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ARTICLE 2.

ADMINISTRATIVE OFFICIALS AND AGENCIES

DIVISION I. ADMINISTRATIVE OFFICIALS

Sec. 18-13. Administrative official.

(a) As provided in G.S. 160A-148 and the Wilmington City Charter, the City Manager has the power and duty to see that this chapter is faithfully executed and enforced. Except as otherwise specifically provided, primary responsibility for administering and enforcing this chapter may be assigned by the City Manager to one (1) or more individuals. Regardless of the assignment of such responsibilities, the City Manager is referred to in this chapter as the person with the responsibility for administering and enforcing this chapter. References to the City Manager shall be deemed to be references to the person or persons to whom these functions are assigned.

(b) All persons performing inspection duties for the city under the provisions of this section shall have all the powers, duties and obligations of a building inspector as set forth in Part 5 of Article 19 (G.S. section 160A-411 et seq.) of Chapter 160A of the North Carolina General Statutes, the State Building Code and all applicable City ordinances and administrative procedures.

Sec. 18-14. Technical review committee.

The City Manager shall establish a technical review committee (TRC). The TRC shall be a committee of city staff, North Carolina Department of Transportation staff and other agencies that review site plans for major and minor developments in accordance with Section 18-60.

Secs. 18-15--18-25. Reserved.

DIVISION II. BOARD OF ADJUSTMENT

Sec. 18-26. Establishment and procedure.

The Wilmington Board of Adjustment, herein called "board" is hereby established to fulfill the duties and powers prescribed to it by this article and the City Code and by North Carolina General Statutes, Chapter 160A, Article 19, Parts 3 and 6.

- (a) The board shall consist of five (5) members and two (2) alternate members appointed by the Wilmington City Council. All members shall be appointed for staggered terms of three (3) years. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. All appointments to fill vacancies shall be for the unexpired term.

- (b) The board shall adopt rules of procedure for the conduct of its affairs and in keeping with the provisions of this article. Such rules of procedure shall not be effective until approved by the City Council. All meetings held by the board shall be held in accordance with the North Carolina Open Meetings Law. The board shall keep minutes of its proceedings suitable for review in court showing:
 - (1) The factual evidence presented to the board by all parties concerned;
 - (2) The findings of fact and the reasons for the determinations by the board;
 - (3) The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.

Sec. 18-27. Appeals to the board of adjustment.

Appeals to the board concerning interpretation or administration of this chapter by the City Manager may be taken by any person aggrieved or by any officer, department, commission or board of the city. Such appeal may be taken by filing a notice of appeal specifying the grounds thereof with the secretary to the board within ten (10) consecutive calendar days after the issuance of the City Manager's order. Upon proper filing of an appeal, the City Manager shall forthwith transmit to the board all papers then constituting the record upon which the action appealed from was taken as provided in the rules of procedure. The board shall fix a reasonable time for the hearing of appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any person may appear in person or by agent or attorney.

Sec. 18-28. Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the City Manager certifies to the board after notice of appeal has been filed that because of facts stated in the certificate of stay, in his opinion, would cause imminent peril to life or property, or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this chapter. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the board or by a court of record on application, on notice to the City Manager and on due cause shown. The City Manager shall have one (1) copy of said certificate delivered by certified mail or by personal service to the appellant and to each member of the board within ten (10) calendar days from the date the appeal is filed with the secretary to the board. The certificate shall also be placed on file with the secretary to the board for public inspection and recorded in the minutes of the next meeting of the board.

Sec. 18-29. Powers and duties.

(a) *Administrative review.* The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by the City Manager charged with the enforcement of this chapter.

(b) *Variations.* The board of adjustment is authorized to issue variations from the dimensional requirements of this chapter such that they will not be contrary to the public interest, to the spirit of this

chapter and where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary physical but not economic hardship. Dimensional requirements are limited to height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. The hereafter described procedures shall be followed to grant a variance from the terms of this chapter:

- (1) A written application for variance is submitted demonstrating:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
 - c. That special conditions and circumstances do not result from the actions of the applicant; and
 - d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (2) A public hearing shall be held on the variance. Any person may appear at said hearing, in person or by agent or attorney.
- (3) The board of adjustment in granting a variance shall make findings of fact that the requirements of subsection (b)(1) above have been met by the applicant and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- (4) In denying a variance, the board of adjustment shall make findings of fact that one (1) or more of the requirements in subsection (b)(1) above do not exist.
- (5) The findings of fact made by the board of adjustment under this subsection shall be based on evidence presented at the hearing at which the variance is considered.
- (6) Any order or decision of the board of adjustment granting a variance shall expire if a building permit for the affected use is not obtained by the applicant within twenty-four (24) months from the date the decision is filed in the Planning Division office or any

successor office. One extension of time for the variance, not to exceed twelve (12) months, may be granted by the board of adjustment provided an application for such extension is submitted in writing prior to the expiration of the variance.

(c) *Ruling.* In exercising the above-mentioned powers, the board may so long as such action is in conformity with the terms of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the power of the administrative official from whom the appeal is taken.

(d) *Voting.* The concurring vote of four-fifths (4/5) members of the board shall be necessary to reverse any order, requirement, decision or determination of the City Manager, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter.

Sec. 18-30. Appeals from the board of adjustment.

Any person aggrieved by any decision of the board of adjustment shall have standing for purposes of seeking further review by New Hanover County Superior Court; provided, such review shall be subject to proceedings in the nature of certiorari. For purposes of this section, "person aggrieved" shall mean any person, firm, corporation or group of persons of common interest, including the city, its officials, agents and employees, and any city departments, boards or agencies, that are directly or indirectly affected substantially by a decision as set out herein. Any petition for review by the superior court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the board is filed with the planning division office or any successor office, or after a written copy thereof is delivered 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 case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Secs. 18-31--18-34. Reserved.

DIVISION III. PLANNING COMMISSION

Sec. 18-35. Established.

A city planning commission, referred to in this chapter as the "Wilmington Planning Commission," is hereby created under the authority of Article 19, of G.S. Chapter 160A, providing for municipal planning and regulation of development.

Sec. 18-36. Composition; service.

- (a) *Appointment and tenure.*
 - (1) The Wilmington Planning Commission shall consist of seven (7) members, who shall be citizens and residents of the city, holding no other public office under the city government, and shall be appointed by the City Council.

- (2) The term of membership shall be three (3) years, staggered, as vacancies occur to serve in accordance with the council policy on boards and commissions then in effect.

(b) *Compensation.* Members shall serve without compensation and may be removed by the council at any time with or without cause.

Sec. 18-37. Organization; rules of procedure adopted.

(a) *Meetings.* The Wilmington Planning Commission shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.

(b) *Rules of procedure.* Rules of procedure shall be adopted by the Wilmington Planning Commission for the conduct of its business and for the election of its officers. The council shall approve the rules of procedure and any amendments prior to implementation.

Sec. 18-38. Planning commission duties.

In accordance with G.S. section 160A-361, the Wilmington Planning Commission shall perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas.
- (2) Determine objectives to be sought in the development of the study areas.
- (3) Prepare and adopt plans for achieving these objectives.
- (4) Develop and recommend policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
- (5) Advise the council concerning the use and amendment of means for carrying out plans.
- (6) Perform any other related duties that the council may direct.

With concurrence of the council, nothing in this article shall limit or abrogate the powers granted the City Planning Commission by Article 19, section 160A-360 et seq., of G.S. Chapter 160A.

Secs. 18-39--18-42. Reserved.

DIVISION IV. SUBDIVISION REVIEW BOARD

Sec. 18-43. Establishment; designation of planning agencies for final approval of subdivision plats.

- (a) The subdivision review board is hereby established and designated as a planning agency

for the purpose of giving final approval to each individual subdivision plat brought before it as hereinafter outlined and required.

(b) The subdivision review board shall consist of five (5) members of the city administration and relevant independent agencies, or their designees, appointed by the City Manager. The chairman shall be appointed by the City Manager from the membership outlined above. No person serving on the subdivision review board may vote or participate in the decision of the subdivision review board if he or she has a possible conflict of interest.

(c) The subdivision review board shall hold regular public meetings and may hold special meetings as necessary in accordance with its rules of procedure. A minimum of four (4) board members must be present in order to conduct a meeting. The subdivision review board shall adopt rules of procedure for the conduct of its business subject to the approval of the City Council.

(d) All subdivision review board meetings shall be advertised for proper notification to include the meeting date, place, time and items to be reviewed by the board. In addition, a sign shall be prominently posted at the site of each subdivision for consideration at least fifteen (15) calendar days prior to the meeting.

(e) The chairman of the subdivision review board is hereby designated as a planning agency for the purpose of giving final approval to each individual subdivision plat classified as a minor subdivision, as hereinafter defined, and to final plats, preliminary plats of which have been previously approved.

Secs. 18-44--18-47. Reserved.

DIVISION V. HISTORIC PRESERVATION COMMISSION

Sec. 18-48. Historic preservation commission.

A historic preservation commission, in accordance with Part 3C, Article 19, Chapter 160A of the North Carolina General Statutes, is hereby created.

- (a) *Appointment and tenure of members.* The historic preservation commission shall be composed of nine (9) members appointed by the City Council. The term of office shall be four (4) years. Members shall be appointed for terms of four (4) years as vacancies occur. An appointment to fill an unexpired term shall be only for the remaining portion of that term. Membership on the historic preservation commission will be limited to two (2) consecutive terms. Members shall continue to serve until their successors are appointed.
- (b) *Composition.* The commission shall be composed of nine (9) members, the majority of whom shall have demonstrated special interest, experience, or education in history, architecture, archeology or other related fields. At least three (3) members shall be residents within a locally designated historic separate use district (i.e. area zoned HD, HDR or HD-MU), at least one (1) member shall be a resident in a locally designated historic overlay district (i.e. area designated HD-O) and one (1) member may be a building owner or proprietor of a business within an historic overlay district. Four (4) of the nine members

shall be appointed at large. At-large members may be appointed from either outside or within locally designated historic districts and shall have expertise in areas related to historic preservation such as: African-American history, landscape architecture, public history, historic archeology, preservation architecture, structural engineering, construction, or community planning or be a certified arborist. All members of the commission shall be residents of the City of Wilmington. The commission may appoint advisory bodies and committees as appropriate.

- (c) *Attendance at meetings.* Should a member fail to attend three (3) consecutive regular meetings of the commission, and should there be no adequate excuse for such absences, the chairman, with the concurrence of a majority of the entire commission, shall recommend to the appropriate authority that a vacancy be declared and that the vacant position be filled. Absence due to illness, death or other emergency situations shall not affect the member's status excepting that of an extreme duration resulting in prolonged absence, whereby the member shall be replaced.
- (d) *Rules of procedure adopted.* Rules of procedure, subject to approval by the City Council, shall be adopted by the historic preservation commission for the conduct of its business. An annual report shall be prepared by the secretary, and submitted by the first Thursday in January to the commission in time for the annual meeting. The commission shall keep a record of its members' attendance, and of its resolutions, findings, and recommendations, and such record shall be a public record.
- (e) *Design guidelines.* A manual shall be prepared and adopted by the commission to be used in the review for a certificate of appropriateness with principles and guidelines to be outlined and defined for alterations, additions, restorations, reconstruction, new construction, moving and demolition. All decisions of the commission concerning a certificate of appropriateness shall be based upon it.

Sec. 18-49. Authority and powers of the historic preservation commission.

The historic preservation commission shall undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this division and Part 3C, Article 19 of Chapter 160A of the General Statutes of the State of North Carolina, including the following:

- (a) Investigation and report for historic districts. Complete investigations and reports describing the significance of the buildings, structures, features, sites or surroundings included in proposed historic districts or the expansion thereof and prepare descriptions of the boundaries of such districts or expansions.
- (b) Historic landmarks. Identify and evaluate the special significance of landmarks in terms of historical, pre-historical, architectural, or cultural importance and possession of integrity of design, setting, workmanship, materials, feelings and/or association.
- (c) Recommendations. Make recommendations to the planning commission and City Council regarding the creation of historic districts or the expansion thereof. Make recommendations

to City Council regarding individual structures, buildings, sites, areas, or objects which can be designated by ordinance as landmarks. Make recommendations to City Council regarding the designation of an area as a historic district or part thereof, or the removal of the designation of any building, structure, site, area, or object as a landmark and state the reasons therefore. Prepare and recommend the official adoption of a preservation element as part of the city comprehensive plan.

- (d) **Inventory.** Undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, pre-historical, and cultural significance to be used as a guide for the identification and evaluation of landmarks. The commission shall submit such inventories and any additions or revisions thereof to the division of archives and history.
- (e) **Procedure.** Follow procedural steps set forth in Section 160A-400.6 of the North Carolina General Statutes prior to the recommendations designating a historic building, structure, site, area or object as a landmark, or any amendment to such an ordinance, and prior to the acceptance or acquisition of such property by the commission or City Council.
- (f) **Acquisition.** Subject to the approval of the City Council, negotiate with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate. Subject to approval of the City Council, acquire by any lawful means the fee or any lesser included interest, including options to purchase properties within established historic districts or to any such properties designated as landmarks; hold, manage, preserve, restore and improve the same; and exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
- (g) **Preservation.** Restore, preserve and operate historic properties.
- (h) **Education.** Conduct an educational program with respect to historic properties and districts.
- (i) **Cooperation with other agencies.** Cooperate with the state, federal, and local governments in pursuance of the purposes of Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes. As authorized by the City Council, contract with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.
- (j) **Entry upon private land.** Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (k) **Review.** Review and act upon applications for certificates of appropriateness for alterations, demolitions, or new construction within historic districts, or for the alteration

or demolition of designated landmarks, pursuant to Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes.

- (l) Meetings open to the public. All meetings of the historic preservation commission shall be open to the public in accordance with the North Carolina Open Meeting Law.

- (m) Authority to act as advisory. The commission shall have the authority to act as or to establish an advisory group for property owners concerning the historic and aesthetic characteristics of their properties in historic districts. The commission may initiate and undertake any programs of information, research or other activity relating to any matters under its jurisdiction. The commission may request services from the State of North Carolina and agencies or departments of the United States government. With the concurrence of the council, state and/or federal funds may also be requested by the commission. The commission, with permission from the City Manager, may request technical assistance and advice from any department of the City of Wilmington. The commission shall have authority to recommend to the City Council and the State of North Carolina structures or sites of historic significance worthy of national, state or local recognition. The commission shall cooperate with, consult with and make recommendations to the City Manager, the City Council, other local government bodies and appropriate state agencies in matters related to a total community historical program for the City of Wilmington and its environs.