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GENERAL PROVISIONS

Section 1.1 Establishment, Title, and Effective Date

This article, inclusive of any amendments, shall be known as the Land Development Code of the Town Waxhaw. For convenience, it may be referred to throughout this code as “these regulations,” “this code,” or “this ordinance,” and throughout this and other town documents and policies as “The Land Development Code” or “The LDC”. This ordinance shall take effect on January 1, 2021.

Section 1.2 Authority

The Town of Waxhaw, further reference elsewhere as “the Town” is authorized by the State of North Carolina General Statutes (NCGS) to exercise broad powers in the regulation of development within the Town’s zoning jurisdiction, including but not limited to: planning, zoning, subdivision, and environmental regulations. The regulations contained within this code apply fully to all land, uses, and structures within the boundaries of the zoning jurisdiction of the Town of Waxhaw. The Town through this code intends to use all powers provided by virtue of NCGS Chapter 160D. This code shall also use specific powers granted in other sections of the NCGS that are specific to development activity.

Section 1.3 Purpose and Intent

The purpose of the Land Development Code is to provide clear and detailed direction for achieving the goals and objectives of Waxhaw’s Long Range Plans and legal standards for the proper development and stewardship of property in the Town’s jurisdiction. While no set of standards can assure complete and perfect public health and safety conditions in all circumstances, the adoption of carefully considered standards are intended to create a consistent and desirable quality of life environment for the community as a whole.

The Town, through implementation of this code, intends to accomplish a variety of public purposes, including but not limited to:

- A. Responding uniformly and consistently to all planning and development matters

- B. Promoting the health, safety, and general welfare of the Waxhaw community as a whole while providing appropriate provisions to guide development and redevelopment of land
- C. Guiding the growth of the Town in a manner that creates a safe, healthy, and beneficial environment for those living, working, and playing within the community
- D. Encouraging the use of best practices in planning, transportation, and urban design concepts
- E. Requiring appropriate development standards to preserve and protect property values in order to secure the fiscal base for public services
- F. Ensuring adequate and economical provision of necessary public services caused by and attributable to development or redevelopment of land

Section 1.4 *Applicability*

To the extent allowed by law, the provisions of this code apply to all land, buildings, structures, and uses owned, leased, or otherwise controlled by any district, county, state, or federal government agencies. These regulations shall govern the development and use of land within the Town’s jurisdiction.

Section 1.5 *Relationship with Other Laws, Covenants, or Deeds*

If there is found to be conflict between this code and other legislative enactments of the Federal Government, the State of North Carolina, or the Town of Waxhaw, the stricter provision applies to the extent allowed by law. The Town does not enforce private easements, covenants, or restrictions; however, the Town may inquire into private easements, covenants, and restrictions when reviewing development plans for the purpose of ensuring consistency with Town requirements.

Section 1.6 *Exemptions*

This code shall not apply to the followings uses:

- A. Bona fide farms as defined in NCGS 160D and Chapter 13 (Definitions) of this code, except that non-farm uses on farms shall be regulated herein.
- B. Horse farms on three or more acres as defined in Chapter 13.
- C. Any other use, structure, or land development explicitly exempted within the text of this code or by state or federal law.

Section 1.7 *Fractional Requirements*

Whenever any requirement of this Code results in a fraction of a unit, a fraction of a half or more will be rounded up to the next whole unit and a fraction of less than a half will be disregarded. When any requirement of these regulations results in a fraction of a dwelling

unit, that fraction will be disregarded and the nearest lower whole number shall apply.

Section 1.8 Zoning Map and Interpretation of District Boundaries

The zoning map depicts in graphic form the districts and boundaries described in this code. The official zoning map will be in digital format and shall be on file in the office of the Town Clerk. The Planning Department will maintain the official zoning map and provides updates to the Town Clerk.

Section 1.8.1 Interpretation of Boundaries

Where uncertainty exists with respect to the boundaries of the various districts shown on the zoning map, the following rules will be used to interpret the map.

- A. Where a boundary line is located within a street or alley right-of-way, railroad or utility line right-of-way or easement, or stream it will be considered to be the centerline of said feature.
- B. Where a boundary line is shown as being located a specific distance from a physical feature such as a street or a stream, the distance from the feature will control.
- C. Where a district boundary is shown to coincide approximately with a property line or town limit line, the property or town limit line will be considered the district boundary, unless otherwise indicated.
- D. Zoning boundaries that do not coincide with a property line, parcel boundary, landmark, or similar feature will be determined using geospatial data included in the official zoning map.

Section 1.8.2 Maintenance and Updates

- A. The Planning Director or his/her designee is responsible for revising the official zoning map. The official zoning map can only be updated after an official action as detailed in Chapter 3 of this code, unless otherwise stated in this section.
- B. The Planning Director may administratively grant any nonsignificant change such as a mapping or scribing error.
- C. The Planning Director may authorize printed copies of the official zoning map to be produced and shall maintain digital or printed copies of superseded versions of the official zoning map for historical reference.

Section 1.9 Maps Adopted by State, Federal, and Regional Agencies

Maps adopted by State, Federal, and Regional agencies, including approved updates to those maps, can be referenced in order to enforce provisions of this code. Examples of maps include but are not limited to flood insurance rate maps, watershed boundary maps, regional transportation maps, or other maps officially adopted by State, Federal, and Regional agencies.

Section 1.10 Illustrations

The illustrations in this Code are not drawn to scale and are intended only to graphically represent the requirements and concepts contained herein. Where there is conflict between the text of this Code and an illustration, the text shall prevail.

Section 1.11 Consistency with Plans and Studies

The provisions of this Code are intended for use in implementing the goals, objectives, and policies of the Town's adopted plans and any existing or future studies, including but not limited to: land use, transportation, traffic impact analysis, and recreation. This code shall work to implement infrastructure, right-of-ways, easements, and other improvements that are depicted within these plans and studies.

Any amendments to this Code shall be consistent with the goals and objectives of the Town's adopted plans. If any amendment is found to be inconsistent with the Town's adopted plans, then it shall be considered only if it is determined to be reasonable based on provisions in Chapter 3 of this Code and NCGS 160D.

Section 1.12 Interpretations of Provisions/Omissions

The provisions of this Code are considered the minimum requirements for the protection of public health, safety, and welfare. This code shall liberally be interpreted in order to further its underlying purposes. In all cases, the highest standards shall be applied. The meaning of certain words and terms is provided in Chapter 13 - Definitions.

The omission of any specific use, dimension, word, phrase, or other provision of this code shall not be interpreted as permitting any variation from the general meaning and intent of the code.

Section 1.13 Severability

If any provision of this Code is declared invalid by a court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that provision or provisions that are expressly stated in the decision to be invalid; and such decision shall not affect, impair, or nullify this Code as a whole or any other part thereof, but the rest of the Code shall continue in full force and effect.

Section 1.14 Vested Rights

Pursuant to NCGS 160D, vested rights granting periods are as follows. These vested rights shall remain for the period of time from approval to construction commencing on a project that has been approved under the processes and procedures outlined in Chapter 3 (Administration and Enforcement Procedures) and Chapter 5 (Subdivision Regulations):

A. One Year – for administratively approved projects as defined in Section 3.2.

- B. Two Years – for site specific development plans associated with major subdivisions, conditional zoning, and special use permits applications as defined in Sections 3.9, 3.10, and 5.7.
- C. Seven Years – for multi-phased developments containing 25 acres or more that is submitted for construction to occur in more than one phase and is subject to a master development plan with committed elements showing the type and intensity of use of each phase.

Any amendments to a plan with a vested right shall be reviewed and approved in the same process and manner of the original approval.

Section 1.15 Transitional Provisions and Permit Choice

Applications that have approval prior to the adoption of this Code may continue under the provisions of the prior regulations. These approvals may proceed with development as long as they comply with the provisions in existence at the time of their approval.

Applicants with prior approvals may seek approval conforming to the provisions of this code. If an applicant wishes to proceed with approval from this code then the applicant shall resubmit their application.

If a regulation changes after an application is submitted, an applicant may choose which regulation to adhere to and complete their project under those regulations.

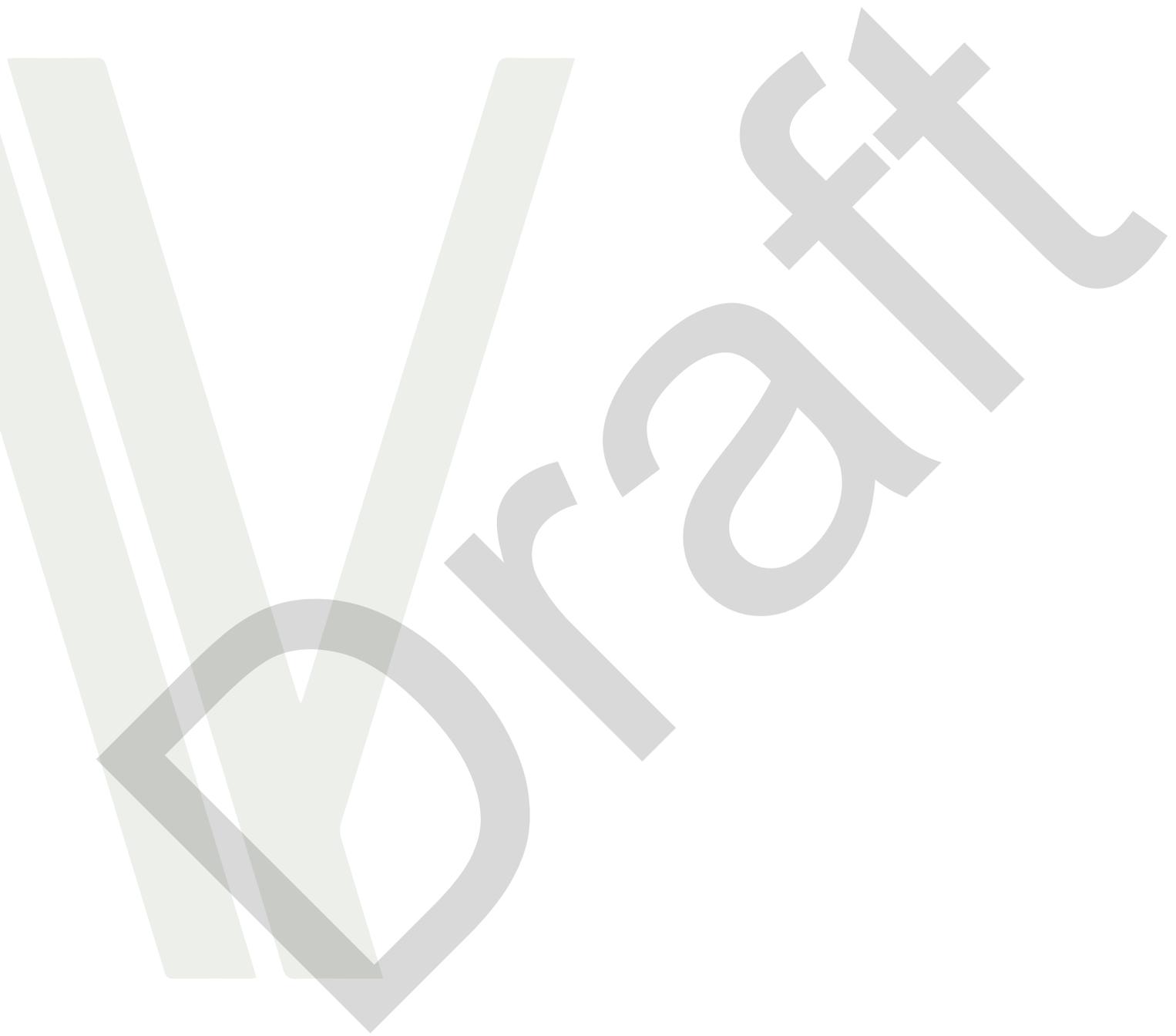
If an applicant lets his/her vested right lapse, then they will be subject to the new regulations.

Section 1.16 Approvals Run with the Land

Unless provided otherwise by this code or by law, all rights privileges, benefits, burdens, and obligations created by this code shall run within the physical boundaries of the land.

Section 1.17 Repeal of Existing Unified Development Ordinance

The ordinance in effect at the time of adoption of this code and any other ordinance provisions in conflict with these regulations are repealed to the extent necessary to give this code full force and effect. However, certain regulations contained within prior ordinance versions will remain applicable to legal nonconformities and legacy zoning districts to the extent required to ensure their legal status.



chapter 2

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ADMINISTRATIVE AGENCIES

Section 2.1 Planning Department/Development Services Department

The Planning Department and the Development Services Department shall perform the planning, zoning, subdivision, and environmental administrative functions for the Town of Waxhaw. The departments shall provide support and guidance for all policies, processes, and procedures as provided herein. The departments shall perform other functions as may be requested by the Town Board of Commissioners, Planning Board, Board of Adjustment, and Town Manager or as authorized by this code.

Section 2.1.1 Zoning Administrator

The Town shall appoint a Zoning Administrator. The Zoning Administrator shall have the following powers and duties under this code:

- A. Administer code provisions such as reviewing development applications, conducting pre-application conferences, issuing permits and certificates of zoning compliance, approving minor subdivisions, and collecting authorized fees.
- B. Interpret terms and provisions.
- C. Maintain the Official Zoning Map and all public records.
- D. Create and maintain all forms, checklists, notices, and other materials necessary to administer this code and provide information to applicants, decision-making and advisory boards, and the public.
- E. Serve as professional staff to decision-making and advisory boards.
- F. Take action authorized by this code to ensure compliance with or to prevent violations of its provisions.
- G. Delegate assigned duties to qualified staff within the department as needed.
- H. Waive any requirement where the type of use or scale of

proposal makes providing the information unnecessary or impractical.

- I. Adjust any requirement where the strict application of this code may be impractical or, if better performance of a requirement can be attained, that is in keeping with adopted plans and public safety and welfare.

Section 2.1.2 Floodplain Administrator

The Town shall appoint a Floodplain Administrator. The Floodplain Administrator shall have the following powers and duties under this code:

- A. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- B. Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received.
- C. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions are met.
- D. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, new and substantially improved structures that have been floodproofed, and all public utilities.
- E. When flood-proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect.
- F. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas.
- G. Permanently maintain all records that pertain to the administration of this code and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- H. Make on-site inspections of work in progress or any sites located throughout the Special Flood Hazard Area. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. Shall issue stop-work order as required.
- I. Revoke floodplain development permits as required. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law

may also be revoked.

Section 2.1.3 Chief Building Inspector

The Town shall appoint a Chief Building Inspector. The Chief Building Inspector shall have the following powers and duties under this code:

- A. Coordinates plan review; reviews blue prints, and specifications for adherence to state building code; supervises the receipt of applications and issuance of building permits.
- B. Inspects building construction for compliance with codes in five trade areas; monitors foundations and framing processes; inspects commercial and institutional construction work; advises contractors in interpreting and applying code regulations.
- C. Ensures the maintenance of records of inspections, permits, plans, and other related documents; prepares necessary reports on inspection activities.
- D. Notifies responsible parties of defects and re-inspects to determine if corrective actions have been taken; issues stop work orders or certificates of occupancy; makes final determination regarding interpretation of state and local codes and ordinances.

Section 2.1.4 Public Services Director

The Town shall appoint a Public Services Director. The Public Services Director shall have the following powers and duties under this code:

- A. Assists the Zoning Administrator on administration and interpretation of code provisions.
- B. Serve as professional staff to decision-making and advisory boards.
- C. Take action authorized by this code to ensure compliance with or to prevent violations of its provisions.
- D. Work closely with code enforcement to assist with enforcement of this code.
- E. Works with Planning and Development Services staff in the review of plans and permits associated with this code.
- F. Works with Planning and Development Services staff on inspection and acceptance of infrastructure, maintenance of right-of-ways and easements, and setback requirements for new construction.

Section 2.1.5 Town Engineer

The Town shall appoint a Town Engineer. The Town Engineer shall have the following

powers and duties under this code:

- A. Assists the Zoning Administrator on administration and interpretation of code provisions.
- B. Serve as professional staff to decision-making and advisory boards.
- C. Take action authorized by this code to ensure compliance with or to prevent violations of its provisions.
- D. Performs civil engineering duties as required to facilitate customer response to inquiries on drainage, plan reviews and other engineering responsive abilities.
- E. Maintains close working relationship with regional, state, and federal regulatory agencies.
- F. Works with Planning and Public Services staff on inspection and acceptance of infrastructure and maintenance of right-of-ways and easements.

Section 2.2 Planning Board

The Planning Board serves in an advisory function to assist in making decisions pertaining to this code. The Planning Board shall operate in this capacity based upon their Rules of Procedure as adopted (and periodically amended) by the Board of Commissioners.

The Planning Board shall advise the Board of Commissioners on decisions involving:

- Zoning Text Amendments
- Zoning Map Amendments
- Conditional Zoning Districts
- Special Use Permits

The Planning Board shall also provide the Board of Commissioners with advice and recommendations on plans and policies developed by the Town pertaining to planning, zoning, subdivision, and environmental issues.

The Planning Board shall make determinations on decisions involving:

- Major Subdivisions

Section 2.3 Board of Commissioners

The Board of Commissioners (the Board, BOC) shall render final decisions on all policies and processes except where this authority is delegated to an advisory board or administration as described in this code.

The Board of Commissioners shall consider recommendations from the Planning Board pertaining to their decisions on:

- Zoning Text Amendments
- Zoning Map Amendments
- Conditional Zoning Districts
- Special Use Permits

The Board of Commissioners shall take such other action not otherwise delegated as deemed necessary to implement the provisions of this code pertaining to planning, zoning, and environmental policies and issues.

Section 2.4 Board of Adjustment

The Board of Adjustment (BOA) shall consist of five (5) regular members, and two (2) alternate members to be appointed by the Board of Commissioners who are citizens and residents of the Town of Waxhaw's zoning jurisdiction. The members shall serve for overlapping terms of three (3) years or thereafter until their successor is appointed. The Board of Commissioners may appoint certain members to terms of less than three (3) years so that the terms of all members shall not expire at the same time. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

The Board of Adjustment will adopt rules and regulations for its own operation necessary to carry out the provisions of this Section.

Hearings before the Board of Adjustment will be quasi-judicial based upon competent, material and substantial evidence presented by sworn-in witnesses. The chair of the Board, any person acting as chair or the clerk to the Board may authorize oaths. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its hearing and other official actions, all of which shall be immediately thereafter filed in the office of the Town Clerk and shall be a public record.

Following a determination of the Board of Adjustment on quasi-judicial matters, written decisions shall be provided that reflects the determination of contested facts and the application of the standards in the Code, signed by the Board of Adjustment Chair or duly authorized member of the Board, filed by the Town Clerk, and delivered by personal delivery, electronic mail, or by first-class mail to the landowner(s), applicant(s), and any other party in interest requesting a written copy of the decision.

Section 2.4.1 Powers of the Board of Adjustment

The Board of Adjustment shall have the following powers:

- A. To hear and decide appeals, where it is alleged there is error in any final order, requirements, decisions, or determinations made by an administrative official in the enforcement of the code or any other ordinance that regulates land use or development.
- B. To hear and determine variances which relate to the establishment or extension of structures or uses of land following a determination by the Administrator that a requested action is not in compliance with the Code. The Board may not grant a variance which would allow a change in permitted uses.

Section 2.4.2 Appeals from Decisions of the Board of Adjustment

Any person who may have a substantial interest in any decision of the Board may appeal from any decision of the Board of Adjustment to the Superior Court by filing with the Court Clerk a petition in writing setting forth plainly, and distinctly wherein such decision is contrary to law. Such appeal may only be filed within thirty (30) days from receipt of written notice.

Section 2.5 Historic Preservation Commission

The Historic Preservation Commission (HPC) shall consist of seven (7) regular members to be appointed by the Board of Commissioners. Membership on the Historic Preservation Commission is limited to those persons whose permanent residence is located within the municipal, corporate boundaries of the Town of Waxhaw. Members of the Historic Preservation Commission shall serve staggered, three year (3) terms. Vacancies shall be filled for the unexpired portions of the terms in the same manner as appointment. Full terms shall begin October 1st in the year appointed and shall terminate on September 30th in the final year of the term. Any person who has served two full consecutive terms on the commission must break for at least one (1) full year before being eligible for reappointment.

The Historic Preservation Commission shall adopt rules and regulations for its own operation necessary to carry out the provisions of this Section.

Section 2.5.1 Purpose and Powers of the Historic Preservation Commission

The general purpose of the Historic Preservation Commission is to protect, preserve and sustain Waxhaw's historic buildings, landmarks and unique character. The Historic Preservation Commission (HPC) is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Section and G.S. 160A-400.8 including, but not limited to, the following:

- A. As a guide for the identification and evaluation of landmarks or historic districts, the commission shall undertake an inventory of properties of historical, architectural, prehistorical and cultural significance within its jurisdiction.
- B. Recommend to the Town Board of Commissioners areas to be designated by ordinance as a “historic district,” and buildings, structures, sites, areas or objects within its zoning jurisdiction to be designated by ordinance as “landmarks.”
- C. Acquire by any lawful means any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same.
- D. Restore, preserve and operate such historic properties.
- E. Recommend to the Town Board of Commissioners that the designation of any area as a historic district or part thereof, or designation of any building, structure, site, area or object as a historic landmark be revoked or removed for cause.
- F. Review and act upon proposals for alterations, demolitions or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Section.
- G. Accept funds granted to the commission for preservation purposes from private individuals and organizations.
- H. Process applications for Certificates of Appropriateness.

Section 2.6 Technical Review Committee

The Technical Review Committee (TRC) is established to assist Town Planning and Development Services staff with the review of plans, particularly when the plans require review from organizations outside of the Town. This committee is a review body only, and has no decision making powers or duties. It shall be the responsibility of Town Planning staff to determine when plans should be forwarded to the TRC for technical review.

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