

**WESTPORT HISTORICAL COMMISSION**  
**RULES AND REGULATIONS**

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Altered, Building, Certificate, Commission, Constructed, Demolish, Exterior Architectural Feature, Public Way, Significant Building, Structure, Abutter

## **Preamble**

(i) The Westport Historical Commission (henceforth called the Commission) was established under a Town Bylaw, (the Westport Historical Commission Bylaw - henceforth called Bylaw) dated April 3, 1973, and under the powers of both Massachusetts General Law Chapter 40, Section 8D (Historical Commission) and Massachusetts General Law 40C (Historic Districts).

(ii) The Westport Point Historic District was created by the above cited Bylaw, and boundaries of the District were recorded in Bristol County Registry of Deeds in Book 1667, page 483 on July 9, 1973. The Westport Point Historic District was registered with the Massachusetts Historical Commission effective as of April 3, 1973 and was subsequently enlarged by a vote of Town Meeting on May 4, 2006 and newly recorded in the Bristol County Registry of Deeds in Book 8711, page 44 on July 9, 2007. A copy of the plat map showing the properties included in the Westport Point Historic District is shown in the *Guidelines of the Westport Point Historic District*, henceforth called *Guidelines*. Any reference to Historic District in this document refers to the existing Westport Point Historic District and any local historic district that may be established within the purview of the Commission.

(iii) The Commission maintains and updates a list of significant historical buildings, structures and significant sites in Westport (known as the Westport Historic Inventory) which is in the files of the Commission at Town Hall, in the Town Library, the Building Department and Westport Historical Society.

## **I. Purpose**

A. The purpose of the Commission is to preserve and protect the historical, architectural and archaeological assets of the Town of Westport.

B. The Commission is the Town of Westport's board responsible for community-wide historic preservation, including responsibilities under the Westport Demolition Bylaw.

C. When acting as a Local Historic District Commission, the Commission is the board responsible for regulatory design review within the Westport Point Historic District and any other local historic district that may be established within the purview of the Commission.

## **II. Membership, Officers and Advisory Committee**

### **A. Membership**

1. The Commission shall consist of 7 (seven) Members, appointed by the Board of Selectmen, each for a term of 3 (three) years. The desired composition of the Membership is established in the Westport Historical Commission Bylaw, with a view to facilitate coordination among Town bodies and to involve a range of relevant professional skills. Each Member shall continue in office after the expiration of his or her term until his or her successor is duly appointed and qualified.

2. The Westport Historical Commission Bylaw empowers the Board of Selectmen to appoint up to 7 (seven) Alternates to the Commission. Alternates are encouraged to attend and to participate in the Commission's meetings.

3. In the event that a Member will be absent or is unable or unwilling to act, for any reason, on the matter before the Historical Commission acting in its capacity as an Historic District Commission pursuant to G.L. c. 40C, the Member shall inform the Chair at least two days in advance of the scheduled meeting unless there is an emergency situation. The Chair shall designate an Alternate to act in the Member's place.

4. All Members and Alternates must adhere at all times to the requirements of the State Conflict of Interest Law, G.L. c. 268A and Guidelines For Town Business. All Members and Alternates are responsible for signing a Disclosure Form if there are known conflicts or appearances of conflicts and shall provide a copy of any filed Disclosure Form to the Commission Chair.

5. Attendance shall be recorded in the Minutes for each Commission meeting. Any Member or Alternate who is absent more than 3 consecutive meetings shall provide for the Minutes a written explanation of the reasons for the absences. Attendance records shall be provided to the Board of Selectmen as required.

#### B. Officers

1. Officers shall consist of: Chair, Vice Chair, Secretary, Treasurer and Clerk. Elections for all officers shall be held each year in July; Members, and Alternates designated to act for absent Members, are entitled to vote. The results of elections shall be reported to the Town Clerk. There are no term limits. The Chair, Vice-Chair and Treasurer shall be chosen from among the list of Members.

2. The *Chair* serves as the spokesperson for the Commission, including correspondence with the public and Town bodies, prepares and posts the agenda in cooperation with the Clerk and Secretary, accepts applications for preliminary reviews, conducts meetings, and oversees the preparation of the annual report, Membership and officer lists and reporting to the Massachusetts Historical Commission. The Chair appoints the Monitors who observe implementation of Certificates of Appropriateness and Hardship granted in a local Historical District. The Chair appoints Alternates to act for absent or recused Members. The Chair oversees the educational and publicity activities for the Commission. The Chair informs the Building Inspector and the applicant of the time and date for the review of any demolition application permits.

3. The *Vice-Chair* substitutes for the Chair as necessary. The Vice-Chair oversees the distribution of the application forms for Certificates and of the *Guidelines* to real estate agents, the Town Building Department, the Commission Bulletin Board and other public places.

4. The *Secretary*:

- (a) records minutes of all meetings and distributes these as required, including to the Board of Selectmen;
- (b) assists the Chair with incoming and outgoing correspondence for the Commission;
- (c) maintains the files of the Commission, including the original approved Certificates;
- (d) maintains a file for each property within the Historic District that contains any applications received, a record of decisions including copies of Certificates granted, and other relevant documentation;
- (e) arranges for date-stamping by the Town Clerk of approved Certificates;
- (f) provides a copy of approved date-stamped Certificates to the applicants and the Town Building Inspector on a timely basis;
- (g) handles the Continuation Request Forms signed by applicants.
- (h) cooperates with the Chair and Clerk in preparation of agenda.
- (i) provides a copy of the signed plans to the Town Building Inspector, the applicant and the Commission's files on a timely basis.

5. The *Treasurer* processes deposit and payment vouchers and makes monthly reports to the Commission. The Treasurer handles the general account and any gift or bequest accounts for the Commission and reports the totals of any gift or bequest accounts. The Commission has no check-writing authority and operates through the Town Treasurer and Town Accountant.

6. The *Clerk* processes all applications for Certificates. The Clerk is responsible for:

- (a) creating application files labeled with name, property address, hearing date(s) ;
- (b) reviewing the submitted date-stamped application to ensure that all required documentation is included; initialing the complete application. If all requirements are not met at time of application deadline, Clerk recommends to the Chair for or against extension of the deadline for that application; notifying applicant by phone and email of the decision and new deadline, as relevant. The Clerk may recommend to the Chair that the application be scheduled only after the application is complete which may mean that the hearing is postponed. The Clerk notifies the Commission at its next meeting of any action taken on incomplete applications.
- (c) communicating with Chair as to number of public hearings requested; recommending carryover of public hearings to another special meeting if necessary;
- (d) submitting meeting notices to Town Clerk to enable posting at least forty-eight (48) hours (Sundays and legal holidays not included) prior to the meeting;
- (e) submitting public hearing notices to the Town Clerk to enable posting at least 14 days (Sundays and legal holidays not included) prior to the hearing date. Note that applications for Certificates of Non-Applicability do not require a public hearing while applications for Certificates of Appropriateness and Hardship normally require a public hearing;
- (f) creating and mailing notices of a public hearing, containing summary of proposed work, to the owner/applicant; specified agents of the owners, if any; abutters; those requesting notification of public hearings; the Town Planning Board and any other persons the Commission may deem necessary;
- (g) assembling and putting into the applicant's file all information relating to the application and the public hearing, including accompanying documents, copy of public hearing notices, a list of abutters notified, and any related correspondence; and
- (h) display on the Commission Bulletin Board, second floor, Westport Town Hall, for public viewing at least fourteen days prior to the scheduled public hearing: copy of the public hearing notice and copy of scale drawings submitted with the application.

7. The Commission may assign Members and enlist other individuals to perform additional duties.

C. Advisory Committee. The Commission may recommend to the Board of Selectmen from time to time, as needed, the appointment of advisory committees of historians and persons experienced in architecture or other arts or in historic preservation or restorations to assist in a manner comparable to the National Park Service Advisory Board or Consulting Committee. The Commission may ask the advice of individual experts (architects, engineers, etc.) to facilitate its review of applications for Certificates.

### III. Meetings and Public Hearings, Voting and Records

#### A. Meetings and Public Hearings

1. All meetings and public hearings are subject to the provisions of the Open Meeting Law, G.L. c. 39, § 23A and § 23B.
2. *Quorum.* Four (4) Commissioners, including Members or Alternates designated to act for a Member, shall constitute a quorum.
3. *Regular meetings* of the Commission will be held each month on a regular basis unless otherwise posted. Notice of date, time and location of the regular meeting shall be provided to the Town Clerk's Office and the agenda shall be posted on the Commission's bulletin board at least 48 hours (excluding Sundays and legal holidays) prior to the regular meeting.
4. *Public hearings* shall be held for applications for Certificates of Appropriateness or Hardship under the authority of the Local Historic District Commission (Section VII below) and for changes to Commission Rules and Regulations and Guidelines. Notice of date, time, location and subject matter shall be posted in the Town Hall at least fourteen (14) days prior to the hearing. In addition, notices of public hearings shall be mailed at least fourteen (14) days in advance to the applicant, abutters as defined in Annex A, (attached hereto, to addresses as shown on tax assessor records, and others requiring notice. Requests for notification for others than the applicant and abutters must be made in writing to the Commission and renewed annually in December.
5. *Special meetings* of the Commission may be held at the call of the Chair or at the request of two other Members. Notice of date, time and location of a special meeting and the agenda of that meeting shall be posted in the Town Clerk's Office at least 48 hours (excluding Sundays and legal holidays) prior to a special meeting.
6. *Emergency meetings* may be held at the call of the Chair or at the request of two Members, if there is an unexpected occurrence or set of circumstances demanding immediate action that relates directly to the functions and responsibilities of the Commission. In this case there are no public notice requirements, but the Commission should attempt to post notice in the Town Clerk's Office before the meeting if possible.
7. *Continuation.* The Commission itself may continue a public hearing to another date if the new date meets the time limits imposed by the Commission Bylaw. The applicant may request a continuation beyond the time limits imposed by the Commission by signing a Continuation Request Form provided by the Commission. In both cases, the date, time, place and agenda for that hearing must be announced publicly during the initial meeting and recorded in the minutes. The continuation hearing is considered to operate under the legal and abutter notification of the initial hearing, and no additional notifications are required. The Commission shall establish a deadline for the submission of any additional or revised materials on a case by case basis, with the intent to assure that these additional materials shall be available and posted at the Town Hall in advance of the continuation hearing to allow the public an adequate time period to consult them. The Commission shall file the Continuation Request Form with the Town Clerk and in the applicant's file.

8. *Cancellation of meetings.* The Chair or other officer of the Commission (in the absence of the Chair), may dispense with a meeting by giving notice to all Members and Alternates designated to act for a Member, and by posting a notice of the cancellation in the Town Hall at least 48 hours (excluding Sundays and legal holidays) prior to the scheduled time.

9. *Site visit.* The Massachusetts Open Meeting Law, G.L. c 39 §23 B, specifically exempts a site visit from the definition of a public meeting in which the general public must be allowed to participate. When a site visit is arranged as a continuation of a meeting or public hearing, it does not require specific additional notices. No decisions can be taken at a site visit. An oral or written summary report on the site visit should be presented at the next Commission meeting and recorded in the minutes.

## B. Voting

1. All Members and Alternates designated to act for a Member shall be entitled to vote except as noted below. Proxy or absentee voting is not allowed. Alternates who are not acting on behalf of a Member are expected to participate in all aspects of Commission discussions and deliberations, but are not entitled to vote.

2. In the case of a continuation of a public hearing on an application for a Certificate within a local Historic District, a Member or Alternate designated to act for a Member may vote on the application only if s/he has attended all sessions of the public hearing or has reviewed the filmed meeting.

3. If a Member position is vacant and not yet filled by appointment by the Selectmen, no Alternate can be designated by the Chair to vote for that Member position.

4. Decisions shall be made by simple majority vote present *except* in the case of the granting of a Certificate of Appropriateness, Hardship or Non-Applicability. In case of a tie, the motion is not approved.

5. Four (4) affirmative votes, being a majority of the Commission Members and Alternates designated to act for a Member(s) as required by G.L. c. 40C §11, shall always be required to approve a Certificate of Appropriateness, Hardship and Non-Applicability. If the affirmative votes are less than four in number, the Certificate is denied.

6. Members and Alternates are subject to the requirements of the State Conflict of Interest Law, G.L. c. 268A. The Commission acknowledges the rights of Members and Alternates to an exemption from these requirements under G.L. c. 268A §19(b)(1).

7. In addition to the requirements of G.L. c 268A §19, the Commission acknowledges that Members and Alternates may represent themselves in discussion of a particular matter in which they may have conflict of interest. However the Member or Alternate must not sit with the Commission during public discussion, Commission deliberation or voting on that matter, and may not take official part in the Commission deliberations and voting on that matter. It is strongly recommended that the Member or Alternate leave the room for the voting process.

8. In addition to the requirements of G.L. c. 268A §23, the Commission acknowledges that Members and Alternates may meet the requirements of the law by stating in advance that there is an appearance of a conflict of interest on a particular matter. However the Commission strongly recommends that the Member or Alternate abstain from deliberations and voting on that matter as for Chapter 19.

9. Members, or Alternates designated to act for Members, may abstain from a vote at their own discretion.

C. Records

1. *Minutes.* Minutes shall be recorded for all meetings and public hearings. Minutes shall constitute a permanent record stating attendance of Members and Alternates and signed public attendance, including abutters who identify themselves at a public hearing, Commission decisions, reports from individual Members on relevant matters that transpire outside of meetings or public hearings, resolutions, the basis for decisions on applications for Certificates and a description of any required revisions to the proposed plans, and the votes of each Member and Alternate designated to act for a Member. The date, time, and place of the next meeting shall be stated at the end of each set of Minutes. Copies of the approved Minutes shall be filed at the Commission offices at Town Hall and provided to the Office of the Selectmen.

2. *Certificates.* Certificates require approval by four affirmative votes by Members or Alternates acting for a Member of the Commission. Certificates awarded by the Commission shall be signed by the officer Chairing the meeting, and witnessed by the person who was the Secretary or his/her designee for the meeting at which the decision was made. The Certificate shall include a listing of agreed amendments to the proposal and any further conditions to be met by the applicant.

3. *Building Plans.* After approval at a public hearing, each page of the three copies of the approved building plans shall be signed and dated by at least four Members and/or Alternates designated to act for a Member, who voted at the meeting at which the decision was made. After signing and dating by the Commission, one copy of the approved and signed plans shall be returned to the applicant, one shall be delivered to the Building Inspector when a building permit is required and one, along with any supporting material presented for the Commission's consideration, shall be placed in the Commission files.

4. *Annual Report.* The Commission shall prepare an annual report for the Annual Town Report. A copy of the annual report and updated lists of Commission Members shall be sent to the Massachusetts Historical Commission.

5. *Copies of Commission Records.* Copies of Commission records, including final minutes and signed certificates, shall be made available to the public, upon application to any Member of the Commission. Any expenses involved will be borne by the requesting party.

#### **IV. Establishment of Commission Rules and Regulations**

A. The Commission may set its Rules and Regulations according to Article 7 of the Westport Historical Commission Bylaw.

B. The Commission from time to time may amend its Rules and Regulations. Such amendment requires a public hearing.

## **V. Powers and Duties as an Historical Commission**

### **A. The Commission may:**

1. advise and make recommendations to the Board of Selectmen on any matter having an impact on the historical or archeological assets of the Town of Westport (Chapter 40, Section 8D);
2. cooperate with and advise the Board of Selectmen, the Planning Board and other town bodies in matters involving historical, architectural or archeological assets in the Town of Westport;
3. accept and expend money and/or gifts and employ clerical and technical assistants or consultants;
4. conduct surveys of Westport buildings and sites for the purpose of determining those of historic significance;
5. propose as it deems appropriate the establishment of additional historic districts and changes in historic districts;
6. determine an appropriate system of markers for selected historic sites and buildings;
7. arrange for preparation and publication of maps and brochures and descriptive material about Westport historic sites and buildings;
8. cooperate with and enlist assistance from the Massachusetts Historical Commission, the National Park Service, the National Trust for Historic Preservation, Historic New England, (and/or their successor agencies, if any), and other agencies, public and private, from time to time concerned with historic assets and resources in the Town of Westport;
9. advise owners of historic buildings and structures in the Town of Westport about problems and solutions for historic preservation;
10. acquire in the name of the Town of Westport by gift, purchase, grant, bequest, devise, and lease or otherwise the fee simple or lesser interest in real or personal property of significant historical value and manage the same.

## **VI. Authority Under Westport Demolition Bylaw**

### **A. Demolition Bylaw.**

1. The Westport Demolition Bylaw establishes procedures for delaying the issuance of permits for the demolition of significant buildings in the Town of Westport. Demolition refers to any act of pulling down, destroying, removing or razing any building or a substantial portion thereof. The list of significant buildings is found in the Historical Inventory that was prepared by the Commission. Copies of the Historical Inventory are available in the Commission Offices, at the Building Inspector's offices and at the Westport Public Library.

2. For significant buildings *outside* a designated local Historic District, the Commission has authority to delay demolition of a significant building if the Commission determines that the demolition would be detrimental to the historical or architectural heritage or resources of the Town. The Commission is empowered to delay issuance of a demolition permit for up to 365 days to allow time to attempt to find ways to save the significant building. The Commission does not have veto power, only the power to impose a delay in certain circumstances to allow more time to find other solutions.

3. For any building or structure *within* a designated local Historic District, the Commission has authority to approve or deny (and not just delay) demolition (See section VII below).

B. Procedures.

1. *Buildings and structures within a designated local Historic District.* Applicants may not obtain a demolition permit from the Building Inspector without a Certificate from the Commission. A Demolition requires either a Certificate of Appropriateness, Hardship or Non-Applicability.

2. *Significant buildings outside the local historic district.* Upon receipt of an application for a demolition permit for a significant building *outside* a designated local Historic District the Building Inspector shall forward a copy to the Commission. The Chair shall inform the applicant and the Building Inspector when it will take up the demolition application. Normally that would be at the Commission's next scheduled meeting, assuming that there is sufficient time to include the item on the agenda. If there is not sufficient time, it will be considered at a special meeting, but in any case, within 30 days of receipt of the application. In addition to the application for demolition, the applicant may request the Commission to take into consideration factors of hardship that may arise due to any delay.

3. If the Commission determines that demolition of the significant building *outside* a designated Historic District would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall inform the Building Inspector and the applicant of its determination in writing, and thereafter, as provided by the Westport Demolition By-law, the Building Inspector may proceed with his own consideration of the application. If the Commission determines that demolition of the significant building *outside* a designated local Historic District would be detrimental, the Commission shall inform the Building Inspector and applicant in writing that the issuance of a demolition permit must be delayed by up to 365 days. The purpose of the delay is to allow additional time to find other solutions, including: (a) developing possible ways to use the significant building in the applicant's plans; or (b) finding a purchaser willing to relocate, preserve, rehabilitate or restore the building. The Commission will use its resources to help the applicant find alternative solutions. If no alternative solution (acceptable to the applicant) is found within the 365 day delay, the Building Inspector may proceed with his own consideration of the permit application, without further intervention from the Commission.

4. In cases where the significant building *outside* a designated local Historic District is considered by the Building Inspector to pose an imminent threat to public safety, the applicant may request an emergency demolition permit and, pursuant to the Westport Demolition By-law, the Building Inspector will apply to the Commission for an immediate decision. In that case, the Commission shall hold an emergency meeting to consider the application.

C. *Enforcement.* In the event the Commission takes cognizance of a violation of the Demolition By-law within its jurisdiction as an Historical Commission, the Commission shall notify the Board of Selectmen and the Building Inspector for appropriate enforcement.

## **VII. Powers and duties as a Local Historic District Commission**

### **A. Introduction.**

1. Buildings and structures in a designated local Historic District and visible to a public way may not be altered, constructed, or demolished without a Certificate issued by the Commission, whether or not such work requires a building permit from the Town Building Inspector. See Annex A for definitions. "Visible to the public" includes the view from a public street, public way, public park or public body of water. Vegetation, landscaping, fences, walls, trellises, and the like are not considered to provide a barrier to visibility.
2. If an owner of a property in a designated local Historic District either: (i) fails to obtain a Certificate for alterations, construction or demolition under the Commission's purview, or (ii) fails to observe the conditions of the Certificate, the Commission shall first notify the owner in writing that the requirements of the Bylaw and/or Certificate are not being met. The owner will be given one week to respond to this notification with a plan to correct the situation, such plan to be delivered to the Chair. The owner will be requested to present the proposed plan to the next Commission meeting. If there is no response from the owner within that time period or the proposed plan (as it may be modified during the discussion at the Commission meeting) is found inadequate, the Commission may declare the situation on the site to be illegal under G.L. Chapter 40C:6 and apply the available remedies under G.L. c. 40C §13. The Commission may refer the matter to the Building Inspector for enforcement of the conditions of the building permit.
3. Whoever violates any of the provisions of G.L. c. 40C shall be punished by a fine not exceeding three hundred dollars (\$300) for each offense. Each day any violation continues shall be deemed a separate offense.
4. The Commission shall not prevent a property owner from meeting requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition.

### **B. Guidelines.**

1. The Commission shall publish Guidelines which, among other things, shall include: (a) the scope of its review authority (b) any specific limitations on its review authority, (c) its guidelines for determining the appropriateness of any proposed alterations, construction and demolition, and (d) the procedures for the application process for a Certificate.
2. When deemed appropriate, and made known to the public in advance in a public hearing, the Commission may allow standing exemptions of certain construction and alterations from review by the Commission over and above those specifically exempted in Chapter 40C and the Westport Historical Commission Bylaw. For example certain lighting fixtures or a roster of colors of paint may be specified to meet the requirements of the Commission and would need no review for any applicant.
3. Members and Alternates may respond to routine questions about the Guidelines, but shall refer non-routine questions to a meeting of the Commission.

C. Procedures.

1. The Commission offers three types of Certificates – Appropriateness, Hardship and Non-Applicability (See Sections D, E, and F below). The *Guidelines* state the conditions that determine which Certificate may be required.
2. *Application Process.* *Guidelines* and application forms shall be made available on the Commission bulletin board, Second Floor Town Hall and in the Building Department.
3. The Commission shall charge a filing fee for applications for Certificates of Appropriateness and for Certificates of Hardship. There is no fee for filing for Certificates of Non-Applicability. The fee schedule shall be established by May for the upcoming fiscal year.
4. *Applications for Certificates shall be filed with the Selectmen's Office.* The date of the filing of an application normally shall be the date on which an application is received at the Board of Selectmen's Office and date stamped. However if the application does not contain all the required documents stated in the *Guidelines* the date of filing shall become the date on which these documents are added to the files and date stamped. Applications will be checked by the Clerk who will notify the applicant if they are incomplete. Incomplete applications may lead to delay and/or to denial of a Certificate.
5. An applicant may withdraw the application at any time through a written request. The Commission shall record a vote for the Minutes accepting the withdrawal. Any subsequent applications shall require the full process and fees for a public hearing. There will be no refund of the filing fees.
6. The Commission shall determine within fourteen (14) days of the receipt of the complete application if a public hearing is necessary. Most applications require a public hearing and notices will be sent promptly. (See IIIA4.) Applicants will be informed if a public hearing is not required.
7. A public hearing on an application for a Certificate of Appropriateness or Hardship may be waived: (a) in writing by all persons entitled to notice, and (b) by the Commission if the Commission determines that the exterior architectural feature involved or its category or color is so insubstantial in its effect on the historic district that it may be reviewed by the Commission without public hearing on the application. However, if the Commission votes to dispense with a public hearing on any application, notice of the application shall be given to the owners of all adjoining property and other property deemed by the Commission to be materially affected and ten (10) days shall elapse after the mailing of such notice before the Commission may act. A public hearing is not required for applications for Certificates of Non-Applicability. These applications will be considered at a meeting of the Commission during the business portion of the meeting.
8. *Preliminary review by the Commission.* The applicant may request a preliminary review of proposed plans by the Commission at a meeting before s/he files a formal application. The Commission strongly recommends such a review for major changes such as additions and new construction. A verbal or written request for a preliminary review should be made by the applicant to the Chair and received at least seven days in advance of the regular meeting in order to be placed on the agenda. Materials presented should be adequate to ascertain at least the broad outlines of the proposed project and the proposed changes to the site. During the preliminary review, the Commission may offer suggestions and advice on aspects of the proposed plan, including ways to enhance its appropriateness.

9. No votes can be taken by the Commission at a preliminary review. The preliminary review is not considered part of the public hearing process and does not require notice, but does require being placed on the agenda. Public hearings have first priority on the agenda. Times for preliminary reviews shall be set only after times for initial public hearings and continuations of public hearings are set.

10. *Monitors.* The Chair shall nominate two Members and/or Alternates designated to act for a Member as *Monitors* for each approved Certificate from among the attendees at the public hearing for the Certificate. The names of the Monitors shall be recorded in the Minutes and on the Certificate. The duties of the Monitors include: (a) observing on a regular basis if the project is in compliance with the terms of the Certificate; (b) providing a channel of communications between the property owner and the Commission; and (c) reporting status of project to the Commission on a regular basis. Monitors do not have any decision-making authority on their own. They must report immediately to the Chair all requests from the property owner and possible violations. A special meeting may be called to address such issues. The Chair may place the issue on the agenda of the next regular meeting as appropriate.

11. *Applicant and the Building Inspector.* The Commission shall provide a copy of the Certificate and the signed plans to the Building Inspector. The applicant provides “For Construction” plans to the Building Inspector and is responsible that the “For Construction” plans are consistent with the features covered by the Commission’s approval and correspond to the requirements of the Certificate.

12. *Denial.* When the Commission does not approve an application, the Commission *may* make recommendations for changes in the applicant’s proposal that, if made, would make the application acceptable to the Commission. In all cases, the Commission shall record the reasons for the disapproval in the minutes of the meeting when the decision is made and send notice of and reasons for the decision to the applicant. The Commission also must consider whether the application merits a Certificate of Hardship.

13. *Expiration of Certificates.* For work that requires a building permit, the property owner must apply for a building permit within twelve months of the date of issue of any Certificate. If application for a building permit is not made within twelve months, the Certificate expires and the property owner must apply for a new Certificate. A new application will need to fulfill all requirements and guidelines that may be in force at that time; there will be no grandfathering of previously approved plans that have not been completed. All Certificates shall be valid for the period of the building permit. As a Certificate is granted to a person, not to properties (like the building permit), all Certificates expire upon sale of the property. Any previously approved work not yet completed at the time of the sale must be resubmitted to the Commission for approval.

14. *If no building permit required.* For work that does not require a building permit, the Certificate shall expire 24 calendar months after the date of issuance of the Certificate or at sale of the property whichever shall come first. This 24 month deadline may be extended by the Commission on a case by case basis. If the approved work is not completed before the expiry, a new application must be filed for any work not yet completed.

15. *Transfer of Certificates.* Certificates are not transferable to new owners. New owners must make a new application to the Commission for any uncompleted work.

16. *Changes to Approved Plans.* Applicants cannot make changes to approved plans and/or Certificates without prior authorization from the Commission at a public meeting. If an applicant wishes to make changes to specific features covered by the Certificate and the signed plans, the applicant shall inform at least one Monitor (who will contact the second Monitor and the Chair). The three may advise the applicant as to what type of application s/he should submit to the Commission, if any. All actions must be reported to the full Commission at the next meeting. The Commission may hold a special meeting to consider such matters.

(a) If the Commission determines that the proposed change to an already issued Certificate of Appropriateness or Certificate of Hardship is substantial, a new public hearing is required. Applicants may anticipate this requirement by applying for such a Certificate in a timely manner.

(b) If the Commission determines that the change is insubstantial but within its purview, it may vote to dispense with a public hearing, but must give notice to all those deemed to be materially affected (as set out in VII.C.7 above) and wait ten (10) days after the mailing of such notice before it can act.

(c) If the Commission determines that the change is exempt from Commission review it may issue a Certificate of Non-Applicability at that meeting.

17. *Additional work.* If an applicant wishes to undertake additional work subject to the Commission's review that was not included in the plans submitted to obtain the original Certificate, a complete application for the additional work must be submitted. The Commission will then handle the application when it is received according to the procedures for the relevant type of Certificate.

D. Certificate of Appropriateness.

1. The Commission may impose conditions and limitations on the applicant under the terms of a Certificate of Appropriateness, and may require architectural or plan modifications.

2. If at the public hearing, the Commission decides that the agreed changes are too substantial to be made easily understandable on the basis of a hand-markup of the plans, the Commission may require the applicant to resubmit two copies of the plans revised to reflect the Commission's decision. This may require a continuation of the public hearing (see III A.7. above). If the continuation is not requested by or agreed to by the applicant, the Commission may deny the application and require that a new application be submitted.

3. The Commission may make recommendations (beyond those imposed as conditions and/or limitations on the Certificate) for additional changes to the design, arrangement, texture, materials, or similar features, to enhance further the proposal's appropriateness. These are not binding upon the applicant.

4. In the case when an application for a Certificate of Appropriateness is not approved, the Commission shall consider if the application meets the criteria for a Certificate of Hardship.

E. Certificate of Hardship

1. A Certificate of Hardship may be issued to an applicant on the basis of the criteria set forth in G.L. 40C §10 in addition to the criteria necessary to obtain a Certificate of Appropriateness. The additional criteria are: the Commission must determine (a) whether, owing to conditions especially affecting the building or structure involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the application; and (b) whether

such application may be approved without substantial detriment to public welfare and without substantial derogation from the intent and purposes of G.L. c.40C. Applicants must provide sufficient evidence to the Commission that these two criteria have been met by the applicant and the proposal.

#### F. Certificate of Non-Applicability

1. The Commission may consider an application for a Certificate of Non-Applicability at a Commission Meeting or a public hearing; in most cases a public hearing is not required. The Commission may also delegate authority to approve Certificates of Non-Applicability to the Chair and Secretary jointly, under circumstances described below.

2. A Certificate of Non-Applicability may be issued for proposed construction, alteration or demolition that does not involve any “exterior architectural features” as defined in Annex A. The applicant must show evidence that the project is outside the purview of the Commission.

3. The original Westport Historical Commission By-Law established a list of activities outside the Commission’s purview (e.g., terraces, walks, driveways, etc. being structures substantially at grade, color of paint on doors and shutters, work not visible from a public way, color or nature of roof materials, etc.). In addition, MGL 40C: 9, Section 9 establishes that Commission powers shall not be construed to prevent the ordinary maintenance, repair or replacement of any architectural feature within an historic district which does not involve a change in design, material, color or outward appearance.

4. Upon receipt of an application for a Certificate of Non-Applicability, the Chair and Secretary shall jointly review the application to evaluate whether the project is outside the Commission’s review authority. They may discuss the matter with the applicant, visit the site if desired, and review the evidence presented to verify eligibility for a Certificate of Non-Applicability. If the two agree that the proposed project clearly falls outside of the Commission’s review authority, they shall issue a Certificate of Non-Applicability to the applicant, and report the matter under General Business at the next Commission meeting. The Secretary also shall provide copies of the Certificate of Non-Applicability to the Building Department, because projects outside of the Commission’s review authority may require a building permit (e.g., reroofing, window replacement, work not visible from public way, etc.).

5. If the Chair or Secretary, individually or jointly, determines that the case for eligibility for a Certificate of Non-Applicability is not clearly established, they shall refer the matter to the next Commission meeting for its determination. If the Commission determines at that meeting that the specific features or components of proposed construction, alteration, or demolition do not need approval by the Commission, the Commission shall issue a Certificate of Non-Applicability, copied to the Building Department.

6. If any of the features covered by the application for a Certificate of Non-Applicability are determined to be subject to the Commission’s review authority, the applicant shall be required to apply for a Certificate of Appropriateness or a Certificate of Hardship as appropriate, before proceeding with the proposed construction, alteration, or demolition. In this case, a public hearing is required.

#### G. Enforcement and Coordination with Town Officials

1. *Town of Westport Officials.* The Commission shall request that in the event a duly authorized officer identifies an unsafe or dangerous condition in a building or structure in a local Historic District, such officer shall report to the Commission and the Commission shall offer its assistance in determining an appropriate response, which may include convening an emergency meeting with concerned public officials and property owners and/or their designated representatives.

2. *Building Inspector*

(a) For alterations, construction or demolition subject to Commission review and which require a building permit, the Building Inspector of the Town of Westport is *de facto* the next line of enforcement of Commission rules and regulations, guidelines and decisions. Just as the Building Inspector cooperates with and coordinates with the Board of Health and the Conservation Commission to ensure that the proposed plans are acceptable to those Town bodies, the Building Inspector ensures that no building permit is issued in an Historic District for plans that have not received a Certificate from the Commission. This is effected by the requirement of the Building Inspector that plans (including any amendments) presented to him for approval are already cleared and signed off by the relevant Town bodies, including the Commission.

(b) The Building Inspector is the enforcement officer of the Westport Demolition By-law.

(c) If there are occasions when there are differing views or uncertainties about what was approved by the Commission or possible conflicts between Building Code requirements and parameters established in the Certificate issued by the Commission or the plans as signed off by the Commission, the Building Inspector and the Chair will consult to establish a mutually agreeable process to reach a solution on an expedited basis. The Chair will inform the Commission Members of any such occasions, and the Commission will meet, on an emergency basis if needed, to decide how to proceed.

3. *Board of Selectmen.* For those issues that relate to a matter that does not involve a building permit or when there are issues beyond the capacity of the Commission to resolve, the Commission shall turn first to the Board of Selectmen and make recommendations to them for appropriate follow-up according to the Town Bylaws.

4. *Non-criminal Disposition of Violations in District Court.* The Commission may exercise the procedures provided pursuant to Mass. G.L., C.40§21D for non-criminal disposition of violations of the Commission in District Court.

5. *Superior Court:* In the event the Commission takes cognizance of a violation of the Commission Bylaw, the Commission may notify the Board of Selectmen and request the assistance of Town Counsel to file an enforcement action in Superior Court, pursuant to Mass. G.L. c. 40C §13.

H. Appeal

1. G.L. c. 40 §12A allows that any applicant aggrieved by a determination of the Westport Historic District Commission may, within twenty days after the filing of the notice of such determination with the Westport Town Clerk, appeal to the Superior Court sitting in equity for Bristol County.

## **Annex A.**

**Definitions** The following definitions are consistent with the Massachusetts General Law (MGL), Chapter 40C and the Westport Historical Commission By-Law:

- (a) “Altered” includes the words “rebuilt, reconstructed, restored and demolished” and the phrase “changed in exterior color.”
- (b) “Building” means a combination of materials forming a shelter for persons, animals or property.
- (c) “Certificate” means a Certificate of Appropriateness, a Certificate of Hardship and a Certificate of Non-Applicability.
- (d) “Commission” means the Commission acting as the historic district commission and/or the historical commission.
- (e) “Constructed” includes the words “built, erected, installed, enlarged, and moved.”
- (f) “Demolish” means the destruction of a building or a substantial portion thereof.
- (g) “Exterior architectural feature” means such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, and is not specifically excluded from review by the Westport Historical Commission Bylaw, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces, and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures.
- (h) “Public way” means a public street, public way, public park or public body of water.
- (i) “Significant Building” means any building included on the Westport Historical Inventory compiled by the Commission.
- (j) “Structure” means a combination of materials other than a building, not limited to but including signs and raised septic mounds, and excluding fences, walls, terraces, walks, driveways and like structures that are substantially at grade.
- (k) An “abutter” for purposes of the Commission is defined as including owners of properties directly across a private or public road, path or driveway, and all properties within 70 feet of the applicant's property boundary.