

Article 12: Administration and Enforcement

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Section 12.1 Zoning Administrator

It shall be the duty of the duly appointed Zoning Administrator to administer, interpret and enforce all provisions of this ordinance. In executing these duties, the Zoning Administrator shall be responsible for the following duties:

- (a) To issue interpretations of this Ordinance upon request.
- (b) To issue zoning permits, certificates of appropriateness, certificates of occupancy and other approvals required by this Ordinance where the requirements of this Ordinance have been met.
- (c) To accept and examine all applications for subdivision, construction, land use or reuse.
- (d) To accept, review and prepare reports for the Board of Zoning Appeals' consideration of applications for variances and special exceptions.
- (e) Accepting and processing appeals to the Board of Zoning Appeals and preparing the record for any appeal to circuit court.
- (f) Maintaining the current Official Zoning Map.
- (g) Maintaining public records related to zoning, including conditions of approval placed on a structure or use in conjunction with conditional, special exception or variance approval.
- (h) To enforce the provisions of this Ordinance, decisions of the BZA and conditions to which approvals of the BZA, Planning Commission and Town Council were made.
- (i) To conduct inspections of buildings, structures and use of land to determine whether a violation of this ordinance has occurred.
- (j) To notify property owners of identified violations, order action(s) to correct them or discontinuances thereof, and take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.
- (k) To manage files of any and all matters referred to him/her and execute any and all reports the Town Council may require.
- (l) To perform such other duties assigned by Ordinance, Mayor or Council, or Town Administrator.
- (m) To maintain an inventory of buildings and structures designated as being within the Historic District pursuant to Article V, Section 1.

§ 12.1.2 Appeal of a Decision by the Zoning Administrator

It is the intention of this Ordinance that all questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from a written decision of the Zoning Administrator. Such appeal must be filed within fifteen (15) business days of receipt of notice of such action. The Zoning Administrator's action will remain in effect during the appeal process.

Section 12.2 Planning Commission

The McClellanville Planning Commission is hereby established. The Planning Commission shall be composed of five (5) members, who shall be appointed by Town Council. In the appointment of members, consideration shall be given to their professional expertise, knowledge of the community and concern for the future welfare of the total community and its citizens. Members shall represent a broad cross section of the interests and concerns of the Town.

§ 12.2.1 Appointments and Terms

- (a) No member of the Planning Commission may hold an elected public office in the Town.
- (b) The terms of office of the members of the Planning Commission shall be staggered and for four (4) years, and until their successors are appointed and qualified.
- (c) Members of the Commission may be removed by Town Council for cause.
- (d) A vacancy occurring otherwise than through the expiration of the term shall be filled for the unexpired term by Town Council.

§ 12.2.2 Compensation

All members of the Commission shall serve without compensation.

§ 12.2.3 Officers and Meetings

- (a) The Commission shall elect a chairman and vice chair from among the appointed members, and a secretary who may be an employee of the Town or member of the Commission. The term of office for the chairman and vice-chair shall be for one (1) year, and the chairman and vice-chair shall be eligible for re-election.
- (b) The Commission shall appoint a secretary who may be an officer or employee of the Town.
- (c) The Commission shall hold a regular meeting at least once every quarter and shall convene at such other times at the call of either the Chairman of the Commission or at the request of the Mayor.
- (d) The Commission shall adopt rules for the transaction of business, and shall keep a record of its recommendations, transactions, findings and determinations, all of which shall be a public record.

§ 12.2.4 Powers and Duties

The Commission shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning or carry out the purposes of this Ordinance and of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as the same may, from time to time, be amended.

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- (a) It shall be the responsibility of the Commission to develop and maintain a planning process which will result in systematic preparation, continual re-evaluation and updating of elements considered necessary, critical and desirable to guide development and re-development within the Town. The planning process to be implemented by the Commission shall include those elements as set forth in S.C. Code, §6-29-510 (Supp.1998), as the same may, from time to time, be amended.
 - (1) The Commission shall review the Comprehensive Plan elements, as it deems necessary, but not less than once every five (5) years, to determine whether changes in the amount, kind or direction of development or other reasons make it desirable to amend the Plan. The Comprehensive Plan, and all elements thereof, must be updated at least every ten (10) years.
 - (2) Recommendation of the Comprehensive Plan or any element, amendment, extension or addition must be by resolution of the Commission, carried by the affirmative votes of at least a majority of the entire membership. Such resolution must refer expressly to maps and other descriptive matter intended by the Planning Commission to form the whole or element of the recommended plan and the action taken must be recorded in the official minutes of the Planning Commission meeting.
 - (3) A copy of any recommended plan or element of it must be transmitted to Town Council and all other legislative and administrative agencies affected thereby.
- (b) It shall be the duty and responsibility of the Commission, and the Commission shall have the power, to determine, consider, study or recommend any issues required by this Ordinance to be brought before it, as well as any other matters as Town council may, from time to time, assign to it.
- (c) The Commission shall submit a report to Town Council on any issues required by this Ordinance to be brought before it as well as any other matters as Town Council may assign.
- (d) All public officials shall, upon request, furnish to the Commission, within thirty (30) days, such available information as it may require for its work.
- (e) The Planning Commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.
- (f) The Commission may accept and use gifts for the exercise of its functions.
- (g) The Commission, its members, officers and employees, in the performance of their functions, may enter upon any land with the consent of the property owner or after ten (10) days written notice to the owner of record, make any examinations and surveys and place and maintain necessary monuments and markers thereon, provided that the commission shall be liable for any injury or damage to the property resulting therefrom.
- (h) In the discharge of its responsibilities, the Commission has the power and duty to periodically prepare and revise plans and programs for the development and redevelopment of areas within the Town. As a means of implementing these plans and programs, the Commission may prepare and recommend for adoption by Town Council:

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- (1) Zoning Ordinances and Ordinance amendments, including zoning district maps and appropriate revisions thereof;
- (2) Regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of these regulations adopted;
- (3) An official map and appropriate revisions showing the exact location of existing or proposed public streets, highways, utility rights-of-way, and public building sites together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within the Town;
- (4) A landscaping ordinance setting forth required planting, tree preservation, and other aesthetic consideration for land and structures; and
- (5) A capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by Town Council prior to preparation of the capital budget and policies or procedures to facilitate implementation of planning elements.

Section 12.3 Board of Zoning Appeals

A five (5) member Board of Zoning Appeals is hereby established, whose members shall be appointed by Town Council.

§ 12.3.1 Appointments and Terms

- (a) Initial appointment of members of the Board of Zoning Appeals shall be as follows: two (2) members for a term of three (3) years, two (2) members for a term of two (2) years, and one (1) member for a term of one (1) year. Thereafter, terms shall be for overlapping terms of three (3) years each.
- (b) Vacancies shall be filled for unexpired terms in the same manner as the initial appointment.
- (c) The Town Council may remove any member of the Board for cause.
- (d) No member of the Board shall hold any other public office or position in the Town.
- (e) Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

§ 12.3.2 Officers, Meetings, Notices and Records

- (a) The Board shall elect one of its members as chairman, who shall serve for one (1) year or until re-elected or his successor is appointed and qualified.
- (b) The Board shall adopt rules and by-laws in accordance with this Ordinance and the South Carolina Code of Laws.
- (c) Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine provided the Board meet a minimum of once per calendar year for the election of officers and approval of minutes from its last meeting.

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- (d) All meetings of the Board shall be open to the public and public notice of all meetings shall be provided by publication in a newspaper of general circulation in the Town and on the Town's website. Public Hearings will be posted no less than 15 days in advance of the meeting date. Any meeting previously advertised that is rescheduled shall be noticed to the public via the Town's website no less than 72 hours in advance of the new meeting time.
- (e) The chair (or acting chair) may administer oaths and may compel the attendance of witnesses by subpoena.
- (f) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and keep records of its examinations and action, all of which must be filed in the office of the Town and be a public record.
- (g) The Board shall appoint a secretary who may be an officer of the Town or Board of Zoning Appeals.

§ 12.3.3 Powers and Duties of the BZA

The Board of Zoning Appeals shall have the following powers and duties:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination by the administrative official in the enforcement of this Ordinance.
- (b) To hear and decide appeals for a variance from the requirements of this ordinance when strict application of the provisions of this Ordinance would result in unnecessary hardship.
- (c) To permit uses by special exception, subject to the terms and conditions for such uses in § 12.3.6(e) of this Ordinance;
- (d) To remand a matter to an administrative official, upon motion by a party or the Board's own motion, if the BZA determines the record is insufficient for review; and
- (e) To hear any other matters as may be assigned to it by ordinances of the Town.

§ 12.3.4 Appeals

- (a) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality.
- (b) Such appeal shall be taken within fifteen (15) days of the decision, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board notice of appeal specifying the grounds thereof.
- (c) The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

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- (d) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal shall have been filed with him/her that by reason of facts stated in a certificate a stay would, in his/her opinion, cause imminent peril to life and property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of competent jurisdiction, on notice to the officer from whom the appeal is taken, on due cause shown.

§ 12.3.5 Variances

- (a) A variance may be requested by any property owner who feels that the strict application of zoning requirements in this Ordinance will cause them unnecessary hardship pursuant to the criteria for a hardship set forth in §6-29-800(A)(2)(a)-(d) of the SC State Code. §12.3.3(b)(1).
- (1) A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:
- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property; and
 - b. These conditions do not generally apply to other property in the vicinity; and
 - c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
- (2) The Board may not grant a variance, the effect of which would be:
- a. To allow the establishment of any use not otherwise permitted in a zoning district;
 - b. To extend physically a nonconforming use of land; or
 - c. To change the zoning district boundaries shown on the Official Zoning Map.
- (3) The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
- (b) A request for a Variance can be submitted anytime. Such request shall be made in writing and mailed or delivered to the Town of McClellanville Zoning Administrator, accompanied by application forms provided.
- (c) Application materials shall demonstrate why the Variance is justified in accord with the criteria for Variance in § 12.3.5(a) above.
- (d) The Board shall hold one or more public hearings, at which any party may appear in person, by agent or attorney, prior to taking action on a request for a variance.

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- (e) In granting any variance, the Board may attach to it such conditions regarding the location, character or other features of the proposed building, structure or use as the Board may consider advisable to protect established property values in the surrounding area, or to promote public health, safety, or generally welfare.

§ 12.3.6 Special Exceptions

- (a) The Board of Zoning Appeals may hear and decide upon requests for special exception approval only for those uses specifically listed as special exception uses in a particular zoning district.
- (b) A request for approval of a Special Exception use can be submitted anytime or may accompany an application for a zoning permit. Such request must be in writing and mailed or delivered to the Zoning Administrator.
- (c) A request for approval of a Special Exception use should include:
 - (1) A statement of justification as to why the proposed special exception use will not cause substantial injury to the value of other property in the neighborhood;
 - (2) A statement as to how the proposed use is to be designed, arranged, and operated in order to permit the development and use of neighboring property in accord with the applicable district regulations; and
 - (3) A visual depiction of the site and the use demonstrating how establishment of the requested special exception use shall comply with applicable district regulations of this Ordinance and address development conditions and the criteria for special exception uses below. Such visual depiction may be sketched on a recorded plat of the property or site where the special exception is proposed to operate.
- (d) The Board shall hold one or more public hearings, at which any party may appear in person, by agent or attorney, prior to taking action on a special exception use approval request. In considering a special exception application, the BZA shall give the following factors reasonable consideration:
 - (1) Whether the proposed special exception use will result in the preservation or destruction, loss or damage of any physical, natural, scenic, archaeological or historic feature of significant importance.
 - (2) Whether the proposed special exception will contribute or promote the welfare or convenience of the public.
 - (3) The effect of the proposed special exception on groundwater supply.
 - (4) The effect of the proposed special exception on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
 - (5) Whether the proposed special exception use will provide desirable employment and enlarge the tax base by encouraging sustainable economic growth consistent with the Comprehensive Plan.
 - (6) Whether the proposed special exception will adequately provide for safety from fire hazards and have effective measures of fire control.

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- (7) Whether the proposed use has or will provide adequate utility, drainage, and other such necessary faculties.
- (8) The traffic expected to be generated by the proposed use, the adequacy of access and the vehicular and pedestrian circulation elements (both on and off site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety and efficient traffic movement.
- (9) The level and impact of any noise emanating from the site, including that to be generated by the proposed use, in relation to other uses in the immediate area.
- (10) The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
- (11) The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of the ordinance.
- (12) The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls and fences on the site and in the neighborhood.
- (13) The nature and extent of existing or proposed landscaping screening and buffering on the site and in the neighborhood.
- (14) The location, character and size of any outdoor storage.
- (15) The proposed designation and use of open space.
- (16) The proposed days/hours of operation.
- (17) The location and screening of parking and loading spaces and/or areas.
- (18) Any anticipated odors that may be generated by the uses on site.
- (19) Whether the proposed special exceptions employs sufficient measures to mitigate the impact of construction traffic on existing neighborhoods.
- (e) In approving a special exception, the Board of Zoning Appeals may impose such conditions, safeguards and restrictions upon the premises benefited by the special exception as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special exceptions upon other property in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional setbacks from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to safeguard the interest of the general public. The Board may require a guarantee or bond to ensure that conditions imposed will be complied with.
- (f) In conjunction with the Board's action to approve a special exception use, the Board shall make written findings certifying compliance with the criteria for a special exception in subsection (e) above and any other conditions and regulations applicable to the proposed use. If the Board denies approval of the request, it shall specify its reasons for such denial.

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- (g) The issuance of a permit for a special exception does not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by those codes and ordinances adopted by the Town including, but not limited to, a building permit, a certificate of occupancy, site development plan, subdivision approval and a zoning permit.
- (h) Unless a longer period of validity is specifically approved as a part of such application, no special exception permit shall be valid for a period longer than five (5) years from the date on which the special exception was granted, unless within such five (5) year period: (1) a building permit is obtained and the erection or alteration of a structure is started and diligently pursued, or (2) an occupancy permit is obtained and a use commenced; or 3) a zoning permit is issued. Such period of validity may be extended for good cause shown, by application to the body that approved the special exception.
- (i) As a condition of approval, a special exception permit may be granted for a specific period of time of less than five (5) years with expiration of the approval to occur at the termination of said period. In such case, an extension may be granted prior to expiration by the Board of Zoning Appeals, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special exception.

§ 12.3.7 Applications and Hearings

- (a) Each applicant for an appeal, variance or special exception shall, at the time of application, remit such fee as may be established, from time to time, by Town Council.
- (b) Public Notice. The Board shall fix a time for the hearing of the appeal or other matter referred to it within sixty (60) days of receiving an appeal or application, and give at least fifteen (15) days public notice of said hearing in a newspaper of general circulation in addition to posting on the Town's website, as well as due notice to the parties in interest, including owners of properties abutting the affected property, and decide the same within a reasonable time.
- (c) Posting of Properties. Properties addressed in a request for a variance or special exception use will be posted with a minimum of one sign, provided by the Zoning Administrator, of a size and location that is clearly visible from the abutting road/street, on all properties for which a request for Variance or Special Exception approval has been received.
 - (1) Such sign(s) shall cite the zoning ordinance section from which the variance is requested or the special exception use proposed and the zoning district in which it is located.
 - (2) Public hearing signs shall be posted a minimum of ten (10) days prior to the Board of Zoning Appeals meeting. Failure to comply with posting requirements will result in removal of the application from the Board's public hearing agenda and forfeiture of the applications fee. It is the responsibility of the developer/owner of the property owner to notify the Zoning Administrator of the need for a replacement any time the sign has been damaged or removed.

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- (3) All signs shall be removed within thirty (30) days of the final public hearing on a special exception use request.
- (d) At the hearing, any party may appear in person or by agent or by attorney.

§ 12.3.8 Decisions of the BZA

- (a) In exercising the previously listed powers, the Board may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, of the Administrative Official, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the circuit court having jurisdiction.
- (b) All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, which must be delivered to parties of interest by certified mail.
- (c) Contempt of Board. In case of contempt by any party, witness or other person before the Board, such Board may certify the fact of noncompliance to the circuit court of Charleston County and the judge of the court, either in term time or vacation, after hearing, may impose such penalty as the facts authorize or require.
- (d) A vested right to exercise application of a variance approved by the Board of Zoning Appeals shall be granted in accord with Section 6-29-1510 through 1550 of the SC State Code.
 - (1) The vested right is applicable to the site-specific development plan for the property as it exists at the time the variance is granted.
 - (2) A vested right for the site-specific development plan expires two years after vesting, unless or until the property applies for and Board of Zoning Appeals authorizes an annual extension of the vested right at the end of the original vesting period.
 - (3) The Board of Zoning Appeals may approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.
 - (4) Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations.

§ 12.3.9 Appeals from Decisions of the Board of Zoning Appeals

- (a) Any person who may have a substantial interest in any decision of the Board or any officer or agent of the Town may appeal any decision of the Board to the Court of Common Pleas for Charleston County, in accordance with the mandates of State Law, by filing with the Clerk of the Court a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the decision of the Board is mailed.

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- (b) A property owner whose land is subject of a decision of the Board of Zoning Appeals may appeal either to the circuit court as provided in § 12.3.9(a) or by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accord with §6-29-825 of the SC State Code, as amended.
- (c) Any notice of appeal and request for pre-litigation mediation must be filed within thirty (30) days after the decision of the Board is postmarked.

Section 12.4 Architectural Review Board

In order to implement the provisions of Article V of this Ordinance, there is hereby established the McClellanville Architectural Review Board (ARB), hereinafter referred to as "the Board", consisting of five (5) members with at least three (3) of the members being residents of the Town of McClellanville.

§ 12.4.1 Appointments

Members of the Architectural Review Board shall be appointed by the Town Council.

- (a) Members of the Board shall assume their duties and be installed at the first regular meeting of the Board following their appointment.
- (b) All of the members shall have demonstrated interest, competence or knowledge in historic preservation, and shall be able to prepare for and attend Board meetings. Members shall be appointed from the fields of engineering, law, real estate, banking, archeology, architecture, history, planning, and related fields to the extent that such professionals are residents of the Town of McClellanville and are available to serve.
- (c) No appointed member shall hold any other municipal office.
- (d) Members shall serve without compensation, except for authorized expenses attendant to the performance of their duties.

§ 12.4.2 Terms of Office

- (a) The term of office for each member of the Board shall be two (2) years.
- (b) Memberships shall be identified by place numbers one through five. Terms of office in the three odd-numbered places shall expire in odd-numbered years and those in even-numbered places shall expire in even-numbered years; provided, however, that each member of the Board shall serve until his successor is appointed and duly installed. Any individual who has served as a member of the Board for three (3) consecutive terms shall not be eligible for appointment to another term until one (1) year has elapsed, provided, however, that a term of less than one (1) year shall not be counted in determining eligibility for reappointment.
- (c) Removal. Any member of the Board may be removed from membership by the Town Council for any other cause.
- (d) Appointment to Fill a Vacancy. In the event any seat on the Board becomes vacant due to removal, resignation or any other cause, Town Council shall appoint a replacement within sixty (60) days for the remainder of the unexpired term.

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§ 12.4.3 Officers

The Board shall elect from its membership a chairman and vice-chairman who shall serve for one (1) year or until their successors are elected. No member shall be elected chairman or vice-chairman for more than three (3) consecutive years. The Board shall appoint a secretary, who may be an officer or employee of the Town. The secretary shall not be a voting member of the Board.

§ 12.4.4 Powers and Duties of the ARB

- (a) It shall be the duty of the Board to promote the purposes and objectives of this ordinance, and to review plans and applications, as hereinafter provided, for all construction within the Historic District and Highway Commercial District, including modifications to existing buildings, demolitions (in part or in whole), and construction of new buildings and the moving of buildings into, out of, or within the Districts. The Board shall have the power to approve or deny approval of such applications for Certificates of Appropriateness in accordance with prescribed procedures and guidelines.
- (b) Survey and inventory Historic Properties. The Board, with the approval of Town Council, may authorize ongoing surveys and inventories of historic properties, pursuant to such standards and guidelines as may be authorized by Town Council.
- (c) The Board may recommend to Town Council the creation of additional historic districts, or the addition of individual buildings and sites to the current historic district.
- (d) Nominations to the National Register. The Board may review and recommend to the State Historic Preservation Officer (SHPO) the nomination of buildings, structures, sites, objects or districts to the National Register of Historic places. The Board shall not have the authority to nominate the properties directly to the National Register; only the State Board of Review and the SHPO shall have the final review authority.
 - (1) When considering whether a building, structure, site, object or district should be nominated, the Board should apply the following National Register criteria:
 - a. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association; and
 - b. Are associated with events that have made a significant contribution to The broad patterns of our history; or
 - c. Are associated with the lives of persons significant in our past; or
 - d. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - e. Have yielded, or may be likely to yield, information important in prehistory or history.

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- (2) The Board shall conduct first review and evaluation of all proposed National Register nominations within its jurisdiction, including any which may have been submitted to the State Historic Preservation Office, and shall forward all review nominations to the SHPO with recommendations for consideration by the State Board of Review.
- (3) Property owners will be notified when their property is nominated to the National Register and that there will be notification for all nominations to be considered by the Board.
- (e) The Architectural Review Board is designated to fulfill the duties of the Town's Design Review Board for the purposes of conducting design review required in Article V of this Ordinance, and in such context, may be referred to as the Design Review Board.
- (f) The Board may, at its discretion, enlist the professional services of an architect, landscape architect, or planner to conduct a preliminary review of all applications for development within the Town for conformance with the requirements of this ordinance and render advisory assistance as requested by the Board. The Town may elect to charge a fee to cover costs incurred for these services.

§ 12.4.5 Meetings, Hearings and Notices

- (a) Regular Meetings. Regular meetings for transaction of business of the Board shall be held with such frequency as the Board may determine, but not less than one time a year.
- (b) Annual Organizational Meeting. The first regular meeting following the beginning of the Town's fiscal year shall be designated the Annual Organizational Meeting for the election of officers and organization of the Board.
- (c) Special Meetings. Special meetings of the Board may be held at any time upon the call of the chairman.
- (d) Public Meeting. Prior to taking any final action with respect to a Certificate of Appropriateness, the Board shall hold a public meeting.
- (e) Public Notice. All meetings of the Board shall be open to the public and notice of the time and place, or any changes to a previously scheduled meeting date, shall be given to the public by posting on the Town's website. Notice of hearings regarding an application shall be posted no less than 15 days prior to the scheduled meeting.

§ 12.4.6 Rules and Records

- (a) The Board shall adopt rules of procedure and shall keep records or minutes of its recommendations, findings, approvals and denials, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the Board and be a public record.
- (b) A quorum, consisting of a majority of the total membership of the Board, shall be required for the transaction of business.

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- (c) Decisions or actions by the Board shall be by concurring majority vote of qualified members present and voting. Proxy votes will not be permitted.
- (d) Contempt of Board of Review. In case of contempt by any party, witness or other person before the Board, such Board may certify the fact of noncompliance to the circuit court of the county wherein such contempt occurs and the judge of the court, either in term time or vacation, after hearing, may impose such penalty as the facts authorize or require.

§ 12.4.7 Quarterly Report

The Board shall make a quarterly report to the Town Council citing applications brought before the Board and the approvals, denials or other resolutions issued by the Board. This report will be on public record and will be kept with the minutes of the Town Council meetings at the Town Hall.

§ 12.4.8 Application Review Process

- (a) Pre-Application Review. Prior to submitting a complete application for a Certificate of Appropriateness, the owner of the property or an authorized agent or representative of the owner shall provide drawings and outline specifications for the proposed work, for review and informal discussion with the ARB or its designee. The purpose of this review shall be to acquaint the owner or his representative with standards of appropriateness of design that are required of all proposed developments.
 - (1) The required pre-application review shall not require formal application but shall require notice to be given to the chairman of the Architectural Review Board at least ten (10) days before the date of the meeting at which the preliminary drawings are to be discussed.
 - (2) All documents submitted at this meeting shall be in triplicate, except for scale models, which will be returned to the applicant after the review.
 - (3) If the ARB finds the proposal to be generally consistent with the standards set forth in subsection (d) below, it may grant permission for the applicant to proceed with preparation of a complete proposal.
- (b) Documents to be submitted. Application for a Certificate of Appropriateness shall be filed with the Zoning Administrator, accompanied by three (3) copies of each of the following
 - (1) Drawings, including plans and exterior elevations, drawn to scale with sufficient detail to show, insofar as they relate to exterior appearances, the architectural design of buildings.
 - (2) Specifications or other information describing proposed materials and textures.
 - (3) Plot, plan, or layout site showing all improvements affecting appearances such as walls, walks, accessory buildings, signs, lights, excluding security and floodlights, and other elements.
 - (4) Photographs of the site location, showing contiguous properties and streetscapes, and in cases involving an existing building, all sides of the building to be considered.
 - (5) Any processing fees as adopted by Town Council.

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- (c) Review of Application. The Zoning Administrator shall cause said data to be made available to the ARB members within five (5) days of receipt. Upon receipt of a properly completed application for a Certificate of Appropriateness, the ARB shall conduct its official review of the proposal at its next regularly scheduled meeting, or within thirty (30) days, whichever shall first occur. If it is found that the applicant has submitted a complete application for the initial review and the ARB has found that the preliminary drawings and other data are sufficiently clear and explicit, and that the proposal is consistent with the standards set forth in (d) below, it may grant both preliminary and final approval at the same meeting.
- (d) Review Criteria. In reviewing proposals, the ARB shall use as a guides the Secretary of the Interior Standards for Rehabilitation and the Town of McClellanville Design Guidebook as may, from time to time, be amended.
- (1) The ARB shall make no requirements other than for the purpose of preventing developments which are not in harmony with the prevailing character of the Historic District or which are obviously incongruous with this character.
 - (2) The ARB shall not consider the uses or proposed uses of buildings, interior arrangements, interior design or building features which are not subject to public view.
 - (3) In acting upon an application, the ARB shall consider the general design, the character and appropriateness of design, scale, arrangement, texture and materials of the structure in question, the relationship of such elements to similar features of structures in the immediate surroundings and impacts on the streetscape.
 - (4) In acting upon an application to demolish, or demolish in part, or remove a portion of an existing structure, the ARB shall consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, and the effects, if any, that such demolition or removal would have on the historic significance of the structure.
 - (5) Among other grounds for considering a design inappropriate are the following: arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors, a multiplicity or incongruity of details resulting in a restless and disturbing appearance, the absence of unity and coherence in composition not in consonance with the dignity and character of the present structure in the case of repair, remodeling, or enlargement of an existing structure or with the prevailing character of the neighborhood in the case of a new building, and the historic accuracy of materials proposed to be used.

§ 12.4.9 ARB Decisions

- (a) Approval. When an application is reviewed and approved by the ARB, a Certificate of Appropriateness shall be issued immediately after such action and a report shall be transmitted to the Zoning Administrator stating the basis upon which such approval was made. When a Certificate of Appropriateness is issued, written notification shall be provided to the applicant and a copy thereof shall be retained by the Zoning Administrator.

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- (b) Denial. When an application is reviewed and it is the judgment of the Architectural Review Board that the proposed moving of a structure, demolition or partial demolition, alterations and/or additions to existing structures or erection of new structures is in violation of specific criteria stated in the design review guidelines for the Historic District, the applicant shall be denied a Certificate of Appropriateness. The Architectural Review Board shall state its reasons for disapproval by notifying the applicant in writing. In notifying the applicant of its denial, the ARB may give advice to the applicant and make recommendations regarding appropriateness of design, arrangement, texture and material of the property involved that may increase the project's consistency with the criteria.
- (c) Subsequent Modifications. Subsequent to approval of a Certificate of Appropriateness, any modification in design details must be reconsidered by the Board prior to the issuance of an occupancy permit by the Zoning Administrator, unless the record of proceedings of the Board reveal that, at the time of its consideration of the project, the Board identified acceptable design alternatives, or the Zoning Administrator determines the proposed modification is insubstantial in relation to the scope of the entire project. For purposes hereof, "insubstantial" means the modification of the building or project detail lacks enough material form or substance to change the overall compatibility or scope of the project. Under no circumstances may a modification to height, scale, mass, siting or shape be deemed insubstantial.

§ 12.4.10 Appeal to the Architectural Review Board.

Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town in the administration of the historic district review process. The appeal must be taken within thirty (30) days of the decision by such officer, by filing with the officer from whom the appeal was taken and with the Board notice of appeal specifying the grounds of it. The officer from whom the appeal was taken immediately shall transmit to the Board all the papers constituting the record upon which the action appealed was taken.

- (a) Upon a motion by a party or the board's own motion, the ARB may remand a matter to an administrative official if the Board determines the record is insufficient for review. A party's motion for remand may be denied if the Board determines that the record is sufficient for review.
 - (1) The ARB must set a rehearing on the remanded matter without further public notice for a time certain within sixty (60) days unless otherwise agreed to by the parties.
 - (2) The Board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing and notice of the rehearing shall be mailed to these persons prior to the rehearing.
- (b) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal was taken certifies to the Board, after the notice of appeal has been filed with him/her, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the Board or a Court of Record on application, on notice to the officer from whom the appeal was taken, and on due cause shown.

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- (c) The Board shall fix a date for the hearing of the appeal and give public notice of it, as well as due notice to the parties in interest, and decide the same within thirty (30) days from the date such appeal is heard. At the hearing, any party may appear in person or by agent or by attorney.

§ 12.4.11 Appeal of ARB's Decision to Courts

A person who may have a substantial interest in any decision of the Architectural Review Board or any officer, or agent of the Town, may appeal from any decision of the ARB to the Circuit Court in and for Charleston County by filing with the Clerk of Court a petition, in writing, setting forth plainly, fully and distinctly why the decision is contrary to law.

- (a) A property owner whose land is the subject of a decision of the Architectural Review Board may appeal either:
- (1) As provided above; or
 - (2) By filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with §6-29-915 of the SC Code of Laws, as amended.
- (b) A notice of appeal and request for pre-litigation mediation shall be filed within thirty (30) days after the decision of the Architectural Review Board is postmarked.

Section 12.5 Tree Committee

The McClellanville Tree Committee is hereby established. The Tree Committee shall have a minimum of five (5) members, who shall be appointed by Town Council. In the appointment of members, consideration shall be given to their professional expertise, knowledge of the community and concern for the future welfare of the total community and its citizens. Tree committee members shall include a registered forester or certified arborist as well as at-large members representing a broad cross section of the interests and concerns of the Town. If a registered forester or certified arborist is not available to serve on the Committee, the Town may contract for consulting services with a certified arborist or with an urban forester of the SC Forestry Commission to serve in an advisory capacity to the Committee.

§ 12.5.1 Appointments and Terms

- (a) No member of the Tree Committee may hold an elected public office in the Town.
- (b) The terms of office of the members of the Tree Committee shall be staggered and for four (4) years or until their successors are appointed and qualified.
- (c) Members of the Committee may be removed by Town Council for cause.
- (d) A vacancy occurring otherwise than through the expiration of the term shall be filled for the unexpired term by Town Council.

§ 12.5.2 Compensation

All members of the Committee shall serve without compensation. The Town, upon receipt of appropriate receipts and documentation, shall reimburse reasonable expenses incurred by members and approved by the Committee.

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§ 12.5.3 Officers and Meetings

- (a) The Committee shall elect a chairman from among the appointed members. The term of office for the chairman shall be for one (1) year, serving no more than four (4) consecutive years. The Chairman shall be responsible for setting each meeting's agenda and for conducting the meetings. In the absence of the Chairman, the Secretary shall carry out the responsibilities of the Chairman.
- (b) The Committee shall elect a secretary to serve a term of one (1) year. The Secretary shall serve no more than four (4) consecutive years. The Secretary shall be responsible for keeping records of the proceedings and events of the Tree Committee, publicizing meetings in the local newspaper or town newsletter, distributing meeting notices to members, and recording minutes of each meeting. In the absence of the Chairman, the Secretary or a member he/she designates shall carry out the responsibilities of the Chairman.
- (c) The Committee shall hold a regular meeting at least once every quarter, public notice being given for each meeting no less than seven (7) days prior to each regularly scheduled or special meeting in the local newspaper or town newsletter.
- (d) Members absent for more than three (3) consecutive meetings may be replaced by recommendation of the Tree Committee to the Mayor and Town Council.
- (e) The Tree Committee shall adopt rules for the transaction of business, and shall keep a record of its recommendations, transactions, findings and determinations, all of which shall be a public record.

§ 12.5.4 Powers and Duties

The responsibilities of the Tree Committee shall include, but not be limited to, the following:

- (a) Advising the Town in all tree-related matters.
- (b) Serving as a source of information about proper tree maintenance techniques and community tree management policies.
- (c) Making recommendations for public tree establishment, maintenance, protection, and removal policies and publishing a manual for appropriate tree species, quality, placement, and spacing, as well proper as maintenance techniques for public trees within the town.
- (d) Developing and maintaining a list of trees recommended and not recommended for planting in the Town of McClellanville.
- (e) Investigating and applying for donations and grant funding from public and private sources for community forestry related projects.
- (f) Providing regular community tree care educational programs and information about the value of trees and proper tree maintenance to citizens.
- (g) Reviewing the Tree Ordinance and providing recommendations for amendments thereto to the Planning Commission as needed.

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- (h) Preparing an annual report to Town Council that includes the past year's accomplishments and planned activities.
- (i) Maintaining the Town's Tree City USA status by submitting an application for this designation annually by December 15th to the SC Forestry Commission for approval and forwarding to the National Arbor Day Foundation, and ensuring that the Town:
 - (1) Conduct an annual Arbor Day Celebration on or around Arbor Day in South Carolina, the 1st Friday in December in the Town. An Arbor Day Proclamation shall be created and included as part of the celebration.
 - (2) Continues to have a tree ordinance that is reviewed, and revised if necessary, at least once every two (2) years.
 - (3) Continues to have an active Tree Committee, appointed by Town Council, responsible for advising the Town on tree-related matters.
 - (4) Spends at least \$2 per capita on public tree management, including tree management, planning, education, tree establishment, maintenance, protection and removal, and any and all other maintenance or management activities.
- (j) Seeking to attend tree related educational and training events on an annual basis.
- (k) Maintaining a current inventory of all public trees. The inventory data gathered and recorded for each tree shall include, at a minimum, the following information:
 - (1) Location (address or latitude/longitude coordinates)
 - (2) Tree species.
 - (3) DBH/CBH.
 - (4) Condition.
 - (5) Maintenance needs.
- (l) Developing an annual work plan for the management of public trees utilizing the tree inventory information. The work plan shall contain the following plans and schedules:
 - (1) Tree planting.
 - (2) New tree maintenance including mulching, irrigation, and young tree training pruning.
 - (3) Tree pruning.
 - (4) Tree mulching.
 - (5) Tree removal.

Section 12.6 Violations and Enforcement

The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land comply with the provisions of this Ordinance. If the Zoning Administrator shall find that any one of the provisions of this Ordinance is being violated, he/she

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shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

§ 12.6.1 General Provisions

- (a) Any building or structure erected contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or the provisions of any approval granted by the Town under this Ordinance shall be a violation of this Ordinance and the same is hereby declared to be unlawful.
- (b) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Ordinance or the provisions of any approval granted by the Town under this Ordinance shall be subject to the enforcement provisions of this Section.
- (c) Whenever a violation occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator.
- (d) The Zoning Administrator shall record such complaint, investigate, and take action thereon as provided by this Ordinance.
- (e) Upon his becoming aware of any violation, the Zoning Administrator shall serve notice of such violation on the person committing or permitting the same, and the landowner, and if such violation has not ceased within such reasonable time as the Zoning Administrator has specified in such notice, he shall institute such action as may be necessary to terminate the violation.
- (f) In addition to the remedies provided in this Section, the Zoning Administrator may initiate injunction, mandamus, abatement or any other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use or to correct or abate the violation or to prevent the occupancy of the building, structure, or land.

§ 12.6.2 Remedial Actions.

In order to correct a violation of this Ordinance, or to mitigate the adverse impacts resulting from violation of this Ordinance, the Zoning Administrator has the discretion to select among the following courses of action, as appropriate under the circumstances. The intent of these steps is to allow the non-compliance to be eliminated or mitigated without necessitating legal action by the Town.

- (a) Order a discontinuance of the illegal action;
- (b) Issue a “stop order,” per SC Code of Laws §6-29-950(A), requiring cessation of construction, or of an unauthorized activity or use, pending the submission and approval of a building permit, site development plan or drainage plan, as provided for in this Ordinance;
- (c) Withhold any or all zoning permits, building permits, or other permits or certificates of occupancy for any development that does not comply with the provisions of this Ordinance. Such permits and certificates will not be granted to the applicant until the development is brought into compliance with these ordinances;

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- (d) Require the developer or owner to take specific actions to bring the construction or activity in question into compliance with this Ordinance;
- (e) Where compliance is not practical, require the developer or owner to take specific actions that will minimize the extent and impacts of the non-compliance so long as this will not work an undue hardship on adjoining or nearby property and uses;
- (f) Where the severity of the situation warrants, require the removal of illegal structure, additions and uses;
- (g) Require the developer or owner to take appropriate actions to mitigate the adverse impacts caused by, or associated with, the violating action or use; and/or
- (h) Require the developer or owner to otherwise make reasonable restitution for damage caused or expenses incurred as a result of the violation of this Ordinance; and
- (i) Collect any fees or costs incurred by the Town in taking remedial action.

§ 12.6.3 Judicial Action

In case any building or structure is erected, constructed, reconstructed, altered, maintained or used, or any land is used in violation of this ordinance or of any regulation or amendment thereof, the governing body of the Town, in addition to other remedies provided by law, may institute an injunction, abatement or any appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use. Injunctive relief is especially warranted when land-altering activity is commenced, or is about to commence, contrary to the provisions of this Ordinance.

§ 12.6.4 Municipal Court Action

Any violation of the McClellanville Zoning Ordinance is unlawful and any person violating this Ordinance shall be deemed guilty of a misdemeanor per SC Code of Laws §6-29-950 and upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or imprisonment for not more than thirty (30) days or both. Each day such violation shall continue shall be deemed a separate offense.

Section 12.7 Fees

The Town of McClellanville may impose reasonable fees for the processing of any application before the Board of Zoning Appeals, Architectural Review Board or Design Review Board to offset associated costs of processing the application.