

AN ORDINANCE CREATING THE HISTORIC PRESERVATION COMMISSION OF MCDOWELL COUNTY, NORTH CAROLINA

Section 1. Purpose

- A. The strength and happiness of a community is measured and preserved by the contributions and commitment of its people to the past, present and future. The purpose and objective of this Ordinance is to promote, protect, conserve and preserve one of McDowell County's most valued and important assets, its historical and architectural heritage. By means of recognizing, designating, and regulating historic landmarks and historic districts, McDowell County seeks to:
1. Safeguard its heritage by preserving and protecting any historic buildings, structures, sites, areas and objects that embody their cultural, social, economic, political and architectural history;
 2. Promote the use and conservation of McDowell County's historic resources for the education, pleasure and enrichment of the residents of the County and State as a commemoration and reminder of the early days of their settlement and evolution;
 3. Foster civic beauty through the development and maintenance of historic sites, buildings and landmarks; and
 4. Stabilize and enhance property values throughout the County; preserve environmental quality of neighborhoods; promote the economy, commerce and industry; and encourage tourism.
- B. By thus preserving and protecting McDowell County's historic heritage, these measures for recognizing, designating, and regulating historic landmarks and districts enhance and contribute to the general health, safety and welfare of the residents of McDowell County. To serve these purposes, the McDowell Board of County Commissioners established the McDowell County Historic Preservation Commission. The Commission is established to fulfill the purposes outlined above and to advise the citizens and elected officials of McDowell County about matters of historic preservation and to perform the quasi-judicial functions described herein.

Section 2. Enactment and General Provisions

- A. There is hereby established a McDowell County Historic Preservation Commission ("Commission"), pursuant to the North Carolina General Statutes, Chapter 160A, Sections 160A-400.1-160A-400.14.

- B. Prior to the official action the Commission shall adopt rules of procedure governing its meetings and the conduct of official business and by-laws governing the appointment of members, terms of office, the election of officers and related matters. A public record shall be kept of the Commission's resolutions, proceedings and actions. The Commission shall also prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks or within historic districts.
- C. The Commission shall consist of (at least five) members appointed by the County Board of Commissioners. All members shall reside within the territorial jurisdiction of McDowell County. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archeology or related fields. The Commission may appoint advisory bodies and committees as appropriate.
- D. Members of the Commission shall serve terms of four (4) years. Terms shall be staggered. The initial Commission shall be established as follows: the Commission shall assign one member to a one year term; another member to a term of two years; a third member to a term of three years; and the remaining two members to a term of four years. Their successors shall be appointed by the McDowell Board of County Commissioners for a term of four years. A member may be reappointed for a second consecutive term, but after two consecutive terms a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of his/her second term. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term in the same manner of the initial appointment.
- E. Within thirty (30) days after appointment, the Commission shall meet and elect a Chair and create and fill such offices as it may determine. The term of the Chair and other officers shall be one (1) year, with eligibility for reelection. The Commission shall adopt internal rules, regulations and by-laws for transaction of business and shall keep a record of its members attendance and of its resolutions, discussions, findings and recommendations, which shall be of public record. The Commission shall establish a meeting time and shall meet monthly and more or less often as it shall determine and require. All meetings of the Commission shall be open to the public and reasonable notice of the time and place shall be given to the public. All meetings shall conform to the North Carolina Open Meeting Law (North Carolina General Statutes 143, 33C).
- F. Any member of the Commission who misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose status with the Commission and shall be replaced or re-appointed by the Board of McDowell County Commissioners. Absence due to sickness, death or emergencies of like nature shall be recognized as approved absences and shall not affect a member's status on the Commission, except in the event of long illness or other such cause for prolonged absence a member shall be replaced.

Section 3. Commission Powers

- A. The Commission is authorized and empowered to undertake such action as is reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Ordinance and Part 3C of Chapter 160A of the General Statutes of the State of North Carolina including but not limited to the following:
1. Undertake and inventory of properties of historical, pre-historical, architectural and/or cultural significance.
 2. Recommend to the McDowell Board of County Commissioners areas to be designated by ordinance as “Historic Districts” and individual structures, buildings, sites, areas or objects to be designated by ordinance as “Landmarks”.
 3. Recommend to the McDowell Board of County Commissioners that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.
 4. Review and act upon proposals for (a) alteration, relocation, or demolition of designated landmarks or (b) alteration, relocation, demolition, or new construction within designated historic districts or for the alteration or demolition of designated landmarks.
 5. Conduct an educational program with respect to historic districts and landmarks within its jurisdiction.
 6. Cooperate with the state, federal and local government in pursuance of the purposes of this ordinance; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Board of Commissioners, or the Commission when authorized by the Board of Commissioners, may contract with the State or the United States, or any agency of either, or with another organization provided the terms are not inconsistent with state or federal law.
 7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without express consent of the owner or occupant thereof.
 8. Prepare and recommend the official adoption of a preservation element as part of the County’s comprehensive plan.

9. Acquire by any lawful means the fee or any lesser including interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
10. Restore, preserve and operate historic properties.
11. Institute action to prevent, restrain, correct, or abate violations of this ordinance or of ordinances designating landmarks or historic districts.
12. Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.
13. To receive and spend any funds appropriated by the McDowell Board of County Commissioners for operation and performance of duties.
14. To accept funds granted to the Commission from private or non-profit organizations for preservation purposes.

Section 4. Historic Districts

- A. Historic districts are hereby established as districts which overlap with other zoning districts. All uses permitted in any such district, whether by right or as a special use, shall be permitted in historical districts.
- B. Historic districts, as provided for in this section, may from time to time be designated, amended, or repealed; provided, however, that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, pre-historical, architectural or cultural importance. Such district must also possess integrity of design, setting, workmanship, materials, feeling and/or association. No district shall be designated, amended, or repealed until the following procedure has been carried out:
 1. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and
 2. The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of the recommendations concerning such report and description of proposed

boundaries. Failure of the Department to submit its written analysis and recommendations to the Board of Commissioners within thirty (30) calendar days after written request for such analysis has been received by the Department of Cultural Resources shall relieve the Board of Commissioners of any responsibility for awaiting such analysis, and the Board of Commissioners may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

- C. The Board of Commissioners may also, at its discretion, refer the report and the proposed boundaries to any other interested body for its recommendations prior to taking action to amend the zoning ordinance.
- D. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts with the jurisdiction, the investigative studies and reports required by the subdivision of this section shall be prepared by the Commission and shall be referred to the Planning Board for its review and comment according to the procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision of this section.
- E. Upon receipt of these reports and recommendations the Board of Commissioners may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

Section 5. Historic Landmarks

- A. Upon complying with the required landmark designation procedures set forth herein, the Board of Commissioners may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Commission to be of special significance in terms of its historical pre-historical, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.
- B. The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or pre-historical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area or object so designated as a landmark, the ordinance shall require that the waiting period set forth in this ordinance be observed prior to demolition. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise the sign may be placed on a nearby public right-of-way.

C. No property shall be designated as a landmark until the following steps have been taken:

1. As a guide for identification and evaluation of landmarks, the Commission shall, at the earliest possible time and consistent with the resources available to it, undertake an inventory of properties of historical, architectural, pre-historical and cultural significance within McDowell County.
2. The Commission shall make or cause to be made an investigation and report on the historic, architectural, pre-historical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
3. The Department of Cultural Resources, acting through the State Historic Preservation Officer, or his/her designee, shall either upon request of the Department or at the initiative of the Commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark. All comments will be provided in writing. If the Department does not submit its comments to the Commission within thirty (30) days following receipt by the Department of the report, the Commission and the Board of County Commissioners shall be relieved of any responsibility to consider such comments.
4. The Commission and the Board of County Commissioners shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.
5. Following the public hearing(s) the Board of County Commissioners may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
6. Upon adoption of the ordinance the owners and occupant of each landmarks shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the Commission in the office of the Register of Deeds of McDowell County. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office and the Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the McDowell County Manager and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the building inspector. The fact that

a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by McDowell County for such period as the designation remains in effect.

7. Upon adoption of the landmark ordinance or any amendments thereto, it is the duty of the Commission to give notice thereof to the tax supervisor of McDowell County. The designation any recorded restrictions upon the property limiting its use for preservation proposes shall be considered by the tax supervisor in appraising it for tax purposes.

Section 6. Certificate of Appropriateness Required

- A. From and after designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within the historic district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Commission. Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the proposes of this ordinance. A certificate of appropriateness shall be required whether or not a building or other permit is required.
- B. For purposes of this ordinance “exterior features” shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size and location of all such signs.
- C. The State of North Carolina (including its agencies, political subdivisions and instrumentalities), McDowell County, and all public utilities shall be required to obtain a certificate of appropriateness for construction, alteration, moving or demolition within a designated historic district or of a designated landmark.

Section 7. Application for Certificate of Appropriateness

- A. Applications for a certificate of appropriateness shall be obtained form and when completed, filed with the County Manager or his designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the Commission. Each application shall be accompanied by sketches, drawings,

photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction. The names and mailing addresses of property owners filling and/or subject to the application and the addresses of property within one hundred (100) feet on all sides of the property which is the subject of application must also be filed. No application which does not include the aforementioned information will be accepted.

- B. It shall be the policy of the Commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a sub-committee of the Commission shall be available to meet with persons involved in planned or pending applications in order to advise them informally at an early state in the development process concerning the Commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The members of the sub-committee, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or options given by any member of the sub-committee as such an informal meeting shall not be considered official or binding upon the Commission.

Section 8. Action on Application for Certificate of Appropriateness

The Secretary of the Commission shall notify, by mail, not less than one week prior to the meeting at which the matter is to be heard, the owners of property within one hundred (100) feet on all sides of the subject property. Applications for certificates of appropriateness shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed to be approved and a certificate shall be issued. An extension of time may be granted by mutual consent of the Commission and the applicant. As part of the review procedures the Commission may view the premises and seek the advice of the Department of Cultural Resources or other such expert advice as it may need necessary under the circumstances. The Commission may hold a public hearing on any application when deemed necessary. The action on an application shall be approval, approval with conditions, or denial, and the decision of the Commission must be supported by specific findings of fact indicating the extent to which the application is or is not congruous with the special character of the historic district or landmark.

Section 9. Hearings for Certificate of Appropriateness

- A. Prior to the issuance or denial of a certificate of appropriateness the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. All meetings of the Commission shall be open to the public in accordance with the North Carolina Open Meeting Law, General Statutes 143, Article 33C.

- B. The Commission shall have no jurisdiction over interior arrangement, except as provided below, and shall take no action under this ordinance except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features which would be incongruous with the special character of an historic district or landmark.
- C. The jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned landmarks for which consent of an owner for interior review has been given by the owners. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the Register of Deeds office and indexed according to the name of the owner of the property or grantor and grantee indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commission's jurisdiction over the interior.
- D. In any action granting or denying a certificate of appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment.
- E. Written notice of the intent to appeal must be sent to the Commission, postmarked within thirty (30) days following the decision. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of McDowell County.
- F. The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision within thirty (30) days form the date that a notice of appeal by the State is received by the Historical Commission. The decision of the Historical Commission shall be final and binding upon both the State and the Commission.

Section 10. Administrative Approval of Minor Works

- A. Notwithstanding the subsection above ("Action on Certificates of Appropriateness"), upon receipt of a completed application the County Manager or his designee may issue a certificate of appropriateness for minor works.
- B. Minor works are defined as those exterior changes which do not involve substantial alterations, additions or removals that could impair the historic integrity of the property and/or district as a whole. No application may be denied without the formal action of the Commission. All minor works applications approved by the County Manager or his designee shall be forwarded to the Commission in time for its net scheduled meeting.

Section 11. Review Criteria

- A. No certificate of appropriateness shall be granted unless the Commission finds that the application complies with the principles and guidelines adopted by the Commission for review of changes. It is the intent of these regulations to insure insofar as possible that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in an historic district or of landmarks shall be congruous with the special character of the historic district or landmark.
- B. An addition to the principles and guidelines, the following features or elements of design shall be considered in reviewing applications for certificates of appropriateness:
1. Lot coverage, defined as the percentage of the lot area covered by primary structures;
 2. Setback, defined as the distance from the lot lines to the building;
 3. Spacing of buildings, defined as the distance between adjacent buildings;
 4. Surface materials and textures;
 5. Use of regional or local architectural traditions;
 6. General form and proportion of buildings and structures, and the relationship of additions to the main structure;
 7. Style, material, size and location of all outdoor advertising signs;
 8. Structural condition and soundness; and
 9. Significant landscape, archaeological, and natural features.
- C. The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for certificates of appropriateness.

Section 12. Certain Changes Not Prohibited

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in an historic district or of a landmark which does not involve a change in design, materials, or outer appearance thereof; the ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs; the construction, reconstruction, alteration, restoration or demolition of any such feature which the Building Inspector shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration of any above ground utility structure without approval by the Commission.

Section 13. Enforcement and Remedies

- A. Compliance with the terms of the certificate of appropriateness shall be enforced by the Zoning Administrator. Failure to comply with the certificate shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations.
- B. In case any building, structure, site, area or object designated as a landmark or within an historic district is about to be demolished, whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed except in compliance with this ordinance, the Board of County Commissioners, the Commission, or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

Section 14. Delay in Demolition of Landmarks and Buildings Within Historic Districts

- A. An application for a certificate of appropriateness authorizing the demolition, removal, or destruction of a designated landmark or a building, structure or site within a historic district may not be denied except as provided in subsection D below. However, the effecting date of such certificate may be delayed for up to 365 days from the date of approval. The period of delay shall be reduced by the Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period the Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure or site. If the Commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

- B. If the Commission has voted to recommend the designation of a landmark or the designation of an area as an historic district, and final designation has not been made by the Board of County Commissioners, the demolition or destruction any building, structure or site in the proposed district or on the property of the designated landmark may be delayed by the Commission for up to one hundred eighty (180) days or until the Board of County Commissioners takes final action on the designation, whichever occurs first.
- C. The Board of County Commissioners may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.
- D. An application for a certificate of appropriateness authorizing the demolition of a building, structure or site determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

Section 15. Severability

It is the legislative intent of the McDowell Board of County Commissioners in adopting this Ordinance that all provisions thereof shall be liberally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of McDowell County. It is the further intent of the McDowell Board of County Commissioners that this Ordinance shall stand, notwithstanding the invalidity of any part thereof, and that should any provision of this Ordinance be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions.

Section 16. Conflict with Other Laws

When provisions of this ordinance impose higher standards than required in any other statute or local ordinance or regulation, the provisions of this Ordinance shall govern. When the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of the statute or local ordinance shall govern.

Section 17. Effective Date

The provisions of this Ordinance shall be effective on the after the 5th day of December, 2000.

Adopted this 4th day of December, 2000.

s/Michael A. Thompson
Chairman of the
Board of Commissioners
McDowell County, NC

s/Carrie Padgett
Clerk to the Board of
Commissioners
McDowell County, NC