The Chairperson shall appoint such standing committees as these Rules may provide, and such ad hoc committees as the Chairperson may deem convenient from time to time, and designate their chairpersons and shall be and ex officio member of all committees. The chairperson shall execute all financial obligations authorized by the commission or by an officer or committee authorized by the Commission pursuant to City Code Chapter 28.

### 3 – Vice Chairperson

The Vice Chairperson shall assist the Chairperson and in the absence of the Chairperson have all powers and duties of the Chairperson. The Vice Chairperson shall act as Chairperson upon absence of the Chair.

### 4 – Secretary

The Secretary shall execute all official documents as required by the office.

### 5 – Staff

The City Manager shall designate a person from the City’s Planning Department to serve as professional staff to the Commission in the form of “Commission Coordinator,” herein also referred to as the “Coordinator,” to assist with administrative duties.

### 6 – Attendance at Meetings

Any member of the Commission who misses more than three consecutive regular meetings or more than one half of the regular meetings in a calendar year shall thereupon cease to be a member of the Commission. The Chairperson shall in such case report the vacancy created to

the City Council as provided in these Rules. Absence because of sickness, death in the immediate family and like may be excused at the discretion of the Commission by a vote of two-thirds of the other members of the Commission.

#### 7 – Conflict of Interest.

A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

#### 8 – Qualification to Vote

Before voting on any matter affecting an application, including a request for reconsideration, any member who has not attended all previous Commission deliberations related to the application shall state for the record that he or she has reviewed the minutes and record of such deliberations. No Commission member shall vote on any matter deciding an application or a request to reconsider, unless that member shall have attended, or have had access to the minutes and record of, the Commission's previous deliberations on such application. In the event of an absence from previous deliberations, the member shall declare for the record that the member has reviewed minutes and record and is familiar with the previous deliberations.

#### 9 – Impartiality

In order to protect the integrity of the quasi-judicial process, members shall not communicate with any person concerning a pending application before the beginning of deliberations on the application. A member shall before the beginning of deliberations disclose the entire substance of any communication concerning the application to which the member has been a party.

#### 10 – Designation Committee

A Designation Committee may be established from the membership of the Commission to review the inventory and recommend to the full Commission, from time to time, the designation of historic landmarks.

The Designation Committee may also review applications for historic landmark designation submitted by property owners. It may meet with applicants for designation at an early stage in the process of preparing the application in order to advise them informally concerning the Commission's standards for reports, the criteria for designation, the boundaries of the property to be designated, and other relevant matters.

The Committee, collectively and individually, shall refrain from an indication of approval or

disapproval, but shall not for that reason be barred from reasonable discussion of the applicants' proposals. No advice or opinion given or reported as having been given by any member of the committee at such informal meeting(s) shall in any way be official or binding upon the Commission.

## **ARTICLE VIII MEETINGS**

### **1 – Regular Meetings**

The Commission shall hold regularly scheduled meetings at intervals not less than every three months, unless there is at the time scheduled for a regular meeting no business to come before the Commission. Regular meetings of the Commission shall be held as agreed to by the Commission in the City Hall Council Chambers or such other place as the Commission may determine from time to time, subject always to notice as required by law.

### **2 – Special Meetings**

Special meetings may be called by the Chairperson. Special meetings may also be called by a majority of members. Minimum notice of special meetings shall be one week to all members and 48 hours to members of the press.

### **3 – Cancellation of Meetings**

Whenever there is no business for the Commission, the Chairperson shall cancel a regular meeting. The Chairperson may also cancel any meeting for good cause, including severe weather, except that the Chairperson shall not cancel a meeting called by a majority of the members without the consent of a majority of the members. The Chairperson or a designee shall, at least twenty-four hours before the time set for a cancelled meeting, give notice of cancellation to all members and to the press and other such interested persons as the Chairperson may determine. In the case of a meeting cancelled for severe weather, notice shall be given at the earliest practical time.

### **4 – Quorum**

A majority of members shall constitute a quorum at any meeting of the Commission or of any committee

### **5 – Conduct of the Meetings**

All meetings shall be open to the public as provided by law. The order of business at regular meetings to include the review of applications for Certificates of Appropriateness shall be as follows: roll call; approval of agenda; approval of minutes; consideration of returning applications; consideration of new applications; old business; new business; committee reports; commissioner's report; staff report; other business; financial report; adjournment.

The order of business at regular meetings not to include the review of applications for Certificates of Appropriateness shall be as follows: roll call; approval of agenda; approval of minutes; old business; new business; committee reports; commissioner's report; staff report; other business; financial report; adjournment.

## **ARTICLE IX CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURES**

### **1 – Filing of Application**

Application for a Certificate of Appropriateness shall be made as set forth in the Hendersonville City Code, Chapter 28 as amended or any successor ordinance.

### **2 – Notice to Owners of Materially Affected Property**

When an application for a Certificate of Appropriateness is filed notification to affected property owners shall be made at least seven business days prior to the application being heard by the Historic Preservation Commission.

### **3 – Design Review Advisory Committee**

The Chairperson shall appoint a Design Review Advisory Committee (referred to in this Article IX as the “Advisory Committee”). The Advisory Committee may include persons the Chairperson considers competent to review applications, but shall not include any sitting member of the Commission. The Advisory Committee shall consider itself a public body subject to North Carolina laws concerning meetings of public bodies, and shall treat its documents as public records subject to laws concerning inspection and copying of public records.

The Advisory Committee shall review applications and discuss their contents and progress with affected persons not including the members of the Commission. Members of the Advisory Committee may make recommendations, based on the Design Guidelines approved, and as amended from time to time, by the Commission, to applicants but shall in all cases explain clearly that the Committee sits in an advisory and not a judicial capacity, and that the Committee's recommendations or opinions are not binding on any person.

The Advisory Committee shall meet and review all applications for additions, garages and carports, new commercial buildings and new houses and other applications at the Commission Coordinator's discretion. For all other applications, the Advisory Committee shall, upon the request of the applicant, meet when necessary after an application has been filed. The Chair of the Advisory Committee shall notify all interested persons of meetings not less than 7 days and the press not less than 48 hours before any properly called meeting.

### **4 – Public Hearings**

Before the approval, approval with conditions or denial of a Certificate of Appropriateness, the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. Subject to its power to limit testimony as inadmissible,

redundant and the like, the Commission shall permit relevant testimony from any person.

#### 5 – Time for Decision.

Applications for Certificates of Appropriateness shall be acted upon within the time limits set forth in the Hendersonville City Code, Chapter 28.

#### 6 – Approved Application

If the application is approved, the Commission shall have prepared a Certificate of Appropriateness for signature by the Chairperson or a designee, clearly describing the nature of the work which has been approved. A placard form of the Certificate of Appropriateness to be displayed on the project shall be included with the Certificate, and both shall be transmitted to the applicant. A Copy of this information shall be forwarded to the Zoning Department which is responsible for its enforcement.

#### 7 – Denied Application

If an application is denied, the Commission shall have prepared a letter for signature by the Chairperson or a designee, clearly stating the reasons for the denial. The letter and a copy of the Commission meeting minutes shall be transmitted to the applicant.

#### 8 – Appeals

An appeal of a decision of the Commission in granting or denying any Certificate of Appropriateness may be taken to the Hendersonville Board of Adjustment. Appeals may be taken by any aggrieved party within twenty calendar days after the decision of the Commission and shall be in the nature of certiorari (only evidence presented at the Commission's meeting shall be considered at the appeal). Appeal from the decision of the Board of Adjustment shall be to the Henderson County Superior Court.

#### 9 – Administrative Approval of Minor Works

Notwithstanding Sections 1 through 7, above, upon receipt of a completed application, the Commission Coordinator may issue a Certificate of Appropriateness on behalf of the Commission for minor works when it is in conformance with the development standards cited in Hendersonville City Code, Chapter 28.

Minor works are defined in Hendersonville City Code, Section 28-153 and are further described, but not limited to, the following:

1. *Fences and Walls:* Fences or low walls of wood, stone, brick or cast iron, which comply with the Design Guidelines; chain link fences may be permitted in side or rear yards if they cannot easily be seen from a street.
2. *Landscaping Projects:* Heavy pruning or removal of hedges, large shrubs or trees 6" and larger in diameter; construction or replacement of brick or stone retaining walls;

construction or replacement of patios which cannot easily be seen from a street; walks and driveways made of brick, stone, concrete or gravel; removal of dead or diseased trees or trees where the roots or limbs are causing damage to a house; new parking areas which are located to the rear of buildings, are not easily visible from a street and which are screened from adjoining properties with fencing or plant materials.

3. *New Roof Coverings:* Replacement of asphalt or fiberglass roof coverings with new dark color asphalt or fiberglass shingles; replacement of slate, tile or membrane roof covering where there is no change in materials.
4. *Installation of Mechanical and Utility Equipment:* Installation of mechanical and utility equipment including but not limited to heating and air conditioning units which cannot easily be seen from a street or which are screened from view with shrubbery or appropriate fencing.
5. *Foundation Repairs:* Repair or replacement of masonry foundations where the original foundation material is retained or where new material matches the original as closely as possible; installation of metal foundation vents (on sides and rear only) and replacement of wood access doors which cannot easily be seen from a street.
6. *Masonry Repairs:* Repointing and other masonry repairs when the color and composition of the mortar matches the original and new brick or stone matches the original as closely as possible.
7. *Exterior Lighting Fixtures:* Lighting fixtures which cannot easily be seen from a street or are similar to those existing in the District.
8. *Small Identification Signs:* Signs made of wood or metal nine square feet or smaller in size.
9. *Removal of Artificial Siding:* Total removal of asbestos, asphalt or other artificial siding when the original siding is to be repaired and repainted. Replacement with siding other than the original constitutes a major work.
10. *Replacement of Exterior Stairs, Landing, Steps and Entryways:* Repair or replacement of exterior stairs, steps, ramps or flooring which are made of masonry, rock, painted wood or comparable materials and are similar to styles found in the District.
11. *Replacement of Missing Details:* Replacement of missing or deteriorated siding and trim, porch floors, ceilings, columns and balustrade or other architectural details with new materials identical to the original details.
12. *Removal of Accessory Buildings:* Removal of deteriorated accessory buildings which are not original to the site or otherwise historically significant and which cannot be easily seen from a street.



13. *Other Minor Construction:* Other minor construction not easily visible from a street.

#### 10 - Time Limits for Approved Applications

If an application for a certificate of appropriateness is approved, it shall be valid for a period of six months (or one year here if desired) from the date of issuance. Failure to complete the project, receive a zoning permit, building permit, or other applicable permit if needed for the work proposed, within the six month period directly following issuance shall warrant the certificate of appropriateness null and void.

Applicants may request time extensions for certificates of appropriateness based on the following: If an application was previously approved by the members of the Commission and not by the Coordinator, time extension requests must be received by the Planning Department within the original six month period of issuance and then approved by the Commission at their next regularly scheduled meeting. If the applicant fails to request renewal of a certificate of appropriateness within the initial six month after approval, the project must be resubmitted to the Commission. A certificate of appropriateness for a minor work may be renewed for six months by the Coordinator upon written request of the applicant if the request is received, by the Planning Department, within the initial six month time period of approval.

### **ARTICLE X APPLICATION HEARINGS**

#### 1 – Consideration of Applications for a Certificate of Appropriateness

Any person with an interest in the application may appear and present a case personally, by agent, or attorney at the meeting. All persons presenting testimony regarding an application shall be sworn as required by law. Any interested person may cross examine all persons giving testimony and may inspect documents presented to the Commission.

The Chairperson may order the hearing in any reasonable way consistent with the requirements of due process. The following order shall be deemed acceptable as a guide:

1. Potential witnesses shall be sworn.
2. The Chairperson or a designee may summarize the application.
3. Hendersonville historic preservation staff may be invited to comment on the application.
4. The applicant may give testimony, subject to cross examination.
5. Other persons supporting the application may give testimony, subject to cross examination.
6. Persons not supporting the application may give testimony, subject to cross examination.

7. The Chairperson may permit or request arguments if clarification is required.

## 2 - Powers of the Chairperson to Manage the Hearing

The Chairperson shall, subject to the requirements of due process and subject to being overruled by a majority of the members present at the hearing, have plenary powers to manage the hearing on an application. The Chairperson shall in all cases require testimony to be sworn and permit interested persons to cross examine witness and inspect tendered documents, but may otherwise restrict testimony and cross examination in any reasonable way.

## ARTICLE XI

### AMENDMENTS

These rules may be amended or rescinded from time to time by a vote of a majority of regular members of the Commission but any such change shall conform to City of Hendersonville ordinance and applicable law. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.