# WEST VIRGINIA CODE CHAPTER 8 ARTICLE 26A

WV Legislature

## §8-26A-1. Legislative determinations.

It is hereby declared as a matter of legislative determination:

(a) That the State of West Virginia is richly endowed with numerous historic buildings, structures, sites and districts which represent the historical, architectural and cultural heritage of this state;

(b) That West Virginia heritage, represented by such historic buildings, structures, sites and districts can best be identified, studied, preserved and protected for the general welfare of residents of this state and this nation by authorizing and empowering action for this purpose at the local level;

(c) That the preservation and protection of such historic buildings, structures, sites and districts aid economic development through revitalization of this state's central business districts, improvement of property values and enhancement of this state's historic attractions to tourists and visitors; and aid the development of education of this state by preservation of such heritage for future generations;

(d) That the preservation of this heritage is essential to the promotion of the prosperity, education and general welfare of the people; and

(e) That the Legislature hereby finds that it is the public policy and the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of government, along with the private sector, to promote the use and preservation of such heritage for the education and general welfare of the people of this state; and, accordingly, this article shall be broadly construed in order to accomplish the purposes herein set forth.

WV Legislature

## §8-26A-2. Definitions.

As used in this article:

(a) "Exterior architectural features" include the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

(b) "Historic district" is a geographically definable area possessing a significant concentration, linkage or continuity of sites buildings, structures or objects united historically or aesthetically by plan or physical development.

(c) "Historic landmark" is a site, building, structure or object designated as a "Landmark" either on a national, state or local register.

(d) "Historic site" is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure.

WV Legislature

## §8-26A-3. Legislative intent; conflict between regulations of zoning district and historic district and properties.

The historic district and property regulation provided in this article is intended to identify, study, preserve and protect historic buildings and structures, sites and districts, some of which are located in zoning districts. Historic properties and districts lying within the boundaries of a zoning district are subject to the regulations for both the zoning district and historic district and properties. If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements apply.

WV Legislature

## §8-26A-4. Municipality or county may establish historic landmarks commission; appointments; detailed provisions to be provided by ordinance or order; appropriation of funds.

Any municipality by ordinance and any county by order of the county commission entered of record may, if it so desires, establish a municipal historic landmarks commission or county historic landmarks commission, hereinafter in this article referred to as the commission, to consist of five members, appointed by the mayor or county commission, as the case may be.

In any such ordinance or order, the governing body shall include provisions specifying (a) the terms of the members of such commission; (b) a method of filling vacancies; (c) whether the members of the commission are to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties; (d) the officers of the commission to be elected from the membership thereof; (e) requirements as to meetings of the commission; (f) requirements as to a quorum of the commission; (g) requirements as to voting by members of the commission; and (h) such other matters as may be deemed necessary or desirable for the proper functioning of the commission. In the event the ordinance or order establishing such commission shall authorize the commission to issue certificates of appropriateness, the ordinance or order shall require a majority of the members to have demonstrated special interest, experience or education in history, architecture, planning, real estate or law, to the extent such persons are available in the community. In establishing such a commission and making appointments to it, a local governing body may seek the advice of any national, state or local historical agency, society or organization.

Any such commission may also be authorized and empowered by any such ordinance or order to employ, within the limits of funds available therefor, such employees, assistants, technical personnel and consultants as are necessary to discharge the duties and responsibilities of the commission.

Any municipality or county establishing any such commission shall have plenary power and authority to appropriate funds to such commission for expenditure by the commission for the purposes of this article.

WV Legislature

## §8-26A-5. Powers and duties of commission.

Any such commission shall be authorized, but not required, within the jurisdictional limits of the municipality or county, as the case may be, and within the limits of available funds, to:

(a) Make a survey of, and designate as historic landmarks, buildings, structures and districts which constitute the principal historical and architectural sites which are of local, regional, statewide or national significance in accordance with section six of this article;

(b) Prepare a register of buildings, structures, sites and districts which meet the requirements of subsection (a) of this section, publish lists of such properties and, with the consent of the property owners, 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 districts;

(c) Review applications for certificates of appropriateness and grant or deny the same in accordance with section seven of this article;

(d) With the consent of the property owners, mark with appropriately designed markers, buildings, structures and sites which it has registered;

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

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

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

(h) Aid and encourage the municipality or county in which the district or landmark is located to adopt ordinances and resolutions for the preservation of landmarks and historic districts, their buildings, structures and character;

(i) 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;

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

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

(l) 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

WV Legislature

matters as may be necessary to carry out the purposes of this article; and

(m) Adopt such other rules and regulations as may be deemed necessary to effectuate the purposes of this article, but no such rules and regulations shall be inconsistent with any plan of the planning commission of such municipality or county: Provided, That in no case shall such rules and regulations take precedence over locally adopted ordinances.

WV Legislature

## §8-26A-6. Designation; report.

Prior to designation of an historic landmark or historic district, the commission shall make or cause to be made a report on the historical, cultural, architectural significance of each building, structure, site and district proposed for designation, based upon the following standards:

No building, structure, site or district shall be deemed to be an historic one unless it has been prominently identified with or best represents, some major aspect of the cultural, political, economic, military or social history of the locality, region, state or nation, or has had a major relationship with the life of an historic personage or event representing 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 to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or 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.

The commission shall submit such report, including maps and photographs as necessary, to the West Virginia department of culture and history. In the case of a report for a proposed historic district, the commission shall submit with the report a map showing boundaries of the proposed district. The West Virginia department of culture and history may prepare written comments within forty-five days on the report.

In the event that any such ordinance or order establishing the commission has authorized the commission to issue certificates of appropriateness, the local governing body shall hold a public hearing on the proposed designation of the historic property or historic district, and any proposed regulations and requirements for the historic district. Notice of the hearing shall be published at least two times in the principal newspaper of general circulation within the municipality or county in which the property or properties to be designated are located; and written notice of the hearing shall be mailed by certified mail with signed return receipt required by the commission to all owners and occupants of such properties. All the notices shall be published or mailed not less than ten nor more than twenty days prior to the date set for the public hearing. Following the public hearing, unless the owner of a proposed property or fifty percent of the ownership interest in a proposed district objects to such designation or regulations and requirements within thirty days following the public hearing, the local governing body may designate the property or properties as historic, and approve, amend or reject the proposed regulations or requirements. Within thirty days following such designation or approval, the owners and occupants of each designated historic property shall be given written notification of such designation or approval by the local governing body, which notice shall apprise said owners and occupants of the necessity of obtaining a certificate of appropriateness prior to undertaking any material change in the appearance of the historic landmark designated or within an historic district.

In the event any such order or ordinance establishing a commission does not authorize the



WV Legislature

commission to regulate historic properties through issuance of a certificate of appropriateness, the survey report may be adopted by the commission, with any recommended amendments or changes by the state agency, and the historic landmark or historic district shall be designated as historic.

Any such designated historic landmark or district designated by this article shall be shown on the official zoning map of the county or municipality or, that in the absence of an official zoning map, the designated property be shown on a map of the county or municipality and kept by the county or municipality as a public record to provide notice of such designation in addition to other such notification requirements of this section.

WV Legislature

## §8-26A-7. Certificate of appropriateness; scope of review; standards of review; review procedures; variances, appeals.

In the event that any 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 archaeological importance exist in the historic district there shall be no excavating or moving of 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 by 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 as 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

WV Legislature

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.

WV Legislature

(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 code and shall be considered exempt from review for certification of appropriateness as described in this section.

WV Legislature

## §8-26A-8. Court action or proceedings to prevent improper changes or illegal acts or conduct.

The 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.

WV Legislature

## §8-26A-9. Violations of this article; penalties.

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.

WV Legislature

## §8-26A-10. Notice to county assessor of designation of historic district.

When any such commission establishes an historic district, it shall notify the county assessor of the county in which such district or any part thereof is located of the fact of such establishment and the boundaries of the district, together with the restrictions which are applicable to the properties located in such district. The county assessor shall take such factors into consideration in assessing the properties therein.

WV Legislature

## §8-26A-11. Assistance of state agencies; coordination; annual reports.

Upon the request of any such commission, all agencies of the state shall assist such commission in the discharge of its duties and functions.

Every such commission shall cooperate and coordinate its activities with the West Virginia historical society and the West Virginia department of culture and history with the view of developing a unified program for the identification, study, preservation and protection of all historic buildings, structures and sites in this state. Such commissions shall submit a brief annual report to the West Virginia department of culture and history summarizing commission activities. In addition, the commissions shall submit reports as required in other sections of this article and any other reports required by rule, regulation or agreement.

WV Legislature