

Town of Concord
Historic Districts Commission
Rules and Regulations

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1. Application Process and Procedures

1.1 Overview

All property owners must apply to the HDC prior to securing building permits or commencing work. The application process is designed to provide the public and the Commission with sufficient detail on the proposed scope of work so that an informed decision regarding the appropriateness of the change can be made. Information on the proposed work, site and site context are required. Applications are available online and at the Planning Division offices at 141 Keyes Road. Applications should be filed in person so that Staff can review the work proposed and confirm that the appropriate supporting materials are included in the submittal. An application includes the application form, supporting documentation (requirements are specified in the Design Guidelines), a “Construction Checklist” noting all proposed changes and materials, the Concord Journal Legal Ad release form, and a \$25 Application Fee. Applicants are scheduled for hearings only when the appropriate and complete documentation has been filed. Applicants are encouraged to review the application instructions, Historic Districts Act, Design Guidelines, submittal deadlines and hearing procedures before submitting an application.

1.2 Request for Determination of Exemption from Review (Certificate of Non-Applicability)

The Historic Districts Act and Design Guidelines delineate what does and does not need Commission review. Circumstances may arise when the Act or Design Guidelines may not address a unique circumstance and a property owner may wish to request a Determination of Exemption from Review. Staff will review the request with the Applicant and consult with the Commission. If the Commission finds that the matter does not require review, the Exemption will be provided and a record retained in the file. The Exemption will clearly state the scope of work which does not require further Commission review.

1.3 Application Process for Sites with Pending Violations

Staff will review the property files for all new applications prior to scheduling a hearing. If a property has unresolved HDC violations from either prior non-conforming work or prior work performed without review, the Commission will not consider a new application unless that application also proposes a resolution for the outstanding violations. No new certificates will be issued until a resolution is reached regarding the outstanding violations.

1.4 Demolition Applications

Special procedural and documentation requirements apply when Applicants propose partial or full building demolition. See the Design Guidelines for the documentation requirements. A site visit may be required in addition to any public hearings. Note that the demolition of an existing structure and its replacement with a new structure will be considered as two separate projects and will be ruled on separately.

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1.5 Building Relocation Applications

Application requirements for building relocation are similar to those for building demolition. If the building is to be reinstalled within an historic district, a separate application is to be made for placing the building at the new location.

1.6 Re-application after Previous Withdrawal

When Applicants re-apply after a withdrawal, the application process is to be redone in its entirety. Applicants are not to rely on the Commission's recollection of the previous application, project, or deliberations. The new application shall include all required documents when filed.

1.7 Re-application after Previous Denial

When Applicants re-apply after a previous denial, the application process is to be redone in its entirety. The new application must differ from the previous application in scope and/or substance. If the new application is similar in scope to the previous denial and the Commission previously proposed conditions under which that original application could be deemed appropriate, then the new application's scope should reflect those conditions. New applications which are identical in scope to a previously denied application may be rejected by the Commission.

1.8 Applications Involving Hardship

Property owners submitting applications which claim a hardship in complying with either the Historic District's Design Guidelines or the Act's intent shall consult with Staff and the Commission to determine the submission requirements. Feasibility studies, cost information, site visits and professional recommendations may be required.

1.9 Application Submissions

Staff relies on the application and discussions with the Applicant to determine the appropriate submittal requirements (Note: Submission requirements differ from Building permit requirements). HDC document requirements will vary for each type of application. If Staff has concerns regarding the requirements, they are to get confirmation from the Chair as to what materials are required for the work proposed. Owners and/or their representatives are advised to consult with Staff as soon as work is contemplated in order to review the filing requirements and confirm the potential hearing schedule and process. Staff may also advise on any previous applications or issues involving a property; on related precedents; and on potential sources of historic information relating to a property. All supporting documentation should be submitted with the application. Staff may request additional information and materials after reviewing the submitted materials. All materials are to be submitted by the documentation deadline. Incomplete submissions may be refused. It is the Applicant's responsibility to insure that the submission is complete and to get confirmation on this from Staff at the time of the submission. Changes to submitted applications or materials after the

submission and documentation deadline may require the withdrawal of the application or the postponement of the Applicant's hearing.

1.10 Documentation Standards

All submitted materials will be made available for public review by the Commission prior to the meeting. Documents submitted shall be clear and concise to the anticipated work and understandable to a layperson (Generally understandable to the public and others not in the building profession). The application and construction checklist should be printed or clearly hand written. Drawing should be to scale and provide sufficient dimensions and graphics to clearly determine both the existing condition of the area in question and the proposed modifications. Elevations and details should have material indications to define the position and character of the finishes. Material specifications (photos, vendor brochures, samples, etc.) should be clearly marked and labeled to match any notes on the submitted drawings and the Construction Checklist. Site plans shall show the property lines, North arrow, and all applicable landscaping and impervious materials. Each application should include photos showing the existing condition of the site and any applicable views from both the property and the public way. In addition, applicants may submit pictures of relevant adjoining properties/buildings (if within 200 feet) and/or any important features or issues which the Applicant wishes the Commission to consider. Renderings or other forms of imaging which better illustrate the proposed work may be desirable. All application materials should be date stamped when received and entered into the project file. Two hard copies of all documents are required. Electronic copies (in PDF format) should also be provided whenever possible.

1.11 Manufacturer's Literature and Material Samples

Manufacturer's literature should be included for all manufactured materials. Full color copies are preferred with the specific model/ type proposed clearly defined by circling, underlining or the use of other graphic illustrations. Each material sample must be labeled with the material's general information, supplier name, and the location where it is proposed to be used. Small material samples should be included with the application (paint samples/chips, finish samples etc.). Large physical samples (custom assemblies, windows, roof singles, gutters, sign materials, etc.) may also be presented at the public hearing. Any such large samples must be accompanied by photos, material descriptions and other pertinent information which can be retained in the Commission's records after the public hearing. When material proportions, details and finishes are important (custom wood siding, brick patterns, etc.), full size samples should be presented.

Applicants should note that such samples are not retained by the Commission and that the Applicant is responsible for removing them after the hearing and review process. The Construction Checklist should accurately define all materials specified/ proposed and will be the sole record of the materials approved for a project. In the event of a discrepancy, the Construction Checklist will take precedence over any drawings and samples.

1.12 Building Area and Volume Measurements

The application requirements for new buildings and additions include volume and area measurements. The floor area measurement is to be the gross floor area of the structure including roofed porches, but excluding below grade space and any unoccupiable attic spaces. The building volume is to include the gross above grade volume, including roofed porches and attic spaces. Similar volume measurements are required for all outbuildings proposed to be constructed or altered in the application.

2. General Meeting Protocols

2.1 Parliamentary Procedures Used

Roberts Rules of Order are used to conduct the HDC's Meetings. The Chair has the right to adjust the meeting agenda as needed at the time of the Meeting.

2.2 Open Meeting Law and Public Participation

All deliberations of the HDC are subject to the Massachusetts Open Meeting Law (See Town Committee Handbook and Open Meeting Law statute). All questions regarding the law should be addressed to the Town Clerk. Members are reminded that email communications are also subject to the Law.

2.3 Quorum and Voting

The Historic Districts Act requires a quorum of five (5) Members to conduct a public meeting. Five (5) voting Members are also needed to issue or deny a Certificate of Appropriateness. If a Full Member is not able to attend a meeting, the Chair shall select an Associate Member to vote in their place. The selection is to be made at the start of the meeting. A simple majority (i.e. 3 out of 5 votes) is required to pass a motion on a Certificate of Appropriateness.

All Members present will vote on administrative motions including the election of the Chair and Officers, entering and exiting executive session, approving meeting minutes, moving to adjourn, etc.

2.4 Conflict of Interest Issues – Recusal

Commission Members are required to recuse themselves whenever a potential conflict of interest arises regarding an Applicant or application. Members should consult with the Town Clerk to get a determination if recusal is required. When in doubt, Members shall recuse themselves from the public hearing and leave the meeting room until the discussion is concluded. Recused Members are not to discuss the application with other Members until the application has been closed. Members should review in particular Open Meeting Law Advisory 05-02 "Voting on Matters affecting abutting or nearby property".

2.5 Chair's Absence

In the event that the Chair cannot attend a meeting, the Vice Chair shall serve in their place. In the event that both the Chair and Vice Chair cannot attend a meeting, the Commission shall vote at a prior meeting or at the start of the public hearing to select a Chair Pro Tem.

2.6 Executive Session

The Commission may as permitted by the Open Meeting Law have occasion to go into an Executive Session. (See Open Meeting Law for permitted reasons to enter Executive Session) The agenda for the Meeting must include a notice of the Executive Session and state the full purpose for the Session. During the Open Meeting, a roll call vote must be taken to go into Executive Session prior to commencing the Session. A simple majority vote is required to approve the session, after which the meeting is to be closed to the public. Separate notes are taken for an Executive Session and a roll call vote is required to adjourn an Executive Session and return to the Open Meeting. Notes of any Executive Sessions are considered to be confidential until the reason for the Session is resolved. At that time, the Commission must vote to release the Minutes to the public. (See Open Meeting Law)

2.7 Communication Outside Hearings

Members are free to discuss administrative matters with individual Members and Staff outside of the Meetings. All hearing or application related communications should be directed only to Staff and the Chair and not concurrently to other Members. (See Open Meeting Law)

3. Hearings

3.1 General Considerations

The success of the Historic Districts depends on Property Owners' willing participation in the Commission's process. Every effort should be made to respect the "partnership" that this entails.

In consideration for all participants, the Chair should call the meeting to order on time, and begin each meeting with introductions and by announcing any proposed changes to the posted agenda. Staff provides the application and property files to the Chair as each application is called. Applicants are asked to present their proposed project and exhibits followed by questions from the Commission and the public. Staff will take the discussion minutes and assist with any procedural issues.

3.2 Chair Controls the Meetings

The Chair controls the Meeting and grants permission to speak. All comments are to be addressed to the Chair. All meetings are open to the public and every effort should be made to allow the public in attendance to see and hear including

orienting easels to be viewed by everyone in the room; allowing the public to visit the Commission table to see exhibits; circulation of additional copies of materials for the public; etc.

Discussion and comments are to be restricted to the application under consideration and the items under the Commission's purview. Disorderly behavior or disrespectful comments may subject participants to removal from meetings. Public participation and comments are encouraged during meetings and are to be called for prior to any motions or votes. Disrespectful, irrelevant, or repetitive discussions should be prevented.

The Chair determines when the discussion period and public comment period is to end. The Chair has the right to terminate any and all lines of discussion and to call for a motion from the Members at any time.

3.3 Respectful and Constructive Deliberation Process

Applicant's knowledge, experiences, and presentation skills on the related proposal may vary widely. Members shall make every effort to understand the Applicant's proposal prior to opening the deliberation/ discussion of the Public Hearing. All Members, regardless of voting status, should participate in the deliberation. Members are asked to maintain a constructive dialogue with Applicants, being mindful of retaining a balance between the community's long term mandate and the desires of the Applicant.

Each application and site is unique. Members should first understand what is proposed by asking questions of the Applicant or their representative prior to deliberating. The construction checklist must also be reviewed to insure that all of the proposed work has been presented prior to a vote.

Members should strive to quickly define the critical issues and address them immediately. Discussion should begin with the "most pronounced" issues including, but not limited to, the overall effect of the proposed work on the historic district; its impact on the integrity of the property; the appropriateness of the proposed massing, over all configuration, site plan, street presence, etc. Once these issues have been addressed, discussion may then proceed "down in scale" to the details and finishes. The Commission is urged to seek consensus on the larger planning items before discussing these details. (i.e. if the massing is too big, do not discuss the door and window details until the massing is resolved.)

All dialogue and/or questions during the public hearing should be focused on the proposed work, its context and appropriateness; discussions regarding the Owner's motivations, personal opinions, and issues of taste should be avoided. The Commission's deliberations and decisions are based on appropriateness of the proposed changes as defined under the Act and further illustrated by the Design Guidelines and copies of both documents are available for reference and review at all Public Meetings. It is anticipated that Members may have differences of opinion during these reviews and discussion is welcomed to ensure that a diversity of viewpoints are presented during the decision process.

The Commission is encouraged to work with all Applicants to address the issues and, when possible, to discuss how a project might be revised to reach an appropriate resolution. The Commission will not dictate a solution but will identify what is acceptable and what is not acceptable during the project review.

3.4 Aesthetic Considerations

Multiple considerations come into play during an application review and both the physical context and historic context must be considered. Concord's architectural environment is the product of evolution and reflects multiple periods, styles, pragmatic solutions, uses and adaptive reuses. Change is part of that evolution and consideration of the continuity of this process is important. The Commission's task is to preserve the important and diverse features which contribute to both the individual property and to the Historic Districts as a whole. The context of the property on its site, any adjoining buildings, and their combined assemblage will contribute to the decision. Changes in massing are of particular concern. At a minimum, the project should not be detrimental to the historic portions of the property or its distinctive features. New products and materials which are out of context are discouraged (vinyl windows, artificial wood, faux finishes, etc). The Design Guidelines provide information about different features and appropriate uses.

3.5 Previous Approval Precedents

The existence of a previous approval for a similar project ("precedent") is not grounds for an automatic approval at another site. The HDC's reviews and rulings are based on the site specific information and may vary given the specific circumstances of each application. Following "precedents" without proper reasoning can have unanticipated results — both good and bad. The Commission should learn from its past decisions but take care in making blanket "policies" to correct unintended detrimental results from previous rulings as it may unintentionally restrict the consideration of future applications. Instead, the Commission is encouraged to regularly revise the Design Guidelines to ensure that they continue to address the root issues in the context of the desired intent/outcome. In addition, proper Public Hearing procedures and detailed rulings with clear intent and restrictions will help to prevent potential reoccurrences.

3.6 Hearing Continuances

A Hearing Continuance may be issued when the review of an application cannot be concluded in one Public Hearing. Most commonly, a Continuance is considered when the Commission does not feel that the Application as submitted is appropriate but has a desire to either continue negotiations or deliberations with the Applicant and/or to allow the Applicant time to consider comments received and possibly make revisions to the application. However, Continuance should not be issued to delay an inevitable vote. If the Commission believes that the application is fundamentally inappropriate, or if the applicant is unlikely or

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uninterested in changing the application, then the Commission should either move forward with the vote or suggest that the applicant withdraw the application.

In addition, continuances may be issued when specific additional information is requested by the Commission such as when an application is incomplete or alternative materials are requested. As noted above, application reviews which require site visits are generally continued following an initial presentation and to the next available meeting after the site visit.

Continuances can be requested by either the Applicant or the Commission, but require the applicant's approval. If a Continuance is not approved, then the Commission must vote based on the application as submitted.

Continuances extend the Act's requirement that the Commission take action on an application within 60 days. If a continuance is agreed upon, the applicant is encouraged to attend the next meeting if possible; if not possible, the Applicant has 60 days to re-appear. Ideally, a specific date agreeable to both the Commission and the Applicant will be specified for the continued hearing. A Continuance can be further extended if the Commission agrees. If the applicant does not reappear after being notified, the Commission can vote to deny the application without prejudice.

For continuity, it is desirable to have the Members who were present at the first hearing participate and vote at the final hearing for the application.

3.7 Site Visits

Site visits are conducted during the application's review period and are not part of the formal hearing process but are a form of supplemental information gathering by the Commission. The site visit allows Members to acquaint themselves with the site conditions, views, boundaries and other physical or site specific items which may not be clearly understood from the submitted materials. The Commission shall notify the Applicant of the items it desires to review during the site visit and may request that the Applicant stake the boundaries of proposed buildings or additions, raise balloons or provide other means to understand the height of a proposed roof, mark site boundaries, mock up heights of screening elements, etc. Sole consideration shall be given to those items seen from the public way.

Site visits are routinely requested for all demolitions, new buildings, additions and open space related applications. They may also be called to assess a sample or mockup of a proposed product or process (masonry replacement, comparison of historic and new details, etc.).

Site visits are scheduled at the convenience of the Commission and the Applicant. Attendance by Commission Members is optional but encouraged. Staff attendance allows confirmation that all previously requested items are present at the visit. Photographing of items is suggested for the benefit of Members not present. The time and location of each site visit is posted in accordance with the Open Meeting Law. The Applicant may invite other interested parties to the site

visit. The general public may observe the visit but are not to enter the property unless approved by the property owner. The site visit is a non-deliberative meeting (quorum not required) and is subject to the Open Meeting Law. Questions may be asked of the Applicant, but deliberation between Members is not permitted.

3.8 Interim Voting

If the Chair believes it would be advantageous to “poll” the Members on an issue, a portion of the proposed application or the entire application, the Chair may call for a non-binding vote (straw poll) to expedite the deliberations and provide the Applicant a clear understanding of the Commission’s views.

3.9 Withdrawal Without Prejudice

If the Commission believes that the Applicant has not provided sufficient information or that an application cannot be approved as presented, the Chair may suggest that the Applicant request a continuance or that they withdraw the application without prejudice. “Withdrawal without prejudice” is used to terminate the review of an application prior to an action or vote being taken by the Commission. This preserves the Applicants right to re-apply with a similar scope at a later date.

3.10 “Partial withdrawals”

In the event that the proposed scope has certain contentious components which may prevent an otherwise appropriate application, the Applicant may request to “withdraw” the contentious portion of the application in order to move the process forward. In these instances, the Chair should warn the Applicant that the withdrawn portions of the project will require a new application and that no commitments can be made as to the review of that new application.

3.11 Motions to Approve a Certificate of Appropriateness

If the Commission believes that the project is appropriate, a motion to approve a Certificate of Appropriateness for the application will be made. The motion may take one of several forms depending on the application and deliberation. “Approval as Submitted” assumes no changes are required. Alternatively, an “Approval with Conditions” grants approval if the changes and limitations raised in the deliberation are complied with by the Applicant. This may also be used when minor information or design details have not been presented but must be presented for subsequent approval.

Once approved, two copies of the submittals, checklists, photos, etc. are immediately stamped and signed by the Chair. A Certificate of Appropriateness is then prepared by Staff and signed by the Chair. The original Certificate of Appropriateness is filed with the Town Clerk and copies are made for the Applicant, Building Division, HDC certificate file and HDC property file. One of the two stamped submittal packages remains in the HDC property file; the other is

forwarded to the Building department for their use in confirming compliance with the related building applications.

The signed submittals which are attached to the Certificate are the primary record of the approved scope of work. All agreed modifications and/or conditions to the submittals should be clearly marked in both copies.

3.12 Motion to Approve an “Inappropriate” Application Based on Hardship

See the Historic Districts Act for the specific conditions and requirements pertaining to the limited ability of the Commission to approve an “inappropriate” application based on its limited effect on the historic district and a specific hardship to the Applicant.

3.13 Changes After Approval

Certificates of Appropriateness are issued only for the scope of the work presented and submitted. All deviations from the submitted and approved documents require a new application and HDC approval prior to construction. Certificates are valid for 6 months unless otherwise specified. (Work needs to start within 6 months of approval).

For all deviations from the approved scope of work, the Applicant shall apply to the Commission to determine if the change requires a new application. Staff, with the consent of the Chair, may approve minor deviations, provided that the deviation is documented and photographed for the record. Letters of Determination for deviations may be provided upon request. All other changes will require a new application and Public Hearing to review the proposed changes. If approved, a new Certificate of Appropriateness shall be issued for the project.

3.14 Required Maintenance for Approved Features/ Screening

Approvals may include conditions requiring screening to hide otherwise inappropriate additions to the site or building such as HVAC units, mechanical equipment, non-period features, etc. Screening such as plantings, fencing, or other items are to be maintained in their approved size, position and density to provide the requested screening. The Commission shall note in the Certificate that such approved conditions bind the current and subsequent Owners to maintain the screening for as long as the inappropriate items remain on the site.

Note: This is the only circumstance in which the HDC has purview over vegetative landscaping. Conditional approvals with vegetative screening materials are to be discouraged because of their lack of consistency due to seasonal variation and eventual configuration during growth.

3.15 Motions to Deny Application

The Commission has a responsibility to deny all applications they deem to be inappropriate for the historic district in question. During the hearing, the Commission shall disclose their objections and reasons to the Applicant. The Commission may also propose conditions to which the Applicant must comply to secure approval. The Applicant will then have the opportunity to modify the application to remove the inappropriate features (or accept the conditions requested); withdraw the application; or seek a continuance in order to reassess the proposed project and present an alternate proposal at a future hearing. If the Applicant does not accept one of these options, a vote will be taken which represents the final decision. All votes, denials in particular, are to be clearly defined with the reasons clearly stated in the minutes for that application. All discussed conditions are to be noted. Staff will prepare the Notice of Denial to be reviewed by the Commission and signed by the Chair. The Applicant has ten (10) days following receipt of the notice of denial to reconsider and modify the application in writing per the conditions discussed in order to secure an approval. If the Applicant does not take this action, the denial is final.

Alternately, if an Applicant fails to appear at an initial hearing or continued hearing, Staff shall request that they either appear at the next meeting or withdraw their application. If the Applicant takes no further action, the Commission shall vote to deny the application.

3.16 Appeals

The Act defines the grounds and process for appeals. As any appeal may result in litigation between the Town and the parties involved, the Commission is encouraged to carefully review any denial before it is issued. Town Counsel, with the approval of the Town Manager, will be made available to assist the Commission in any litigation.

3.17 Approval of Determination of Exemption Letters

If in reviewing an application, Staff and the Commission believe an application is exempt from the requirements of a hearing, the Applicant may request that the Commission vote to issue a Letter of Determination and that a copy of such Letter be provided to the Building Division.

4. Post-meeting Protocols

4.1 Preparation of Certificates

After the hearing, Staff is to prepare the Certificates for approved applications, noting conditions if applicable, and Notices of Denial. The Chair shall review and sign each Certificate after which Staff shall distribute and file them.

4.2 Retained Records

The Commission and Staff are to retain all approved applications and submittal records. Original signed decisions are filed with the Town Clerk. All full records are to be filed by property address to insure continuity. An additional copy of the Certificate of Appropriateness is filed by calendar year in the certificate file. Staff is to remove hearing documents and headings from the HDC website following each meeting and the paper copies resulting from the public hearing are the only official copies to be retained. Material samples will only be retained for custom materials and only until completion of the construction to validate compliance. All other samples and manufacturer material data will be recorded but will only be retained if different than that listed on the Construction Checklist.

4.3 Meeting Minutes

Staff shall maintain minutes for all Commission meetings which include the Members present, hearings conducted and votes taken. Minutes of deliberations should include all discussed issues and Commission comments. All motions and votes require Members to be named. Minutes are to be prepared in a timely fashion and forwarded to Members for review and approval at the earliest possible meeting. The minutes are posted to the website once approved.

Minutes shall be as detailed as needed to convey the deliberations and reasoning behind determinations. Executive Session Minutes are reviewed by the Commission Members at a meeting. Approval of these minutes should include directions as to whether the minutes are to be made public and if not, the related reason.

5. Violations

5.1 Historic Districts Act Violations

The Act authorizes the Commission to issue Notices of Violation. These usually occur either for work completed without a Certificate or for work performed which is not compliant with an approved Certificate. The Commission and Staff do not monitor approved work progress and the Property Owner is responsible for seeing that any work approved by the Commission is completed as specified. Information on potential violations may come from Staff, Commission Members, Building Division Staff, abutters, or others in the community.

5.2 2 Protocols for Addressing Violations

Violation protocol calls for Staff to investigate and confirm the nature of the violation, assemble photographic evidence, and present the information to the Commission for their review. If the Commission finds that the property is in violation of the Historic Districts Act, the Commission shall issue a notice to the Property Owner and the Building Division. The Owner will be requested to return the condition to its original appearance; cease construction work if applicable; and/or to make an application for approval of the change.

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If the Owner fails to apply or respond to the initial violation notice, subsequent notices shall be issued and the Commission shall evaluate if further action is appropriate. Violators of the Act are guilty of a criminal misdemeanor and are subject to fines.

Staff is to retain all records associated with the initial application, approvals, subsequent violation investigation and violation notices, as these may result in the Commission setting conditions for the acceptance of future applications. The Commission reserves the right to refuse further applications from properties with outstanding or unresolved violations.

The Staff and Commission are to maintain records of all ongoing violation actions and to review them with the Commission regularly.