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**Chapter 2: REVIEW AND DECISION-MAKING BODIES****2.1 SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES****2.1.1 Ordinance Administration and Review Bodies**

The following entities shall have roles in administering the provisions of this Ordinance:

- (A) Town Council;
- (B) Planning and Zoning Board;
- (C) Zoning Board of Adjustment;
- (D) Historic Preservation Commission;
- (E) Parks, Recreation, and Cultural Resources Advisory Board;
- (F) Public Art Advisory Board; and
- (G) Staff departments.

Information regarding membership and operating procedures for each of these entities may be obtained from the Town Code of Ordinances.

**2.1.2 Summary Table of Administration and Review Roles**

Table 2.1-1 summarizes the review and decision-making responsibilities of the entities that have specific roles in the administration of the procedures set forth in Chapter 3 and Chapter 4. The notes referenced in the last column are set forth at the end of the table. Other duties and responsibilities of the entities are set forth in the following sections.

**2.1.3 Review by Others**

Even though not referenced in Table 2.1-1, other boards, commissions, and/or committees may be asked to review some applications, including, but not limited to rezonings and development plans.

<b>TABLE 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES</b>								
<i>NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.</i>								
<b>Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.</b>								
<b>Review = Responsible for Review and/or Recommendation    Hearing = Public or Quasi-Judicial Hearing Required</b>								
<b>Decision = Responsible for Final Decision to Approve or Deny    Appeal = Authority to Hear and Decide Appeals</b>								
<b>Procedure</b>	<b>Section</b>	<b>Town Council</b>	<b>Planning and Zoning Board</b>	<b>Zoning Board of Adjustment</b>	<b>PRCR Advisory Board</b>	<b>HPC</b>	<b>Staff Departments</b>	<b>Notes</b>
Amendment to the Comprehensive Plan (Cosmetic)	3.2.1	Decision	-	-	-	-	Review/ Decision	[1]
Initial Adoption of or Amendment to the Comprehensive Plan (Substantive)	3.2.2	Hearing/ Decision	Review	-	Review	-	Review	[1]
Amendment to LDO Text	3.3	Hearing/ Decision	Review	-	-	-	Review	
Rezoning	3.4	Hearing/ Decision	Review	-	Review	-	Review	[5][10]
Accessory Use Permit	3.5	-	-	Appeal	-	-	Review/ Decision	
Permitted Use	3.6	-	-	-	-	-	Review	
Temporary Use	3.7	-	-	Appeal	-	-	Review/ Decision	
Special Use	3.8	-	-	Hearing/ Decision	-	-	Review	
Subdivision Plat	3.9	-	-	-	-	-	Review/ Decision	
Development Plan	3.9	-	-	Decision/ Appeal (some)	-	-	Review/ Decision (some)	[2][3][4][5][6]
Designation of Historic Landmark	3.27	Hearing/ Decision	-	-	-	Hearing/ Review	Review	
Designation of Historic District	3.27	Hearing/ Decision	Review	-	-	Review	Review	
Certificate of Appropriateness - Minor Works	3.27	-	-	Appeal	-	-	Review/ Decision	[13]
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<b>Procedure</b>	<b>Section</b>	<b>Town Council</b>	<b>Planning and Zoning Board</b>	<b>Zoning Board of Adjustment</b>	<b>PRCR Advisory Board</b>	<b>HPC</b>	<b>Staff Departments</b>	<b>Notes</b>
Certificate of Appropriateness - Demolition of Historic Structures	3.27	-	-	Appeal	-	Hearing/ Decision	Review	[13] [14]
Development in Flood Hazard Area	3.12	-	-	Appeal	-	-	Review/ Decision	
Grading Permit	3.13	-	-	Appeal	-	-	Review/ Decision	
Building Permit	3.14	-	-	-	-	-	Review/ Decision	[9]
Certificate of Occupancy	3.15	-	-	Appeal	-	-	Review/ Decision	
Sign Permit	3.16	-	-	Appeal	-	-	Review/ Decision	
Site-Specific Vesting Plan	3.17	Hearing/ Decision	-	-	-	-	Review	
Reimbursement Agreement	3.24	-	-	-	-	-	Review/ Decision	
Development Agreement	3.24	Hearing/ Decision	-	-	-	-	Review	
Minor Modification	3.19	-	-	Hearing/ Decision (some) Appeal	-	-	Review/ Decision (some)	
Variance	3.20	-	-	Hearing/ Decision	-	-	Review	[13]
Appeals from decisions of an administrative official, including fines and penalties	3.21	-	-	Hearing/ Decision	-	-	Review	[11] [13]
Reasonable Accommodation	3.25	-	-	Hearing/ Decision	-	-	Review	[13]
Zoning Compliance Permit	3.26	-	-	Appeal	-	-	Review/ Decision	[13]
Tree Clearing Certificate	3.22	-	-	Appeal	-	-	Review/ Decision	

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Procedure	Section	Town Council	Planning and Zoning Board	Zoning Board of Adjustment	PRCR Advisory Board	HPC	Staff Departments	Notes
Transportation Development Fees	7.11	-	-	Hearing/ Decision; Appeal	-	-	-	[7]
Mixed Use Center Sketch Plan	4.4.2	Decision	Review	-	-	-	Review/ Decision	[12]

<b>NOTES to Table 2.1-1:</b>	
[1]	The Parks, Recreation, and Cultural Resources Advisory Board reviews only those proposed amendments that involve the parks/recreation element of the Comprehensive Plan.
[2]	The Zoning Board of Adjustment and the Planning Director have final decision-making authority on development plans; see Section 3.9.
[3]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding development plans that are administratively approved by staff; see Section 3.9.
[4]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding applications for changes to approved development plans; see Section 3.9.
[5]	The Parks, Recreation, and Cultural Resources Advisory Board's review of development plans is limited to proposed dedications of land or fees-in-lieu of dedication.
[6]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding initial development plan applications that are approved by staff, and also requests for changes to approved development plans; see Section 3.9.
[7]	The Zoning Board of Adjustment makes the final decision on requests for individual assessments and hears appeals of assessments.
[8]	[Reserved]
[9]	Appeal of Building Permit related issues goes to the North Carolina Building Code Council.
[10]	The Parks, Recreation, and Cultural Resources Advisory Board reviews the recreation land dedication proposals associated with PDD rezonings.
[11]	The Zoning Board of Adjustment hears appeals related to development within the Flood Hazard Area and Grading Permits.
[12]	Mixed Use Center sketch plans may be reviewed by staff as defined in section 4.4.2.
[13]	Superior Court hears appeals of Zoning Board of Adjustment decisions.
[14]	Zoning Board of Adjustment review is in the nature of certiorari.

### **2.1.4 Membership and Procedures**

Detailed information on membership criteria and review body procedures for each of the review bodies is located within Chapter 2 of the Town Code of Ordinances.

(Ord. No. 04-007, 7-15-04; Ord. No. 04-011, 9-9-04; Ord. No. 06-009, 4-27-06; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2018-LDO-02, 8-9-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21)

## **2.2 TOWN COUNCIL**

### **2.2.1 Review and Decision-Making Responsibilities**

Without limiting any authority granted to the Town Council by State law or by other ordinances of the Town, the Town Council shall, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

## **2.3 PLANNING AND ZONING BOARD**

### **2.3.1 Review Responsibilities**

The Planning and Zoning Board shall have the review responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

### **2.3.2 Other Powers and Duties**

In addition, the Planning and Zoning Board shall have the following powers and duties, to be carried out at the direction of the Town Council:

To formulate and recommend to the Town Council the adoption or amendment of a Comprehensive Plan and other plans for the Town and its environs as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;

To review the terms of this Ordinance from time to time, as it deems appropriate, and to recommend to the Town Council any changes that the Board considers necessary to carry out plans in a coordinated and efficient manner;

To advise the Town Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments;

Such additional powers and duties as may be set forth for the Planning and Zoning Board elsewhere in this Ordinance and other ordinances of the Town or as may be recited by the Town Council.

(Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

## **2.4 ZONING BOARD OF ADJUSTMENT**

### **2.4.1 Review and Decision-Making Responsibilities**

The Zoning Board of Adjustment shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

**2.4.2 Other Powers and Duties**

The Zoning Board of Adjustment shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) To subpoena witnesses and compel production of evidence pursuant to the provisions of G.S. 160D-406(g); and
  - (B) Such additional powers and duties as may be set forth for the Zoning Board of Adjustment elsewhere in this Ordinance and other ordinances of the Town.
- (Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2021-LDO-01, 6-24-21)

**2.5 HISTORIC PRESERVATION COMMISSION****2.5.1 Review and Decision-Making Responsibilities**

The Historic Preservation Commission shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance, G.S. Chapter 160D, Article 9, Part 4, and the authority granted in Session Law 2007-66, House Bill 827 ratified June 7, 2007 by the General Assembly of the State of North Carolina.

**2.5.2 Other Powers and Duties**

The Historic Preservation Commission shall have the following additional powers and duties within the town's zoning jurisdiction, to be carried out in accordance with the terms of this Ordinance and G.S. Chapter 160D, Article 9, Part 4:

- (A) To undertake an inventory of properties of historical, pre-historical, architectural, and/or cultural significance.
- (B) To recommend to the Town Council, individual buildings, structures, sites, areas, or objects to be designated by ordinance as "historic landmarks," and areas to be designated by ordinance as "historic districts."
- (C) To recommend to the Town Council that 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.
- (D) To review and act upon proposals for alteration or demolition of designated landmarks; for alteration, demolition, or new construction within historic districts.
- (E) To cooperate with state, federal and other local governments in pursuing the purposes of this Section 2.5. The Town Council, or the Historic Preservation Commission when authorized by the Town Council, may 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.
- (F) To review National Register nominations for properties in the Town's zoning jurisdiction and provide a reasonable opportunity for public comment; and then submit to the State Historic Preservation Officer comments as to whether or not, in the commission's opinion, the property or district meets the National Register of Historic Places criteria.



- (G) To prepare and recommend the official adoption of a historic preservation element as part of the town's comprehensive plan at the request of the Town Council.
- (H) To 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.
- (I) To conduct educational programs with respect to historic properties and districts.
- (J) To negotiate at any time with the owner of a building, structure, site, area or object regarding its preservation when such action is reasonably necessary and appropriate.
- (K) To prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties, not inconsistent with G.S. Chapter 160D, Article 9, Part 4, designated as landmarks or within historic districts.

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2021-LDO-01, 6-24-21)

## **2.6 PARKS, RECREATION, AND CULTURAL RESOURCES ADVISORY BOARD**

### **2.6.1 Review and Decision-Making Responsibilities**

The Parks, Recreation, and Cultural Resources Advisory Board shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

### **2.6.2 Other Powers and Duties**

The Parks, Recreation, and Cultural Resources Advisory Board shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) To develop and implement the Parks, Recreation and Cultural Resources Master Plan and other park-related, plans, policies, and programs;
- (B) Upon request of the Town Council or a staff department, to review proposed amendments to this Ordinance, proposed rezonings of property under this Ordinance, and proposed development plans, and to make recommendations to the Town Council for final action thereon;
- (C) To report to the Town Council the recommendations of its various committees as they relate to Land Use and Development; additional powers and duties as may be set forth for the Board elsewhere in this Ordinance and other ordinances of the Town.

(Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

## **2.7 PUBLIC ART ADVISORY BOARD**

### **2.7.1 Review and Decision-Making Responsibilities**

The Public Art Advisory Board shall advise the Town Council on all matters related to public art, including the acquisition and placement of works of art as well as the maintenance, removal, relocation, or alteration of existing works of art in the Town's possession and perform all duties with respect to implementing a public art program in Cary, North Carolina.

**2.7.2 Other Powers and Duties**

The Public Art Advisory Board shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) Review and make recommendations regarding proposed gifts of public art to the Town of Cary, as well as loans and long term exhibitions of public art on Town-owned property;
- (B) Based on recommendations brought forward by the Program Staff, periodically review and recommend changes to the Public Art Ordinance, guidelines, policies, and procedures.

**2.8 STAFF DEPARTMENTS****2.8.1 Review and Decision-Making Responsibilities**

Town staff departments shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance. The departments and agencies also shall have such additional powers and duties as may be set forth elsewhere in this Ordinance and other ordinances of the Town.

**2.8.2 Development Review Committee**

The Development Review Committee is composed of multiple Town staff departments working together to render decisions on applications as a single decision-making body. The Town staff departments with review and decision-making responsibilities under this Ordinance include, but are not necessarily limited to, the: Planning, Administration, Transportation and Facilities, Inspections and Permits, Fire, Parks Recreation and Cultural Resources, Public Works, and Utilities Departments.

**2.8.3 Conflicts of Interest**

Pursuant to G.S.160D-109, no staff member shall make a final decision on an administrative decision required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

Pursuant to G.S. 160D-1108, no member of the inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, unless the staff member is the owner of the building. No member of the inspection department shall engage in any work that is inconsistent with their duties or with the interest of the Town. Specific examples of conflicts of interest are detailed in G.S. 160D-1108.

(Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)