

Historic Districts: Zoning v. HLCs

Fact Sheet

Spring 2019

Local governments have two mechanisms for regulating historic districts: zoning ordinances (“historic zoning districts or overlays”) and historic landmark commissions (HLCs) (“designated historic districts”). Historic zoning districts or overlays and designated historic districts are distinct but may coincide or overlap.

Historic Zoning Districts or Overlays

Zoning ordinances may preserve historic areas set aside as a historic zoning district with design guidelines for exterior architectural features, as well as through use, setback, lot, building height, parking, and landscaping requirements, among others. Chapter 8A does not specifically set parameters for historic preservation of exterior architectural features achieved through zoning. Historic preservation provisions within zoning are reviewed in issuing a zoning permit within a historic zoning district.

HLCs’ Locally Designated Historic Districts

HLCs may designate historic districts and maintain a register at the local level, similar to the designation of a historic district on a national register. Historic districts or landmarks designated by the HLC must be indicated on the official zoning map, or on a publically available map if the community does not have zoning.

Where authorized, HLCs may issue certificates of appropriateness (COAs) for changes to the exterior architectural features of buildings within a designated historic district before building or zoning permits may be issued. HLCs may issue COAs only for historic districts designated at the local level and after approval through detailed public hearing and notice requirements that include individual notice to affected property owners. COAs require the application of design guidelines by the HLC.

Advisory Capacity of the HLC

HLCs may advise counties and municipalities in the adoption of ordinances and resolutions. Specifically, HLC’s advisory capacity includes the ability to advise a planning commission, city council, or county commission in drafting a zoning ordinance that contains historic preservation provisions, such as historic design guidelines. HLCs may advise zoning officers in the application of historic design guidelines to a particular project. HLCs may also testify at a public hearing or provide an opinion that is made a public record to the BZA, planning commission, city council, or county commission.

HLCs may not provide ex parte opinions to the BZA regarding whether to issue a conditional use permit. Advice provided by HLCs must be nonbinding, as zoning officers and BZAs must remain independently responsible for administering zoning ordinances.

HLCs’ Purpose

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*.

Chapter 8A’s Historic Zoning Definitions

Historic districts: a geographically definable area, designated as historic on a national, state, or local register, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

Historic landmarks: a site, building, structure, or object designated as historic on a national, state, or local register.

Historic sites: 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, and designated as historic on a national, state, or local register.

Key Land Use Authority Differences

Zoning	HLCs
May protect historic areas with historic districts or overlays.	May protect historic buildings, sites, and landmarks individually or as part of a historic district.
May rely on a building's designation on a national register in the applicability of design guidelines within a historic district	Must designate historic districts <i>at the local level</i> in order to issue COAs and apply design guidelines.
May set design guidelines for exterior architectural features, and in addition may establish setbacks, building height and size requirements, lot size and coverage requirements, and limit the use of properties. May also set standards for parking, landscaping, and preserving green space.	Only if authorized to issue COAs, must apply design guidelines to exterior architectural features.
May require a zoning permit for use and development standards.	May require COAs for new construction, alteration, removal or demolition of buildings, sites, or structures within a historic district or individually designated as a historic landmark.
A historic zoning district does not require approval of or opportunity for comment by the State Historic Preservation Office.	Historic designations do require the submission of materials and opportunity for comment by the State Historic Preservation Office.
Chapter 8A does not provide the authority to inspect under zoning, even with consent.	HLCs may inspect the maintenance and upkeep of historic structures with the consent of property owners.
No special interest, background, or education in historic preservation is required of those enforcing historic provisions.	Special interest, background, or education is required of the HLC only if the HLC is authorized to issue COAs.
Violators are guilty of a misdemeanor and shall be fined between \$50 and \$500.	Violations are punishable by up to 10% of the total cost of the project or \$500, whichever is greater, and/or six months in