

- **ARTICLE IV. - HISTORIC PRESERVATION**

FOOTNOTE(S):

--- (2) ---

State Law reference— Historic preservation, General Municipal Law § 119-aa et seq.

- **Sec. 15-100. - Title.**

This article shall be known as and may be cited as the Village of Lewiston Historic Preservation Law.

(Code 1978, § 15-100; L.L. No. 1-1978, § 1)

- **Sec. 15-101. - Legislative intent.**

The village finds that many buildings, structures and sites, or districts of such buildings, structures and sites within its borders, have a unique character and special aesthetic interest and represent fine architectural products of distinct periods in the area's history. The village also finds that such buildings, structures, sites, or districts of such may be damaged without adequate consideration of the irreplaceable loss to the citizens of the village. Therefore, it is hereby declared to be a matter of public policy and a valid exercise of the inherent police powers of the village to protect, enhance and perpetuate such buildings, structures, sites or districts as is necessary to:

(1)

Promote the health, prosperity and safety of village citizens;

(2)

Safeguard the area's heritage by preserving elements of its cultural, political, economic and aesthetic history;

(3)

Foster civic pride in the beauty and noble accomplishments of the past; and

(4)

Promote the use of such buildings, structures, sites, or districts for the education, pleasure and welfare of the people of the area.

(Code 1978, § 15-101; L.L. No. 1-1978, § 2; L.L. No. 6-1990, § 1)

- **Sec. 15-102. - Definitions.**

The definitions contained in appendix B, the zoning code of the village , shall be applicable to this article. In addition thereto, the following definitions are deemed controlling regarding terms utilized in this article:

Alteration means any act or process which changes one or more of the exterior architectural features of a building, structure or site designated as historically significant or any such building, structure or site in an historic district. The term "alteration" includes relocation of property and new construction.

Certificate of approval means that document issued by the historic preservation commission which entitles the applicant for such to alter or demolish a designated property.

Demolish means to raise, remove, destroy, obliterate or contribute to substantial deterioration of any portion of a designated property or exterior architectural feature thereof.

Designated property means a building, structure or site determined to be historically significant and all buildings, structures and sites within an historical district.

Exterior architectural feature means the architectural style, design, general arrangement, and components of a designated property, including, but not limited to, color of paint, type of all windows, doors, lights, signs and other fixtures appurtenant to such portion and all buildings, structures, outbuildings, walls, fences, steps, topographical features, earthworks, paving and signs located on the designated property.

Historic district means any area which:

- (1) Has a special character or special historic, architectural, archeological or cultural value; or
- (2) Represents one or more periods or styles of architecture typical of one or more areas; and
- (3) Causes such area, by reason of such factors, to constitute a distinct section.

Relocation means moving a building to another site within the historic district or moving designated historic properties from or to other areas in the village.

Styles of architecture means styles recognized by one of the following organizations:

- (1) The National Register of Historic Places.
- (2) The Historic American Buildings Survey.

- (3)
The Historic American Engineering Record, U.S. Department of the Interior, National Park Service.
- (4)
The Division for Historic Preservation, New York State Office of Parks and Recreation.
- (5)
The National Trust for Historic Preservation.
- (6)
The Society of Architectural Historians.

(Code 1978, § 15-102; L.L. No. 1-1978, § 3; L.L. No. 7-1980, § 1; L.L. No. 6-1990, §§ 2–4)

State law reference— Similar provisions, General Municipal Law § 119-bb.

- **Sec. 15-103. - Historic preservation commission—Established; composition; term of office; officers; meetings.**

- (a)
There shall be created by the village board an historic preservation commission which shall consist of five members to be appointed by the village board. The village historian shall be a nonvoting and ex officio member of the commission.
- (b)
Said members shall be residents of the village and shall include, if available, two architects, one of whom shall be a landscape architect, and one a municipal planner. Other appointees shall be qualified by reason of training, experience, or demonstrated interest in law, local law, business or the history or historical preservation of the village. A vacancy occurring in the membership for any cause shall be filled for the unexpired portion of the term by the village board of trustees.
- (c)
The term of office shall be five years, provided that of those five members initially appointed by the village board, one shall be for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years and one for a term of one year.
- (d)
The commission shall elect one member as chairman and one member as vice-chairman, and shall submit an annual report in the last week of May to the village board of trustees encapsulating its activities of the past year and listing goals and objectives for the ensuing year. Such report shall also include recommendations that the commission deems necessary to carry out the principles of this local law and to enhance the historic and aesthetic qualities of the village.

(e)

Meetings of the commission shall be held at such times as the commission may determine or at the call of the chairman or at the call of at least two commission members, and must be held within 30 days of receipt of complete application for a certificate of appropriateness by the village building inspector. All commission meetings shall be open to the public and notice of such shall be posted on the municipal bulletin board at the municipal building at least five days prior to the meeting.

(f)

The commission shall keep regular minutes of its proceedings and show the vote of each member upon any question. It shall also keep records of its examinations and official actions.

(g)

The commission shall also constitute the architectural review board and act as such board when reviewing and submitting recommendations pursuant to section 15-104(f).

(h)

During such time as there are less than four members constituting the historic preservation commission, the duties of the historic preservation commission shall be performed by the village planning commission.

(Code 1978, § 15-103; L.L. No. 1-1978, § 4; L.L. No. 8-1979, § 5; L.L. No. 7-1980, § 2; L.L. No. 5-1989, § 1; L.L. No. 6-1990, §§ 5, 6; L.L. No. 5-1993; L.L. No. 6-1993, §§ 1, 2; L.L. No. 2-1996, § 1)

- **Sec. 15-104. - Same—Duties and powers.**

(a)

The commission shall inventory and designate all historically significant buildings, structures, sites or districts of such within the village enlisting the voluntary assistance of interested civic and social organizations. The initial inventory shall be completed within one year of the effective date of this local law or the date of first appointment of members to the commission created hereunder, whichever is later, or such other extended times as adopted by resolution of the board of trustees and such inventory shall be reviewed, updated or revised where necessary each year thereafter before the submission of the annual report. Such initial inventory and annual alterations shall be distributed to the village building inspector, clerk, historian and assessor.

(b)

The commission shall determine the acceptability of applications for certificates of appropriateness.

(c)

In addition to the aforementioned powers, the commission shall have the power to:

(1)

Retain or employ professional consultants, secretaries, clerks or other such personnel as may be necessary to assist the commission in carrying out its duties and with budgetary limitations;

(2)

Formulate recommendations concerning the preparation of maps, brochures and historical markers for selected historic sites and buildings or districts;

(3)

Advise owners of historic buildings on problems of preservation and restoration.

(d)

Nothing in this article shall be construed as authorizing the commission, in acting with respect to any designated property, to amend the existing zoning requirements or grant any variance from those requirements.

(e)

In reviewing the construction, alteration or demolition of designated properties, the commission may impose conditions or determinations that are more restrictive than those prescribed in the zoning law, building code and other provisions of law applicable to such activities.

(f)

The commission shall review and submit its recommendations to the planning commission upon matters referred to them for their review by said commission. Such review shall concern the appropriateness of exterior architectural features, as defined in section 15-102, of buildings and structures, plans for the preservation, drives, parking and circulation, and other appropriate features. In reviewing a matter so referred, the commission shall apply the standards as set forth in section 10R of the zoning law (appendix B to this Code).

(Code 1978, § 15-104; L.L. No. 1-1978, § 5; L.L. No. 4-1979, § 1; L.L. No. 8-18-1989, § 1; L.L. No. 5-1989, § 2; L.L. No. 6-1990, § 7)

- **Sec. 15-105. - Criteria and procedure for designation of buildings, structures, sites, or districts.**

(a)

Buildings, structures, sites and historic districts may be designated as historically significant if, by virtue of association with historic personages or events or as representative examples of historic styles or methods of construction, they are important in the chronological record of the village, its neighborhoods, the state or the nation and/or such entity's cultural, political, economic, or aesthetic heritage.

(b)

When evaluating historic significance, the commission shall consider date of erection and period of historic significance, architectural style, scarcity of the type or period in the village, quality of design, integrity of the original design, present condition and appearance and, in the case of historic districts, the collective merits and interrelationship of neighboring properties.

(c)

Procedure for designation.

(1)

Notice of the fact that the commission is considering designation of a building, structure, site or district as historically significant shall be served upon the owner of such building, structure, site or district.

(2)

Said notice shall contain the date, time and place of the meeting at which the proposed designation will be considered, and shall invite owners to comment upon the proposal in person or by providing written comments.

(3)

The notice shall be given at least ten days, but not more than 20 days prior to the date of the scheduled meeting.

(4)

Such notice shall be served personally upon said owner if the owner is a resident of the village; or if the owner is not a resident of the village, said notice shall be sent by certified mail to the last known address as set forth on the latest tax rolls of the village.

(5)

The commission may at its discretion call a public hearing to receive comments concerning a proposed designation. Notice of such hearing shall be served on owners as provided in subsection (c)(4) of this section and shall be announced by public notice at least five days prior to the scheduled hearing.

(6)

Designation shall be made by resolution of the historic preservation commission and notification of such designation shall be sent to the owner by certified mail.

(Code 1978, § 15-105; L.L. No. 1-1978, § 6; L.L. No. 7-1980, §§ 3, 4; L.L. No. 6-1990, §§ 8–10)

- **Sec. 15-106. - Criteria and procedure for certificate of approval.**

(a)

Notwithstanding any inconsistent ordinance, local law, code, rule or regulation concerning the issuance of building permits, no alteration to a designated property shall be commenced without first obtaining a certificate of approval from the commission, nor shall any building permit to demolish, alter, initiate new construction

on a designated property be issued without such a certificate of approval having first been issued. The certificate of approval required by this section shall be in addition to and not in lieu of any building permit that may be required by any ordinance, local law, code, rule or regulation of the village.

(b)

Application for a certificate of approval shall be made to the commission, in writing, in duplicate and upon forms prescribed by the commission. The application shall be sufficiently detailed for the commission to evaluate whether the proposed changes will be in harmony with the historic building, structure or site and shall be accompanied, unless their necessities are waived by the commission, by plans illustrating the designated property, the proposed changes and the relationship of such to adjacent property and in addition, unless waived, shall include:

(1)

Name, address and telephone number of the applicant;

(2)

Location of the building, structure or land the exterior architectural features of which are proposed to be changed;

(3)

Elevations of the proposed change;

(4)

Perspective drawing;

(5)

Samples of the color or materials to be used in the proposed change;

(6)

Where the proposed change includes signs or lettering, a scale drawing showing the type of lettering, all dimensions and colors; a description of the materials to be used and the method of illumination, if any; and a plan showing the location on the building or property.

(c)

Within a reasonable time after the application is filed, but in all events within 30 days (Saturdays, Sundays and legal holidays excluded), unless otherwise mutually agreed upon by the applicant and the commission, the commission shall invite the owner or the owner's representative to attend a meeting when the commission reviews the application. If it approves the application, the commission shall attach a certificate of approval to the building permit, if applicable, or give the certificate of approval to the applicant if no building permit is required. If the commission approves the application, it shall issue a certificate of approval which shall be attached to the building permit, if applicable, and immediately transmitted to the building inspector, or applicant if no building permit is required. The commission shall also stamp all submitted plans. If the commission disapproves an application, it shall state its reasons for doing so and shall

transmit a record of such action and reasons therefor to the applicant and building inspector. The commission may advise what it considers proper if the application is denied, and the applicant, if he so desires, may modify his plans and resubmit his application after doing so.

(d)

In approving or denying an application, the commission shall be guided by the secretary of the interior's standards for historic preservation projects. The commission shall consider the historical and architectural importance of the property, the site in relation to its surroundings, the value to the community, the condition of the property at the time of application, the severity of the change in exterior design and the degree of harmony and integration of the proposed changes with the original property. Also to be considered is whether denial of a certificate will cause economic hardship to the applicant, and if so, to what extent.

(e)

An applicant whose certificate of appropriateness has been denied may within ten days of such denial apply for relief from the strict application of the historic preservation local law on the grounds of economic hardship. The commission shall meet within 30 days of the application for relief. At the meeting, proponents and opponents of the application will be provided the opportunity to present their views.

(f)

The commission may solicit expert testimony or require that the applicant make submissions concerning any or all of the following information before it makes a determination on the application:

(1)

Estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the commission for changes necessary for the issuance of a certificate of appropriateness;

(2)

All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;

(3)

Any listing of the property for sale or the rent price asked and offers received, if any, within the previous two years;

(4)

Assessed value of the property according to the two most recent assessments;

(5)

Real estate taxes for the previous two years;

(6)

Form of ownership or operation of the property, whether a sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other;

(7)

In the case of a proposed demolition, an estimate from an architect, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility or rehabilitation or reuse of the existing structure on the property;

(8)

If the property is income-producing, the annual gross income from the property for the previous two years, itemized operating and maintenance expenses for the previous two years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period; and

(9)

Any other information considered necessary by the commission for a determination as to whether the property does yield or may yield a reasonable return to the owners.

(g)

For all applications, except those involving demolition or removals, the applicant shall, in order to prove the existence of economic hardship, establish that:

(1)

a.

He will suffer significant and unreasonable economic or financial injury if required to comply with the commission's decision as applied to his property; and

b.

The character of the landmark and/or historic district will be preserved and not substantially changed by the proposed alteration; or

(2)

The property is incapable of earning a reasonable return.

(h)

For applications involving demolition or removal of a landmark or structure within a historic district, the applicant shall, in order to prove the existence of economic hardship, establish that:

(1)

The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(2)

The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return;

(3)

Reasonable efforts to find a purchaser interested in acquiring the property for rehabilitation and preservation have been made and have failed; and

(4)

The owner has not created his own hardship through waste and neglect, thereby permitting the structure to fall into a serious state of disrepair.

(i)

Throughout the hardship procedures, the applicant shall consult in good faith with the commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

(j)

Failure of the commission to approve or disapprove an application within 30 days after its filing or within the time period mutually agreed upon by the applicant and the commission shall be deemed to constitute approval by the commission.

(Code 1978, § 15-106; L.L. No. 1-1978, § 7; L.L. No. 7-1980, § 5; L.L. No. 6-1990, §§ 11–14)

- **Sec. 15-107. - Appeals.**

(a)

Appeal from designation. Any owner whose building, structure, site or district has been designated pursuant to [section 15-105](#) shall have ten days after the adoption of the resolution designating the building, structure, site or district to file an appeal with the village board.

(b)

Appeal from disapproval of application. Upon a disapproval of an application for a certificate of approval, if the applicant refuses to modify the application to meet the commission's recommendations, he shall have ten days after the issuance of the commission's decision pursuant to section 15-106, to file an appeal with the village board.

(c)

Review. The village board shall use the same criteria as the commission in reviewing an appeal under subsections (a) and (b) of this section, and shall consider no other facts beyond those contained in the application, the proceedings before the commission and the commission decision, and shall render a decision within 30 days after the filing of said appeal.

(d)

Deadline for appeal. All properties heretofore designated by the historic preservation commission shall be entitled to file an appeal from such designation pursuant to subsection (a) of this section to the board of trustees provided such appeal is filed within 20 days from the adoption of the local law from which this section is derived.

(Code 1978, § 15-107; L.L. No. 1-1978, § 8; L.L. No. 3-1982, § 1; L.L. No. 6-1990, § 15)

- **Sec. 15-108. - Exceptions and exemptions.**

(a)

Ordinary maintenance and repair. Nothing in this law shall be construed to prevent ordinary maintenance and repair using material that duplicates the original in design, color, texture and other visual qualities.

(b)

Interior changes. The commission shall have no control over interior changes in any building or structure unless evidence of such change is apparent on the exterior of such building or structure.

(c)

Materials and methods. Upon approval of an application and subsequent issuance of a certificate of approval, applicant will use materials and methods specified in the approval.

(d)

Exterior design or appearance. Nothing contained herein shall be construed as to require the owner of any presently existing building or structure if designated historically significant pursuant to this law to make any change in the exterior design or appearance of such building.

(Code 1978, § 15-108; L.L. No. 1-1978, § 9; L.L. No. 6-1990, § 16)

- **Sec. 15-109. - Violations and penalties.**

(a)

Violation of any provision of this local law is hereby declared to be an offense, as defined in the New York State Criminal Procedure Law, punishable by a fine not to exceed \$250.00.

(b)

Each and every week that a violation of this local law is allowed to continue shall be considered a separate offense.

(c)

Nothing contained herein shall prevent further prosecution under other local laws of the village or under the laws of the state.

(Code 1978, § 15-110; L.L. No. 1-1978, § 11)

State law reference— Penalties for violation of village legislation, Penal Law §§ 55.10, 70.15, 80.05, 80.10, Village Law § 20-2006, Municipal Home Rule Law § 10(4.)(b.).

- **Sec. 15-110. - Maintenance and repair required.**

Nothing in this section shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district, which does not involve a change in design, material, color or outward appearance.

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the historic preservation commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

Examples of such deterioration include:

- (1)
Deterioration of exterior walls or other vertical supports.
- (2)
Deterioration of roofs or other horizontal members.
- (3)
Deterioration, of exterior chimneys.
- (4)
Deterioration or crumbling of exterior stucco or mortar.
- (5)
Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.
- (6)
Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

Violations.

- (1)
Failure to comply with any of the provisions of this section shall be deemed a violation and the violator shall be liable to a fine up to \$250.00/day for each day the violation continues.
- (2)
Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this section shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the village/town/city attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.