

# **HISTORIC PRESERVATION**

---

Chapter 126

From the

CODE

of the

TOWN OF WINDHAM

COUNTY OF CUMBERLAND

STATE OF MAINE

# Table of Contents

## Chapter 126

### HISTORIC PRESERVATION

---

<b>ARTICLE I</b>	<b>4</b>
§ 126.1 - INTENT AND PURPOSE.	4
§ 126.2 - DEFINITIONS.	4
§ 126.3 - HISTORIC PRESERVATION COMMISSION.	5
§ 126.4 - QUALIFICATIONS FOR SITES OR LANDMARKS.	6
§ 126.5 - ESTABLISHMENT OF HISTORIC DISTRICTS, SITES OR LANDMARKS	7
A. Preliminary procedures.	7
B. Studies and recommendations.	8
C. Public hearings and final report.	8
D. Action by Council.	8
§ 126.6 - DESIGNATED AREAS.	8
§ 126.7 - PERMITTED USES.	9
§ 126.8 - CERTIFICATE OF APPROPRIATENESS REQUIRED.	9
A. Certificate of appropriateness.	9
B. Applications.	9
§ 126.9 - APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.	9
A. Application.	9
B. Application contents.	10
§ 126.10 - ADMINISTRATIVE PROCEDURES.	10
A. Notice to Owner.	10
B. Hearing.	10
C. Approval.	11
D. Disapproval.	11
E. Appeals.	11
§ 126.11 - STANDARDS FOR EVALUATION.	11
A. Reconstruction and alterations.	11
C. Construction in historic districts.	12
D. Visual compatibility factors.	12
§ 126.12 - MAINTENANCE.	13
A. Ordinary maintenance permitted; public safety.	13
B. Maintenance and repair required.	14
§ 126.13 - HARDSHIP VARIANCE.	14
A. Board of Appeals.	14
B. Conditions.	15
§ 126.14 - VIOLATIONS AND PENALTIES.	15
§ 126.15 - APPEALS.	15

**HISTORIC PRESERVATION**  
CHAPTER 126

**ARTICLE 1**

Section	Description
§126-1	Intent and purpose.
§126-2	Definitions.
§126-3	Historic Preservation Commission.
§126-4	Qualifications for sites or landmarks.
§126-5	Establishment of historic districts, sites or landmarks.
§126-6	Designated areas.
§126-7	Permitted uses
§126-8	Certificate of appropriateness required
§126-9	Application for certificate of appropriateness
§126-10	Administrative procedures
§126-11	Standards for evaluation.
§126-12	Maintenance.
§126-13	Hardship variance.
§126-14	Violations and penalties.
§126-15	Appeals

(HISTORY: Adopted by the Town Council of the Town of Windham 3/14/1989. Amendments noted where applicable.)

**GENERAL REFERENCES**

Building construction - See ch. 66.

Land use - See Ch. 140.

Subdivision of land. - See Ch. 213.

## HISTORIC PRESERVATION

### ARTICLE I

#### **§ 126.1 - INTENT AND PURPOSE.**

This chapter is adopted pursuant to the legislative authority vested in Windham by virtue of Title 30, Maine Revised Statutes Annotated, §1917, and in accordance with Title 30, §2157.2.G and §§ 4961 thru 4963, and acts amendatory thereto, for the purpose of preserving, protecting and enhancing buildings and places or areas within the town which possess particular historical, cultural or architectural significance in order to promote the educational, cultural and economic welfare of the residents of and visitors to Windham. To achieve these purposes, it is intended that historic districts and related regulations be used to prevent inappropriate alterations of buildings of historic or architectural value; to preserve the essential character of neighborhoods; and to assure that new buildings or structures constructed in neighborhoods and districts of historic or architectural value are designed and built in a manner which is compatible with the character of the neighborhood or district.

#### **§ 126.2 - DEFINITIONS.**

As used in this chapter, the following terms shall have the meanings indicated

**CONTRIBUTING STRUCTURE.** A structure located within a designated historic district and identified as contributing to the historical or architectural significance of said district.

**HISTORIC DISTRICT.** A geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and designated in accordance with the requirements of this chapter as appropriate for historic preservation. Such "historic districts" may also comprise individual elements, separated geographically but linked by association or history.

**HISTORIC LANDMARK.** Any improvement, building or structure of particular historic or architectural significance to Windham relating to its heritage, cultural, social, economic or political history or which exemplifies historic personages or important events in local, state or national history as may be designated in accordance with this chapter.

**HISTORIC SITE.** Any parcel of land of special significance in the history of Windham and its inhabitants or upon which an historic event has occurred, and which has been designated as such in accordance with this chapter. The term "historic site" shall also include any improved parcel or part thereof used as and constituting part of the premises on which the historic landmark is situated as may be designed in accordance with this chapter.

**§ 126.3 - HISTORIC PRESERVATION COMMISSION.**

- A. Members of the Windham Historic Preservation Commission (hereinafter referred to as the "Commission") shall be appointed by the Windham Town Council (hereinafter referred to as the "Council"), which may make such appropriations each year as it deems necessary to fund the activities of the Commission.
- B. The Commission shall consist of five (5) members, who shall be residents of the Town of Windham. Appointments shall be made on the basis of demonstrated interest, knowledge, ability, experience and desire to promote historic preservation in the Town of Windham within the meaning of § 126.1 of this chapter. To the extent available, the members shall be professionals in the disciplines of architecture, history, architectural history, planning, archeology, urban design or other disciplines related to historic preservation. In addition to the regular members of the Commission, the Council may appoint other persons, not necessarily residents of the Town of Windham, who shall serve on an advisory or consultant basis to assist the members of the Commission in the performance of their functions.
- C. The Commissioners who are first appointed shall be designated to serve terms as follows: one (1) for one (1) year, two (2) for two (2) years and two (2) for three (3) years from the date of their appointment. Thereafter, said Commissioners shall be appointed for a term of three (3) years, except in those instances in which the appointment is made to fill a vacancy in an unexpired term. The Council shall act within sixty (60) days to fill a vacancy, including expired terms. Persons appointed to serve in an advisory or consulting capacity shall hold office during the pleasure of the Council.
- D. Such Commission shall elect annually a Chairman, a Vice Chairman and a Secretary form its own membership. A majority of the number of members appointed by the Council shall constitute a quorum for the transaction of business before said Commission, but if less than such majority is present at a meeting, a majority of those present may adjourn the meeting from time to time. The Secretary shall maintain a permanent record of the activities of the Commission, including but not limited to such items as the number and types of cases reviewed and their disposition, new designations of historic sites, landmarks and districts made, resumes of Commission members, appointments to the Commission, attendance records correspondence and minutes of all meetings. All records maintained or prepared by the Secretary are deemed public and may be inspected at reasonable times.
- E. Said Commission, for its purposes, shall adopt and may from time to time amend rules of procedure upon approval of the Council.
- F. All meetings of the Commission shall be publicly announced, open to the public and have a previously available agenda. Public notice shall be provided prior to any special meetings of the Commission.

- G. The Commission may, subject to appropriations by the Council or other income, employ clerical and technical assistants or consultants and may accept grants, money gifts or gifts of service and may hold or expend the same for all or any of the purposes of historic preservation in the Town of Windham.

H. Duties.

1. The duties of the Commission shall be to:
  - a. Make recommendations for establishing historic districts, historic sites or historic landmarks to the appropriate local governing body, according to the procedures listed in §§ 126.4 and 126.5 of this chapter.
  - b. Review all proposed additions, reconstruction, alterations, construction or demolition of the properties designated under the jurisdiction of this chapter.
  - c. Review all proposed National Register nominations for properties within its jurisdiction.
  - d. Serve an advisory role to local government officials regarding local historical and cultural resources and act as a liaison between local government and those persons and organizations concerned with historic preservation.
  - e. Conduct or initiate a continuing survey of local historic and cultural resources in accordance with Maine Historic Preservation Commission guidelines.
  - f. Work to provide continuing education of historic preservation issues to local citizens.
2. The Commission may undertake other duties as deemed necessary or desirable by the Council, to include advising and assisting owners of designated structures or historic sites on compliance with the requirements of this chapter and administering a historic marker program which would place an informational marker or sign on any designated structure or site.

**§ 126.4 - QUALIFICATIONS FOR SITES OR LANDMARKS.**

The historic districts, historic sites or historic landmarks established in accordance with this chapter shall have one (1) or more or any combination of the following characteristics and qualifications without limitations as to cultural or chronological period:

- A. Structures or sites at which events occur or have occurred that contribute to or are identified with or significantly represent or exemplify the broad cultural, political, economic, military, social or sociological history of Windham and the nation, including

sites and buildings at which visitors may gain insight to see examples either of particular items or of larger patterns in the North American heritage.

- B. Structures or sites importantly associated with historic examples of a great idea or ideal.
- C. Structures or structural remains and sites embodying examples of architectural types or specimens valuable for study of a period, style or method of building construction, of community organization and living or of landscaping, or a single notable structure or a single site representing the work of a master builder, master designer, architect or landscape architect.
- D. Structures contributing to the visual continuity of the historic district.
- E. Those sites or areas on or eligible for listing on the National Register of Historic Places or as a National Historic Landmark

#### **§ 126.5 - ESTABLISHMENT OF HISTORIC DISTRICTS, SITES OR LANDMARKS**

A. Preliminary procedures

Historic districts, historic sites or historic landmarks shall be established by amendment to § 126.6 of this chapter and shall overlay the districts created by the Windham Zoning Ordinance. Such amendments may be initiated by the Council, the Planning Board or the Commission itself with the written approval of the property owner. A form directed to the Chairman of the Commission shall be completed and filed with the Town Manager of Windham, Maine. The Town Manager shall thereafter call a meeting of the Commission for the purposes of formulating the Commission's recommendation concerning the request. Any application for designation of structures, sites and districts for historic preservation shall be in writing and shall include the following as appropriate.

1. Designation of structures and sites for historic preservation.

- a. A concise description of the physical elements qualities, architectural style, period and historical significance represented by the structure or site, including a consideration of scale, materials, workmanship and spatial qualities, as relevant.
- b. A concise statement of how the structure or site meets the review criteria of § 126.4 above.
- c. Interior and exterior photographs of the structure or a site map, illustrating significant details described in Subsection A.1.a above.

2. Designation of district for historic preservation.

- a A concise statement of the remaining physical elements which make this area an historic district and a description of building types and architectural styles and periods represented
- b A concise statement of how the district meets the review criteria of § 126.4 above.
- c A justification of the boundaries of the district.
- d A definition of the types of structures that do not contribute to the significance of the district and an estimate of the percentage of noncontributing structures.
- e A map showing all districts structures with the identification of contributing structures.

B. Studies and recommendations.

Before making its recommendation concerning the proposed establishment of an historic district site or historic landmark, the Commission may conduct studies and research on the proposal. The Commission will make a report to the Council on every request received. Drafts of the report shall also be mailed to the Maine State Preservation Commission for review and comment.

C. Public hearings and final report.

Before a final report is made to the Council, the Commission shall hold a public hearing on the request after due notice provided at least seven (7) days prior to the hearing in the same manner provided by elections. Written notice of the proposal shall be given to the applicant and owners of all property abutting or to be included within the proposed designation. Not later than thirty (30) days after said public hearing, the Commission shall submit a final report with its recommendation to the Council.

D. Action by Council.

After receipt of the Commission's recommendations as provided above, the Council shall consider and take all appropriate action on said proposed amendment in accordance with the Town Charter, the Council's rules of procedure thereto and the laws of the State of Maine. Within ten (10) days after the designation of any historic district, historic or historic landmark, the owner of each property so designated shall be given written notice of such designation by the Town Clerk.

**§ 126.6 - DESIGNATED AREAS.**

The following described lands, buildings or structures or areas of the town are designated historic districts, historic sites or historic landmarks as follows:

(Reserved)

**§ 126.7 - PERMITTED USES.**

Uses permitted in historic districts, historic sites or historic landmarks shall be those set forth in the Town of Windham Zoning Ordinance (see Chapter 140, Land Use.) provisions for the zone in which such district, site or landmark is located.

**§ 126.8 - CERTIFICATE OF APPROPRIATENESS REQUIRED.****A. Certificate of appropriateness**

In any historic district and with respect to any historic site or historic landmark, no building permit shall be issued by the Code Enforcement Officer for any construction, alteration or demolition until a corresponding certificate of appropriateness has been issued by the Commission. A certificate of appropriateness issued by the Commission shall be required before a permit is used for any of the following:

1. Any change in the exterior appearance of an historic landmark, site or any building in an historic district by addition, reconstruction or alteration.
2. New construction of a principal or accessory building or structure visible from a public street where such building or structure will be located in an historic district.
3. Demolition of an historic landmark or of any building in an historic district.
4. Moving of an historic landmark or any building in an historic district.

**B Applications.**

Application for a certificate of appropriateness shall be obtained from the Code Enforcement Officer when obtaining a building permit or when no building permit is required but when such activity must be approved by the Commission.

**§ 126.9 - APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.****A. Application.**

Written application for the certificate of appropriateness shall be submitted to the Chairperson of the Commission, stating the location, use and nature of the matter or item for which such certificate is sought. The Commission shall consider each application and, within thirty (30) days of the date of submittal, approve or deny the application. By mutual written consent of the Commission and the applicant, the review period may be extended. Failure to approve or deny the application at the end of the review period shall constitute approval of the application. When the Commission acts on the application, it shall be sent to the Code Enforcement Officer.

B. Application contents

1. The application shall state the location, use and nature of the matter for which such certificate is sought and shall contain at least the following information or documentation unless any such information or documentation is expressly waived by the Commission:
  - a. The applicant's name, address and interest in the subject property.
  - b. The owner's name and address, if different from the applicant's.
  - c. The address of the subject property.
  - d. The present use and zoning classification of the subject property.
  - e. A brief description of the construction, reconstruction, remodeling, alteration, maintenance, demolition or moving requiring the issuance of a certificate of appropriateness.
  - f. A drawing or drawings indicating the design and location of any proposed alteration or new construction for which the certification is being applied. As used herein, drawings shall mean plans and exterior elevations drawn to scale, with sufficient detail to show how they relate to exterior appearances and the architectural design of the buildings.
  - g. Photographs of the building involved and of adjacent buildings.
2. A site plan, indicating improvements affecting appearance such as walls walks, terraces, plantings and accessory buildings, signs lights and other elements, may be required by the Commission.
3. A fee of seventy-five dollars (\$75.00) must be submitted to the Town of Windham at the time the request is submitted.

**§ 126.10 - ADMINISTRATIVE PROCEDURES.**

A. Notice to Owner.

Prior to issuance or denial of a certificate of appropriateness, the Commission shall take such action as may be reasonably required to inform the applicant and all persons owning abutting property and shall give such persons an opportunity to be heard. For purposes of the notice required hereunder, the owners of property shall be considered to be those against whom municipal taxes and real estate are assessed.

B. Hearing.

A public hearing on the application shall be conducted by the Commission.

C. Approval

If the Commission determines that the proposed construction, reconstruction, alteration, moving or demolition is appropriate, it shall approve a certification of appropriateness and send it to the Code Enforcement Officer for issuing of the necessary permits.

D. Disapproval.

If the Commission determines that a certificate of appropriateness should not be issued, it shall place open its record showing the reasons for such determination and shall notify the applicant and the Code Enforcement Officer of such determination, furnishing the applicant an attested copy of the reasons therefor and the recommendations, if any, as appearing in the records of the Commission.

E. Appeals

An appeal from any final decision of the Commission as to any matter over which it has final authority may be taken, by any party or person aggrieved, to the Windham Board of Appeals.

**§ 126.11 - STANDARDS FOR EVALUATION.**

The standards and requirements contained in this section and in the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1983 Edition) shall be used in review of applications for certificate of appropriateness and specifically as to procedures before demolition can take place. Design considerations and structural factors related to maintaining historic structures in good condition shall be the Commission's primary areas of focus.

A. Reconstruction and alterations

A building or structure classified as an historic landmark, an historic site or a building or structure located in an historic district or any part thereof or any appurtenance related to such structures or sites, including but not limited to walks, fences, light fixtures, steps, paving, signs and natural features shall not be reconstructed or altered and no certificate of appropriateness shall be issued for such action, unless they will preserve or enhance its historical and architectural character.

B. Demolition or removal.

1. An historic landmark or any building or structure in an historic district or any appurtenance thereto shall not be demolished or moved, and a certificate of appropriateness shall not be approved until either, in an historic district, such building or structure has been identified by the Commission as incompatible with the historic district in which it is located or the property owner can demonstrate that it is not capable of earning an economic return on its value in its present location as appraised by a qualified real estate appraiser. If such a demonstration can be made, issuance of a certificate for movement or demolition shall be delayed for a period of one hundred eighty (180) days. Such time period shall commence

when an application for a certificate and the statement of sale, as outlined below, have been filed with the Commission.

2. Notices shall be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notices shall be published in a newspaper of general local circulation at least three (3) times prior to demolition, the final notice of which shall be not less than fifteen (15) days prior to the date of the permit, and the first notice of which shall be published no more than fifteen (15) days after the application for a permit to demolish is filed.
  3. Prior to the issuance of such certificate for removal, the owners shall stipulate that the proper notices as required have been posted, that the property was properly offered for sale, that there has been no bona fide offers made and that no contract for sale has been executed with interested parties. The owner shall, for the period of time set forth and at a price reasonably related to its face market value, make a bona fide offer to sell such building or structure and the land pertaining thereto to any person, firm, corporation, government or agency thereof or political subdivision or agency thereof which gives reasonable assurances that it is willing to preserve and restore the building or structure and the land pertaining thereto.
  4. Prior to making such offer to sell, an owner shall first file a statement with the Commission, identifying the property, the offering price and the date the offer to sell shall begin. The time period set forth in this section shall not commence until such statement has been filed.
  5. The purpose of this section is to further the purposes of this chapter by preserving historic buildings which are important to the education, culture, traditions and the economic value of the town and the afford the town, interested persons, historical societies or organizations the opportunity to acquire or to arrange for the preservation of such buildings. The Commission may, at any time during such stay, approve a certificate of appropriateness, in which event a permit shall be issued without further delay.
- C. Construction in historic districts.
- The construction of a new building or structure within an historic district shall be generally of such design form, proportion, mass, configuration, building material, texture and location of a lot as will be compatible with other buildings in the historic district and with streets and open spaces to which it is visually related and in keeping with the area.
- D. Visual compatibility factors.
- Within historic districts, new construction and existing buildings and structures and appurtenances thereof which are moved, reconstructed, materially altered or repaired shall be usually related generally in terms of the following factors:

1. Proportion of buildings front facade. The relationship of the width of the building to the height of the front elevation shall be visually compatible with buildings, structures and open spaces where it is visually related.
2. Proportions of openings with the facade. The relationship of the width of the windows to the height of windows and doors in a building shall be visually compatible with those of windows and doors of buildings to which the building is visually related.
3. Rhythm of solids to voids in front facade. The relationship of solids to voids in the front facade of a building shall be visually compatible with that of buildings to which it is visually related.
4. Rythm of spacing of buildings on streets. The relationship of the building to the open space between it and the adjoining buildings shall be visually compatible with those of buildings to which it is visually related.
5. Rythm of entrance and/or porch projection. The relationship of entrance and porch projections to the sidewalks of a building shall be visually compatible with those of buildings to which it is visually related.
6. Relationship of materials and textures. The relationship of materials and textures of the facade of a building shall be visually compatible with that of the predominant materials used in the buildings to which it is visually related.
7. Roof shapes. The roof shape of a building shall be visually compatible with that of the buildings to which it is visually related.
8. Scale of buildings. The size of the buildings, the building mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with those characteristics of buildings and spaces to which it is visually related.
9. Directional expression of front elevation. A building shall be visually compatible with the building, squares and places to which it is visually related in its directional character whether this be vertical character, horizontal character or nondirectional character.

#### **§ 126.12 - MAINTENANCE.**

##### **A. Ordinary maintenance permitted; public safety.**

1. Ordinary maintenance permitted. Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in an historic

district or of any historic landmark which does not involve a change in the design, material or outer appearance thereof. Paint color shall be specifically excluded from the scope of this chapter.

2. Safety. Nothing in this chapter shall prevent the construction, reconstruction, alteration, restoration or demolition of any feature which the Code Enforcement Officer shall certify is required for the public safety because of an unsafe or dangerous condition.

**B. Maintenance and repair required.**

Neither the owner of nor the person in charge of a structure within an historic district or of an historic landmark shall permit such historic structure or historic landmark to fall into a state of disrepair which may result in the deterioration of any exterior appurtenances or architectural feature so as to produce or tend to produce, in the judgment of the Commission, a detrimental effect upon the character of the historic district as a whole or upon the life and character of the historic landmark or structure in question or which could lead to a claim necessary for public safety, including but not limited to:

1. The deterioration of exterior walls or other vertical supports.
2. The deterioration of roofs or other horizontal members.
3. The deterioration of external chimneys.
4. The deterioration or crumbling of exterior plaster or mortar.
5. The ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors.
6. The deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition or conditions.

**§ 126.13 - HARDSHIP VARIANCE.**

**A. Board of Appeals.**

The Windham Board of Appeals may, upon written application, grant a variance from the strict application of this chapter, provided that the applicant can show that peculiar and unusual hardship would result without a variance. "Peculiar and unusual" is constituted by any of the following:

1. That the land in question cannot yield a reasonable return unless the variance is granted.

2. That the need for a variance is because of unique circumstances of the property (such as location of existing structures, topographical features, etc.) and not to the general conditions of the neighborhood.
3. That the granting of a variance will not change the essential character of the locality.
4. That the hardship is not the result of action taken by the applicant or a prior owner.
5. That the granting of a variance will not be contrary to the public's interest.
6. That the granting of a variance will not create a nonconforming use.

**B. Conditions.**

In granting permits under this section, the Board of Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this chapter.

- C.** Notwithstanding that the proposed action or usage may be deemed inappropriate owing to conditions specifically affecting the lot, buildings or structures involved in the application but not affecting the historic district generally, the Commission may find that failure to issue a certificate of appropriateness will involve peculiar and unusual hardship (physical, financial or otherwise) to the applicant and that such certificate may be issued without substantial derogation to the intent and purposes of historic preservation in Windham.

**§ 126.14 - VIOLATIONS AND PENALTIES.**

Any person who violates any provision of this chapter shall be guilty of a civil violation and shall be punished by a fine of not more than one hundred dollars (\$100.00) and not less than twenty-five dollars (\$25.00). Each day that a violation continues shall be deemed a separate offense. Any person shall have thirty (30) days after receipt of notice from the Code Enforcement Officer to initiate repair or cease activity.

**§ 126.15 - APPEALS.**

Costs shall only be allowed in accordance with Title 30 M.R.S.A. § 4966, Subsection 3.D.