

Chapter 42

HISTORIC PRESERVATION

Article I. In General

Secs. 42-1--42-18. Reserved.

Article II. Historic Landmark Commission

Sec. 42-19. Established.

Sec. 42-20. Powers and Authority.

Sec. 42-21. Agreements between commission and owners of registered landmarks.

Sec. 42-22. Commission notification of assessor.

Sec. 42.23. Coordination with other entities.

ARTICLE I.

IN GENERAL

Secs. 42-1--42-18. Reserved.

ARTICLE II.

HISTORIC LANDMARK COMMISSION*

* State Law References: Historic landmarks commission, W Va. Code §8-26A-4 et seq.

Sec. 42-19. Established.

The historic landmark commission shall:

(1) Be composed of nine members appointed by the town council in the following manner:

a. The nine members shall have demonstrated interest in or background in, historic preservation or history related disciplines (e.g. history, architecture, archeology, architectural history, geography, real estate, art history, etc.);

b. No fewer than five members shall be appointed from town/residents and/or property owners. The remainder of the members may be drawn from residents and/or property owners of Morgan County for a term of three years.

(2) Notify the town of any vacancy in the membership of the historic landmarks commission and the vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(3) Not receive any salary for their services as commissioners, but may be reimbursed for all reasonable expenses actually incurred in the performance of their duties, which have the prior approval of the commission.

(4) Select one of their members as chairperson and one of their members as secretary, who shall keep accurate records of the proceedings of the commission.

(5) Fix a time and place for holding regular meetings, and unless changed by a unanimous vote of the commission shall meet at least a minimum of four times per year. Special meetings of the commission may be called by the chairperson or by at least two members upon written request to the secretary. The secretary shall send notice of any special meeting, including the time, date and meeting location, at least two days in advance of such a special meeting. However, written notice shall not be required if the date, time and meeting location has been fixed at a regular meeting or if all members are in attendance at the special meeting.

(6) Not take any action unless a majority of the members at a properly constituted regular or special meeting. A majority of the members shall constitute a quorum.

(7) Count the vote of each member thereof equally in all matters which come before the commission.

(8) File for public record with the clerk of the town, minutes of all meetings, within 60 days of the date such meeting was held.

(9) Be authorized and empowered within the limits of funds available thereof to employ assistants, technical personnel, consultants, and such other employees as are necessary to discharge duties and responsibilities hereafter set forth.

(Ord. No. 000-10, art. I, 9-15-2000)

Sec 42-20. Powers and authority.

The historic landmark commission shall have plenary power and authority within the jurisdictional limits of the town, and within the limits of available funds to:

(1) Make a survey of, and designate as historic landmarks, buildings, structures, sites, objects, and districts which constitute the principle historical and architectural sites which are of local, regional, state or national significance. No building, structure, site or object shall be deemed to be historic unless it has been prominently identified with or best represents some major aspect of or ideals related to the history of the locality, region, state or nation. In the case of buildings or structures which are designated, they shall embody

the principal or unique features of an architectural type, demonstrate the style of a period of our history or method of construction, serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked, or has significance in current times;

(2) Prepare a register of buildings, structures, sites, objects or districts which meet the requirement of subsection (1) of this section, publish lists of such properties and, with the consent of the property owner, inspect such properties from time to time and publish a register thereof from time to time setting forth appropriate information concerning the registered buildings, structures, sites, and objects;

(* **Review applications for certificates of appropriateness and grant or deny the same in accordance with section 42-X of this ordinance in accordance with §8-26A-7;**

(3) With the consent of the property owner, certify and mark with appropriately designated markers, buildings, structures, sites, objects, and districts which it has registered;

(4) Establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed;

(5) Acquire by purchase, gift or lease, and administer registered landmarks and easements and interest therein, both real and personal;

(6) Lease or sell property so acquired under terms and conditions designed to ensure the proper preservation of the landmark in question;

(7) Establish historic districts for registered landmarks, utilizing the same guidelines set forth in subsection (1) of this section, and designate the area thereof by appropriate markers;

(8) Identify historic districts for registered landmarks, and aid and encourage the **Town of Bath** ~~county or municipality in which the district or landmark is located~~ to adopt rules and regulations for the preservation of architectural values;

(9) Prepare and place historical markers on or along the highway or street closest to the location which is intended to be identified by such marker;

(10) Seek the advice and assistance of individuals, groups, and departments or agencies of government who are conducting historic preservation programs and coordinate the same insofar as possible;

(11) Seek and establish gifts, bequests, endowments, and funds from any and all sources for the accomplishment of the functions of the commission;

(12) Adopt rules and regulations concerning the operation of the commission, the functions and responsibilities of its officers, employees assistants, and other personnel, and such other matters as may be necessary to carry out the purpose of this article; and

(13) Adopt such other rules and regulations as may be deemed necessary to effectuate the purpose of this article but no such rules and regulations shall be inconsistent with the provisions of any plan or any planning commission of ~~the Town of Bath a municipality or county.~~

(Ord. No. 000-10, art. II, 9-15-2000)

Sec. 42-21. Agreements between commission and owners of registered landmarks.

Whenever the historic landmark commission, with the consent of the property owner, certifies property ~~[this sentence doesn't make sense and seems to be missing wording between "property" and "commission"]~~ commission finds are reasonable and are calculated to perpetuate and preserve the features which led it to designate such property as an historical landmark. All such agreements between the commission and the property owners shall be in writing, and when duly signed and acknowledged, shall be recorded in the office of the clerk of the county commission, and when so recorded shall be notification to the assessor of the restriction's therein set forth.

(Ord. No. 000-10, art. III, 9-15-2000)

Sec. 42-22. Commission notification of assessor.

When the historic landmarks commission establishes an historic district, it shall notify the assessor of the fact such establishment and the boundaries of the district, together with the restrictions which are applicable to the properties located in such districts which have been mutually agreed upon between the commission and the owners of property within the district. The agreement shall be recorded in the same manner as the recordation of agreements between the commission and owners of designated landmarks. The assessor shall take such factors into consideration in assessing the properties therein.

(Ord. No. 000-10, art. IV, 9-15-2000)

Sec. 42-23. Coordination with other entities.

The state historical society and the state division of culture and history shall cooperate and coordinate activities with the historic landmark commission, with the view of developing a unified program for the identification, study, preservation, and protection of all historic buildings, structures, sites and objects in the town.

(Ord. No. 000-10, art. V, 9-15-2000)

Sec. 42-XX. Certificates of appropriateness; scope of review; standards of review; review procedures, variances, appeals.

The commission shall exercise authority to issue a certificate of appropriateness to regulate new construction, alteration, removal or demolition of buildings, sites, or structures within an historic district or individually designated as an historic landmark the commission shall have plenary power and authority to regulate such properties, according to the following provisions;

No private building, site or structure shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission, except as otherwise provided by the governing body in the ordinance or order establishing such commission or as provided by rules, regulations, policies, procedures and standards adopted and published by said commission. For the purposes of this article, "exterior architectural features" shall include such portion of the exterior of a structure as is open to view from a public street, way or place. Similarly, if earthworks of historical or archeological importance exist in the historic district there shall be no excavating or moving earth, rock or subsoil or any development upon or around earthworks without a certificate of appropriateness. The style, material, size and location of outdoor advertising signs and bill posters shall be under the control of such commission.

(1) The commission may request such plans, elevations, specifications, drawings, photographs and other information as may be reasonably deemed necessary by the commission to enable it to make a determination on the application for a certificate of appropriateness.

(2) The commission shall hold a public hearing upon each application for a certificate of appropriateness. Notice of the time and place of said hearing shall be given to publication in a newspaper having general circulation in the area served by the governmental unit, provided it has one, at least seven days before such hearing, and by posting such notice on or near the main entrance of any hall or room where the commission usually meets. The commission shall take such action required to inform the owners of any property likely to be affected by the application and shall give the applicant and such owners an opportunity to be heard.

(3) The commission shall approve or reject an application for a certificate of appropriateness within forty-five days after the filing thereof by the owner or occupant of an historic property or a building, site or structure located within an historic district. Evidence of approval shall be by a certificate of appropriateness issued by the commission

(4) In passing upon the appropriateness of proposed action, the commission shall consider, in addition to any other pertinent factors, the historical and architectural integrity and significance; architectural style; design, arrangement, texture and materials of exterior architectural features; and the relationship and general compatibility thereof to the

historical value and exterior architectural style and pertinent features of other structures in the surrounding area.

(5) The commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed action would be appropriate. In the event the commission rejects an application, such commission shall place upon its records and shall transmit a record of such action and reasons therefor, in writing, to the applicant. In such written record, the commission may make recommendations relative to design, arrangement, texture, material and similar features. The applicant, if he so desires, may make modifications to the plans and may resubmit the application at any time after doing so.

(6) In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of an application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative office charged with issuing building permits.

(7) Where such action is authorized by the local governing body and is reasonably necessary or appropriate for the preservation of a unique historic property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise of the property or any interest therein.

(8) If the strict application of any provision of this article would result in exceptional practical difficulty or undue economic hardship upon any owner of any specific property, the commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provision so as to relieve such difficulty or hardship: Provided, That such variance, modification or interpretation shall remain in harmony with the general purpose and intent of the provisions so that architectural or historical integrity or character of the property shall be conserved and substantial justice done. In granting variations, the commission may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this article.

(9) The commission shall keep a record of all applications for certificates of appropriateness and of all its proceedings.

(10) Any person adversely affected by any determinations made by the commission relative to the issuance or denial of a certificate of appropriateness may appeal such determination to the circuit court in the county in which said commission is located.

(11) Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on an historic property, which maintenance or repair does not involve a material change in design, material or outer appearance thereof, nor to prevent any property owner from making any use of his property not prohibited by other laws, ordinances or regulations.

(12) Undertakings permitted, funded, licensed or otherwise assisted by the state shall be reviewed in accordance with subsection (e), section five, article one, chapter twenty-nine of this the WV code and shall be considered exempt from review for certification of appropriateness as described in this section.

Sec. 42-Y. Court action or proceedings to prevent improper changes or illegal acts or conduct. (verbatim from §8-26A-8)

The Town of Bath ~~municipal or county governing body~~ or the historic landmarks commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this article or to prevent any illegal acts or conduct with respect to such historic property or historic district.

Sec. 42-Z. Violations of this article; penalties (verbatim from §8-26A-9)

Violations of any such ordinance adopted in conformity with this article shall be punishable by a fine up to ten percent of the total cost of the project requiring a certificate of appropriateness or \$500, whichever is greater, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

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