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HISTORIC PRESERVATION

Section 12.1 Purpose and Intent

The historical heritage of the Town is one of its most valued and important assets. Conservation of historic properties will stabilize and increase property values in the surrounding areas and strengthen the overall economy of the town, county and state. By means of recognizing, regulating and acquiring historic properties, the Town seeks, within its zoning jurisdiction, to:

- A. Safeguard its heritage by preserving any property therein that embodies significant elements of its culture, history, architectural history or prehistory; and
- B. Promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the Town, county and state as a whole.

Section 12.2 Designation of Landmarks

- A. The Board of Commissioners may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The code shall describe each property designated therein, the name of the owner of the property, those elements of the property that are integral to its historical, architectural or prehistorical value, including the land area of the property so designated, and any other information the Board of Commissioners deems necessary. For each building, structure, site, area or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this Section be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.
- B. No property shall be recommended for designation as a historic landmark unless (i) the property owner consents and (ii) it is deemed and found by the Historic Preservation Commission (the Commission) to be of special significance in terms of its historical, prehistorical, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

- C. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the Commission or the Board of Commissioners, until the following procedural steps have been taken:
1. The Commission shall prepare and adopt rules of procedure and prepare and adopt principles and standards consistent with state law or this chapter, for altering, restoring, moving or demolishing properties designated as landmarks.
 2. The Commission or property owner shall make or cause to be made an investigation and report on the historic, architectural, prehistoric educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall contain such information as required by rules of procedure and/or standards adopted by the commission in addition to the following (i) the name of the property, both common and historic names if they can be determined; (ii) the name and address of the current property owner; (iii) the location of the property and a justification of the land proposed to be designated historic; (iv) the date of construction and of any later alterations, if any; and (v) an overall photograph(s) that clearly depicts the property proposed to be designated and supplementary photographs showing facades, details and siting. Such investigation or report shall be submitted to the Office of Archives and History, North Carolina Department of Cultural Resources.
 3. Once the designation report has been prepared, either by the Commission or by the owner, the commission shall consider the report. The Commission may accept it, amend it, reject it or recommend further study.
 4. A designation report prepared by or for the Commission may be considered at any meeting of the commission provided the notification requirements contained in subsection 12.2.C.iii of this section are met. A complete application for designation prepared by the property owner must be received at least 30 calendar days prior to the next meeting of the Commission to be considered at the meeting.
 5. When a designation report is prepared by the Commission and is to be considered at a Board of Commissioners' meeting, the chairperson or appointed designee shall notify by certified mail, mailed not less than seven calendar days prior to the meeting at which the matter is to be heard, the owners of the property and the owners of abutting property. When an application for designation is submitted by the owner, the chairperson or appointed designee, using stamped, addressed envelopes provided by the owner, shall notify the abutting property owners by certified mail, mailed not less than seven calendar days prior to the meeting at which the matter is to be heard.
 6. The Department of Cultural Resources, acting through the State Historic Preservation Officer, shall, either upon request of the department or at the initiative of the Commission, be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Section. Any comments shall be provided in writing. If the Department of Cultural

Resources does not submit its comments or recommendations in connection with any designation within 30 days following receipt by the Department of the investigation and report of the Commission, the Commission and the Board of Commissioners shall be relieved of any responsibility to consider such comments.

7. The Commission and the Board of Commissioners shall hold a joint public hearing or separate public hearings on the proposed ordinance of designation. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. 143-318.9 et seq.
8. Following the joint public hearing or separate public hearings, the Board of Commissioners may adopt the ordinance of designation as proposed, or with any amendments it deems necessary, or reject the proposed ordinance.
9. Upon adoption of the ordinance of designation, the owners and occupants of each designated landmark shall be given written notification of such designation by the town. One copy of the ordinance and all amendments thereto shall be filed by the commission in the office of the Union County Register of Deeds. Each designated landmark shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Town Clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the code enforcement officer. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the town and county for such period as the designation remains in effect.
10. Upon adoption of an ordinance designating a landmark or any amendment thereto, it shall be the duty of the Commission to give notice thereof to the County Tax Supervisor.

Section 12.3 Historic Districts

- A. Historic Districts established pursuant to this chapter shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture culture, and to possess integrity of design, setting materials, feeling and association.
- B. Procedures for Designation
 1. The Commission shall determine whether any areas within the zoning jurisdiction of the town possess the character of historic districts as specified in 12.3.A of this Chapter. If the commission makes such a determination, it shall cause to be made an investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, including therein the boundaries of such proposed district.

2. The Commission shall cause a copy of this report, along with a written request for an analysis thereof, to be provided to the Department of Cultural Resources. The Department, acting through the State Historic Preservation Officer or appointed designee, shall make an analysis of and recommendations concerning such report. Failure of the Department to submit its written analysis and recommendations to the Board of Commissioners within 30 calendar days, after receipt of the written request and report, shall relieve the town of any responsibility for awaiting such analysis, and the Board of Commissioners may at any time thereafter take any necessary action to adopt or amend its zoning ordinance and thereby designate, or modify designation of, a historic district.
 3. The Commission shall also cause a copy of this report to be provided to the Planning Board who will review it and make comments upon it in accordance with the procedures set forth in the code.
- C. The Board of Commissioners may, as part of an ordinance enacted or amended pursuant to this chapter, designate and from time to time amend one or more historic districts within the zoning jurisdiction of the town. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the ordinance may include as uses by right or as special uses those uses found by the Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration of the district.
- D. Proposed changes in the boundaries of a designated historic district must comply with the requirements of this chapter.

Section 12.4 Certificate of Appropriateness

- A. Activities Requiring a Certificate of Appropriateness.** From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features), nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to, and approved by the Commission through hearings and procedural requirements for quasi-judicial decision-making. The Town shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this chapter. A Certificate of Appropriateness shall be required whether or not a building or other permit is required.

For purposes of this section, the term “exterior features” shall include the architectural style, general design and general arrangement of the exterior of the building or other structure, including the kind and texture of the building material,

the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, the term “exterior features” shall be construed to mean the style, material, size and location of all such signs. Such exterior features shall include significant landscape, archaeological and natural features of the area.

- B. Jurisdiction Limited to Exterior Features.** The Commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising, signs or other significant features in the district which would be incongruous with the special character of the landmark or district.
- C. Regulation of Interior Features.** Jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in public-owned landmarks and of privately owned historic landmarks for which consent for interior review has been given in writing by the owner. Such written consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the Union County Register of Deeds in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commission’s jurisdiction over the interior.
- D. Relocation, Demolition or Destruction of Designated Properties.** An application for a Certificate of Appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within a designated historic district may not be denied except as provided in subsection 12.4.D.a of this section. 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 commission where it finds that the owner would suffer extreme hardship or be deprived of all beneficial use of or return from such property by virtue of the delay.

During such period the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within a district has no special significance or value toward maintaining the character of a district, it shall waive all or parts of such period and authorize earlier demolition or removal.

- E. Denial of certificate.** 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 commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

- F. Ordinary Maintenance or Repair.** Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature when the building inspector certifies to the Commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing in this chapter shall be construed to prevent (i) the maintenance or (ii) in the event of an emergency, the immediate restoration, of any existing above-ground utility structure without approval by the Commission.
- G. Prior to any action to enforce any landmark or historic district provisions set forth in this chapter, the Commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and standards consistent with this chapter for new construction, alterations, additions, moving and demolition.
- H. All applications for a Certificate of Appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 90 days from the date the application for a Certificate of Appropriateness is filed. An applicant may at any time demand in writing that the Commission take final action as soon as possible. Upon receipt of such written demand, the Commission shall take final action at the next commission meeting which is at least 21 days in the future. Applications shall be filed with the Planning Department. The Commission shall, by uniform rules in its rules of procedure, require information as is reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required information has been submitted.
1. Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. The commission shall notify all adjacent property owners in compliance with NCGS 160D-406.b.
 2. In cases where the Commission deems it necessary, it may hold a hearing concerning the application.
 3. The Commission shall take action on the application and in doing so shall apply the requirements of this chapter and the Waxhaw Historic Landmark Guidelines adopted by the Commission. The Commission's action on the application shall be approval, approval with modifications or disapproval. Prior to final action on an application, the Commission, using the Landmark Guidelines, shall make findings of fact indicating the extent to which the application is or is not in compliance with the review criteria.
- I. Minor Works.** The Commission shall delegate to staff approval of minor works. Minor works are defined as those exterior changes that do not involve a change to the visual character of the property and do not involve substantial alterations,

additions, or removals that could impair the integrity of the property and/or district as a whole. Specific examples of minor works are described in the rules of procedure adopted, as amended from time to time, by the commission. The Commission liaison may approve but may not deny an application for a certificate of appropriateness for minor works. If the Commission liaison determines to not issue a certificate of appropriateness for minor works, the application shall be referred to the Commission for action. A decision by the Commission liaison to issue a certificate of appropriateness for minor works may be appealed in the same manner as other decisions made by the commission as described above.

J. Authentic Restoration or Reconstruction Not Meeting Zoning Requirements.

If the Commission, in reviewing an owner's proposed plans, finds that a building or structure for which a building permit is required is to be an authentic restoration or reconstruction of a building or structure which existed at the same location, but does not meet zoning requirements, such building or structure may be authorized to be restored or reconstructed at the same location where the original buildings or structures were located, provided the Board of Adjustment authorizes such restoration or reconstruction through a variance request, and no use other than that permitted in the district in which it is located is made of such property. Such conditions as may be set by the Commission and the Board of Adjustment shall be conditions for the issuance of the building permit.

K. Appeals. An appeal may be taken to the Board of Adjustment from the Commission's action in granting or denying any certificate, which appeals: (i) may be taken by any aggrieved party; (ii) shall be taken within 15 days of the Commission's action; and (iii) shall be in the nature of certiorari.

Section 12.5 Demolition By Neglect

A. Standard. The exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature), or any type of outdoor advertising sign either designated as a historic landmark or located within a historic district shall be preserved by the owner or such other person who may have legal possession, custody and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody and control, shall upon written request by the Town repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to any of the following defects which have the effect of significantly impairing the integrity of such building or structure or the special character of such historic district:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.

3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delimitation, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures. (11) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the historic landmark.
11. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

B. Petition. The Commission may file a petition to the Zoning Administrator, listing specific defects and requesting the Administrator act under the following procedures, to require the correction of deterioration or making of repairs to any historic landmark or structure located within a historic district, in order to preserve and protect the structure in accordance with the purposes of this Section.

1. Whenever a petition is filed with the Zoning Administrator charging that a structure is undergoing demolition by neglect, the Administrator shall, if the preliminary investigation discloses a basis for such charges, within seven days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a citation stating the charges in that respect and containing a notice that a hearing will be held before the administrator not less than 30 nor more than 45 days after the serving of such citation. The Administrator shall investigate and determine the validity of the charge. Upon confirmation a citation shall be issued stating the charge and shall include a notice of hearing. The citation will be delivered to the current property owner and scheduling of the hearing shall take place no less than 30 days or more than 45 days after delivery of citation. The owner and parties in interest shall be given a right to give a testimony at the place and time fixed in the citation.

The Commission shall also be given notice of the hearing and that the rules of evidence prevailing in courts of law or equity shall not be controlling hearings before the administrator. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and other parties in interest wishes to petition the commission for a claim of undue economic hardship.

2. If after such notice and hearing, the Zoning Administrator determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, according to the standards 12.5.A above, the Administrator shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. If the owner and other parties in interest wish to petition for a claim of undue economic hardship, the Administrator's order shall be stayed until after the Commission's determination in accordance with the procedures 12.5.C

C. Safeguards from Undue Economic Hardship. When a claim of undue economic hardship is made owing to the effects of this article, the Zoning Administrator shall notify the Commission within three days following the hearing on the citation. The Commission shall schedule a hearing on the claim at its next regular meeting, within the limitations of its procedures for application deadlines.

1. The owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship. In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained. The minimum evidence shall include for all property:
 - a. Nature of ownership (individual, business, or non-profit) or legal possession, custody, and control.
 - b. Financial resources of the owner and/or parties in interest.
 - c. Cost of repairs.
 - d. Assessed value of the land and improvements.
 - e. Real estate taxes for the previous two years.
 - f. Amounts paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.

- g. Annual debt service, if any, for previous two years.
 - h. Any listing of the property for sale or rent, price asked, and offers received, if any.
 - i. For income producing property:
 - 01. Annual gross income from the property for the previous two years.
 - 02. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management practices were followed.
 - 03. Annual cash flow, if any, for the previous two years.
 - 2. Within 60 days of the Commission's hearing on the claim, the Commission shall cause to be made a finding of undue or no undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Commission shall report such finding to the Zoning Administrator, and the Administrator shall cause to be issued an order for such property to be repaired within the time specified.
 - 3. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the town, or other public, private or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of the article sufficient to mitigate the undue economic hardship. The Commission shall report such finding and plan to the Administrator. The Administrator shall cause to be issued an order for such property to be repaired within the time specified and according to the provisions of the recommended plan.
- D. Appeals.** An appeal may be taken to the Board of Adjustment from the Commission's action related to demolish by neglect, which appeals: (i) may be taken by any aggrieved party; (ii) shall be taken within 15 days of the commission's action; and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be taken to the superior court of the county.