



Article 45

Amend Chapter 447 of the Acts of 1956

Report of the

Historic Districts Commission Ad Hoc 40C Study Committee

Members

- Anne Laurin Eccles, Chair
- Susan Bennett
- Dan Fenn
- Marilyn Fenollosa
- Lester Savage

Liaison

- Michelle Ciccolo, Selectman

Introduction

The 1956 Special Act establishing the first historic district in Lexington as well as the Historic Districts Commission was the third of its kind in the Commonwealth, following Nantucket and Beacon Hill. It has remained virtually unchanged in substance for over sixty years, except for amendments that established additional historic districts in town.

Since Lexington's Special Act was passed, there have been many developments in Massachusetts' regulation of historic districts:

- most notably, legislation popularly referred to as "40C" was first enacted in 1960 and subsequently amended to establish a state-wide legal framework for local historic districts. Cities and towns can adopt 40C instead of seeking a Special Act for the establishment of historic districts and commissions;
- a number of towns have adopted their own Special Acts and have sought amendments to their acts as they have gained experience operating under them;
- the Massachusetts courts have interpreted both 40C as well as some towns' Special Acts, providing guidance for commissions and towns. There has been very little court interpretation of Lexington's Special Act; and
- Lexington now has over six decades of experience operating under its Special Act, providing a good basis for evaluating its effectiveness.

Revisions to Lexington's Special Act are long overdue to achieve the following goals:

- update the Lexington Code to be more easily read and understood by HDC members and the residents of Lexington, by deleting archaic or unnecessary provisions and defining vague, ambiguous or contradictory provisions;
- conform Lexington's regulatory scheme, to the extent appropriate, to statewide principles and process governing historic district commissions;
- acknowledge and document long-standing and effective practices of the HDC;
- strengthen the nominating process for HDC membership to assure the appointment of qualified candidates;
- augment criteria for assessing appropriateness;
- provide specificity for procedural matters;
- address the parties that can appeal an HDC decision; and

- strengthen penalties for non-compliance.

The proposed amendments to the Act were formulated by an Ad Hoc Study Committee appointed by the Selectmen. This Committee, whose members are listed at the beginning of this Report, reached out to 14 localities to learn about their experiences operating under Special Acts and also compared the Lexington Special Act to 40C. The Committee considered but rejected the idea of recommending that the Lexington Special Act be replaced 40C. It concluded that this “one size fits all” approach was not appropriate for Lexington and that instead, limited amendments to the Lexington Special Act that draw on the precedents both of 40C and other town’s special acts are more appropriate.

The ad hoc study committee’s recommendations were reviewed and recommended to Town Meeting by the Historic Districts Commission by unanimous vote on March 1, 2018. The composition of the current HDC is listed below.

Members	Associates
Anne Eccles, Chair Robert Adams Edward Adelman Robin Lovett	Lee Noel Chase Thomas Fenn Donna Hooper Paul O’Shaughnessy

Process

At the request of members of the Historic Districts Commission, in November, 2017, the Board of Selectmen appointed a "40C Ad Hoc Study Committee".

The Ad Hoc Committee met several times during January and February, 2018, to compare the two statutes (Lexington's Special Act Ch. 447 and MGL Ch. 40C) and identify the preferred provisions of each. The Ad Hoc Committee members also conducted a series of interviews with representatives of all of the known Special Act communities in Massachusetts, as well as former Special Act communities that had converted to Ch. 40C, to determine their experiences and satisfaction or dissatisfaction with their statutes.

Based on these interviews and analysis of the Lexington statute, and recognizing the long and mostly satisfactory experience of the Lexington Historic Districts Commission within the existing framework, it was decided by the Ad Hoc Committee to recommend amending Ch. 447 rather than converting to Ch. 40C. The Ad Hoc Committee then reviewed Ch. 447 to determine what provisions needed to be modified to conform the Act to Massachusetts practice, eliminate ambiguities and vague terms, delete redundancies and reflect modern needs. At the same time, the Ad Hoc Committee was careful to preserve the sections of Ch. 447 that have enabled the preservation of Lexington's historic resources over the last 60 years.

The Ad Hoc Committee presented its findings to the Historic Districts Commission on March 1, 2018, whose members voted unanimously to recommend amendments to Ch. 447 to 2018 Annual Meeting. The Ad Hoc Committee also held a public hearing on March 8, 2018, to which the public and former members of the HDC were invited, to receive their comments and questions. Town Counsel and the Board of Selectmen also contributed their comments and suggestions.

The results of this study, hearings and review are incorporated into a proposed amendment to Chapter 447, requesting Town Meeting Members to authorize the Board of Selectmen to petition the Massachusetts General Court for an act to amend Chapter 447. The text of Chapter 447, with the proposed changes highlighted, as well as a section-by-section analysis of the proposed changes, are included in the following pages.

Proposed Amendment to Chapter 447

Section by Section Analysis

Section 3. Definitions

(1) Add a new definition of "Person aggrieved".

The current version of Ch. 447 permits appeals of HDC findings to the superior court by "any aggrieved person", without further definition (see Section 10, Appeals). This has raised questions as to who has "standing" - the legal term for persons qualified to bring suit because of their specific interest in a case or controversy. Chapter 40C, whose definition is included in these amendments, limits standing to the applicant, the owner of any adjoining property, any owner of property within the same historic district as the applicant's property, any owner of property within 100 feet of the applicant's property lines, and any charitable corporation in which one of its purposes is the preservation of historic structures or districts. Court findings in recent litigation against the HDC refused to permit standing to residents located more remotely from the subject property; it is believed that this amendment will eliminate any ambiguity as to standing in future disputes.

(2) Amend the definition of "Structure" to add certain specific examples to the current broad language that refers merely to "a combination of materials other than a building".

The HDC, in its guidelines, has long exercised jurisdiction over fences, walls, terraces, walks and driveways, as does Ch. 40C. This amendment codifies this practice to avoid any uncertainty.

Section 4. Creation and organization of Historic Districts Commission.

Revise the nominating process and specify attributes of Historic District Commission members; delete the requirement that the HDC elect a secretary.

The current version of Chapter 447 names four nominating organizations: the Board of Selectmen, the Lexington Historical Society, the Trustees of Cary Memorial Library and the Lexington Arts and Crafts Society. These latter two organizations have often found it difficult to identify qualified candidates; as a result, this amendment replaces those organizations with the Lexington Design Advisory Committee, a committee uniquely qualified to assess and nominate appropriate candidates because of the architectural and design backgrounds and experience of its members. Of course, the Board of Selectmen can continue to seek nominees from the Trustees of Cary Memorial Library and the Lexington Arts and Crafts Society for their designated appointment.

The amendment also includes certain criteria for nominations, as developed by the Board of Selectmen and incorporated into the HDC's page on the town website. The

objective of the Committee is to achieve a balanced commission while at the same time ensuring qualified and experienced candidates.

Finally, the amendment deletes the requirement that the HDC elect a secretary, a post not needed given the staff support provided by the town's Land Use, Health and Development Department.

Section 6. Exclusions.

(1) In subsection 6(a), include references to the Director of Lexington's Board of Health and/or the Chief of the Lexington Fire Department in determining unsafe or dangerous conditions; require that the danger be immediate. Also, delete the reference to "See note 2" at the end of the subsection.

This provision is suggested to provide additional certainty for the HDC in cases where it yields its jurisdiction over protected properties due to an unsafe or dangerous condition which requires immediate remedy. It will also facilitate action where the condition arises and must be corrected before the next regularly scheduled meeting of the HDC.

(2) In subsection (b)(1), add language that permits the imposition of conditions to the approval of temporary signs and structures.

Ch. 447 has always allowed the HDC to impose conditions on its approvals -- see Section 9, Powers, Functions, and Duties of Commission, subsection(a), 7th paragraph. This proposed language incorporates the Ch. 40C language on temporary structures and signs, providing additional clarity to HDC decision-making.

(3) Delete subsection (c) in its entirety.

Subsection 9(a)(2), and the definition of "Exterior architectural feature", have always provided for review of paint color by the HDC. This subsection provides, however, that the exterior color of any building in the Historic Districts may be changed to white without application to the HDC for a certificate of appropriateness. HDC guidelines also provide that no hearing is required to paint a house "white". But the guidelines also state that it is appropriate that the Department of Land Use, Health and Development be notified of any change of color, noting that there are many off-shades of white with specific names which are very definite colors. These colors would require an unadvertised, formal hearing. Because of this potential conflict, the Ad Hoc Committee recommends deletion of subsection (c) and reliance on its regular review procedures for applications concerning any color change.

Section 8. Meetings, Hearings, Time for Making Determinations.

Amend this section by deleting the requirement that notices of meetings be sent to parties "deemed by the HDC to be affected thereby" and replacing it with language that specifies that all property owners within 100 feet of the applicant's property be notified.

The Ad Hoc Committee believes that the existing language is too discretionary and leaves the HDC exposed to claims from parties who believed they were "affected thereby" yet were not notified. This language adopts the language used by the Planning Board and other Lexington boards and committees for identifying parties entitled to notice.

Section 9. Powers, Functions, and Duties of Commission.

Delete existing language that prohibits HDC review of relative size and detailed designs of proposed new construction or additions to existing buildings or structures. Add a statement of support for solar energy use and protection.

Based on its review of all known Special Act historic district commissions, the Ad Hoc Committee believes that the Lexington HDC is the only historic district commission in the Commonwealth that prohibits the consideration of size and design in reviewing new construction and additions. In contrast, Ch. 40C is explicit in its language permitting such review, as an important element in protecting the architectural and historic integrity of the existing building. The Ad Hoc Committee proposes this language, copied from 40C, to protect its essential powers of review.

The Ad Hoc Committee also recognizes the importance of modification of historic structures for energy efficiency, and notes that the HDC has promulgated guidelines to inform the installation of solar facilities in the historic districts. The Ad Hoc Committee therefore proposes that a policy statement be incorporated into the Special Act that reflects the HDC's willingness to accommodate this technology.

Section 11. Enforcement.

Add a sentence that notes that every day that a violation of the Special Act provisions is outstanding constitutes a separate offense and fines may be assessed accordingly.

The Ad Hoc Committee notes that the existing penalties for violation of Ch. 447 -- fines of no more than \$500 in total -- provide neither disincentives nor adequate mitigation for willful disregard of HDC actions. By imposing a fine on a daily basis, the Lexington HDC would align itself with other Special Act communities and those HDCs that have adopted Ch. 40C.

Ch. 447 with Proposed Amendments

Marked copy showing proposed amendments:
Deletions indicated by strikethrough; additions with double underlining

CHAPTER 447, ACTS OF 1956
AN ACT ESTABLISHING AN HISTORIC DISTRICTS
COMMISSION FOR THE TOWN OF LEXINGTON AND DEFINING
ITS POWERS AND DUTIES, AND ESTABLISHING HISTORIC
DISTRICTS IN THE TOWN OF LEXINGTON

(As amended by Ch. 185, Acts of 1958, Ch. 579, Acts of 1966; Ch. 268, Acts of 1978; Ch. 375, Acts of 1982; Ch. 426, Acts of 2000)

Section 1. Purpose. - The purpose of this act is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of historic buildings, places and districts through the development of appropriate settings for said buildings, places and districts and through the maintenance of said buildings, places and districts as landmarks of historic interest.

Section 2. Creation of Districts. -

Battle Green District: Beginning at the intersection of the northerly line of Hancock Avenue with the easterly line of the railroad right of way; thence southerly and then southeasterly along the easterly and northeasterly line of the railroad right of way to a point in said northeasterly line of the railroad right of way distant two hundred feet southeasterly from the easterly line of Hancock Street; thence northerly along a line distant two hundred feet easterly from and parallel to said easterly line of Hancock Street to the northeasterly lot line of the property now numbered 6 Meriam Street; thence southeasterly along said northeasterly lot line to the northwesterly line of Meriam Street; thence southeasterly in a straight line across Meriam Street to the intersection of the southeasterly line of Meriam Street with the southwesterly line of Oakland Street; thence southeasterly along said southwesterly line of Oakland Street to the westerly lot line of the property now numbered eleven Oakland Street; thence southerly along said westerly lot line and said westerly lot line extended to a point on the northerly line of the railroad right of way; thence easterly along said northerly line of the railroad right of way to the northwesterly line of Woburn Street; thence southwesterly along said northwesterly line of Woburn Street to the easterly line of Fletcher Avenue; thence southwesterly in a straight line across Woburn Street and Massachusetts Avenue to the intersection of the southerly line of Massachusetts Avenue with the westerly line of Winthrop Road; thence southerly and then southwesterly along said westerly and the northwesterly line of Winthrop Road to a point distant two hundred fifty feet southerly from the southerly line of Massachusetts Avenue; thence westerly along a line distant two hundred fifty feet southerly from and parallel to the southerly line of Massachusetts Avenue to a point distant two hundred feet easterly from the easterly line of Waltham Street; thence southerly along a line distant two hundred feet easterly from and parallel to said easterly line of Waltham Street to the northerly lot line of the property now numbered eighty-two Waltham Street; thence westerly along said northerly lot line to the easterly line of Waltham Street; thence westerly in a straight

line to the intersection of the northerly lot line of the property now numbered twenty-two Muzzey Street with the easterly line of Muzzey Street; thence westerly in a straight line across Muzzey Street to the intersection of the westerly line of Muzzey Street with the northerly line of Raymond Street; thence westerly along said northerly line of Raymond Street to the westerly line of Clarke Street; thence southerly along said westerly line of Clarke Street to the intersection of the northeasterly line of Forest Street; thence northwesterly to the easterly lot line of the property now numbered 43 Forest Street; thence northeasterly along said lot line to the southerly lot line of the property now numbered 11 Belfry Terrace; thence northeasterly along the easterly lot line of 9 Belfry Terrace to the southerly lot line of the property now numbered 11 Belfry Terrace; thence northeasterly along the easterly lot line to the northerly lot line of the property now numbered 11 Belfry Terrace; thence northwesterly along the northerly lot line of the property now numbered 9 Belfry Terrace to the southerly lot line of the property now numbered 1906 Massachusetts Avenue to a point three hundred feet southerly from the southerly line of Massachusetts Avenue; thence northwesterly and then westerly along a line distant three hundred feet southwesterly and southerly from and parallel to the southwesterly and southerly line of Massachusetts Avenue to the westerly line of Forest Street; thence northerly along said westerly line of Forest Street to a point two hundred feet southerly from the southerly line of Massachusetts Avenue; thence westerly along a line distant two hundred feet southerly from and parallel to the southerly line of Massachusetts Avenue to the southwesterly line of Parker Street; thence southwesterly by a straight line to the intersection of the westerly line of Worthen Road with the southerly line of Lincoln Street; thence westerly and then southwesterly along said southerly and the southeasterly line of Lincoln Street to a point distant four hundred and fifty feet westerly from the westerly line of Worthen Road; thence northwesterly across Lincoln Street to the intersection of the northwesterly line of Lincoln Street with the northeasterly line of Hastings Road; thence northwesterly along said northeasterly line of Hastings Road to the southeasterly line of Massachusetts Avenue; thence northwesterly in a straight line across Massachusetts Avenue to the intersection of the northwesterly line of Massachusetts Avenue with the northeasterly line of Hastings Road; thence northwesterly along said northeasterly line of Hastings Road to a point distant two hundred feet northwesterly from said northwesterly line of Massachusetts Avenue; thence northeasterly along a line distant two hundred feet northwesterly from and parallel to the northwesterly line of Massachusetts Avenue to the westerly line of Worthen Road; thence northerly and then northeasterly along said southwesterly, westerly and the northwesterly line of Worthen Road to the southwesterly line of Bedford Street; thence northeasterly in a straight line across Bedford Street to the intersection of the northeasterly line of Bedford Street with the southeasterly line of Camellia Place; thence northeasterly along said southeasterly line of Camellia Place to the southwesterly line of the railroad right of way; thence northeasterly in a straight line across said railroad right of way to the point of beginning.

Hancock-Clarke District: Beginning at the intersection of the northerly line of Hancock Avenue with the easterly line of the railroad right of way; thence southerly and then southeasterly along the easterly and northeasterly line of the railroad right of way to a point in said northeasterly line of the railroad right of way distant two hundred feet southeasterly from the easterly line of Hancock Street; thence northerly along a line distant two hundred feet easterly from and parallel to said easterly line of Hancock Street to the southerly lot line of the property now numbered forty-five Hancock Street; thence westerly along said southerly lot line to the easterly line of Hancock Street; thence northwesterly in a straight line across Hancock Street to the intersection

of the westerly line of Hancock Street with the southerly lot line of the property now numbered forty-six Hancock Street; thence westerly along said southerly lot line four hundred and twenty-nine feet to a point; thence southwesterly in a straight line to a point in the easterly line of the railroad right of way two hundred and forty-eight feet distant northerly from the northerly line of Hancock Avenue; thence southerly along said easterly line of the railroad right of way to the point of beginning.

Munroe Tavern District: Beginning at the intersection of the southerly line of the railroad right of way with the northwesterly line of Woburn Street; thence southwesterly along said northwesterly line of Woburn Street to the easterly line of Fletcher Avenue; thence southwesterly in a straight line across Woburn Street and Massachusetts Avenue to the intersection of the southerly line of Massachusetts Avenue with the westerly line of Winthrop Road; thence southerly and then southwesterly along said westerly and the northwesterly line of Winthrop Road to a point distant two hundred feet southerly from the southerly line of Massachusetts Avenue; thence easterly and then southeasterly along a line distant two hundred feet southerly and southwesterly from and parallel to the southerly and southwesterly line of Massachusetts Avenue to the northwesterly line of Percy Road; thence southerly by a straight line across Percy Road to a point in the southeasterly line of Percy Road distant two hundred feet southwesterly from the intersection of said southeasterly line of Percy Road with the westerly line of Tavern Lane; thence southerly and then southeasterly along a line distant two hundred feet westerly and southwesterly from and parallel to the westerly and southwesterly line of Tavern Lane and said southwesterly line extended to the southeasterly line of Eliot Road; thence easterly and then southeasterly along the southerly and southwesterly line of Eliot Road to the southeasterly line of Pelham Road; thence northeasterly along said southeasterly line of Pelham Road to a point distant two hundred feet southwesterly from the southwesterly line of Massachusetts Avenue; thence southeasterly along a line distant two hundred feet southwesterly from and parallel to the southwesterly line of Massachusetts Avenue to the northerly line of Marrett Road; thence easterly along said northerly line of Marrett Road to the southwesterly line of Massachusetts Avenue; thence northerly in a straight line across Massachusetts Avenue to the intersection of the northeasterly line of Massachusetts Avenue with the northwesterly lot line of the property now numbered eleven hundred and fifty-five Massachusetts Avenue; thence northeasterly along said northwesterly lot line to a point two hundred feet distant northeasterly from said northeasterly line of Massachusetts Avenue; thence northwesterly along a line distant two hundred feet northeasterly from and parallel to the northeasterly line of Massachusetts Avenue to the southeasterly lot line of the Muzzey Junior High School Property; thence northeasterly along said southeasterly lot line to the southwesterly lot line of the Munroe Cemetery property; thence northwesterly along said southwesterly lot line to the intersection of said southwesterly lot line with the northwesterly lot line of the Munroe Cemetery property; thence northeasterly along said northwesterly lot line to the southerly line of the railroad right of way; thence westerly along said southerly line of the railroad right of way to the point of beginning.

East Village District: Beginning at the intersection of the northeasterly line of Massachusetts Avenue with the northwesterly lot line of the property now numbered eleven hundred and fifty-five Massachusetts Avenue; thence northeasterly along said northwesterly lot line to a point two hundred feet distant northeasterly from said northeasterly line of Massachusetts Avenue; thence southeasterly along a line distant two hundred feet northeasterly from and parallel to the

northeasterly line of Massachusetts Avenue to a point distant two hundred feet northwesterly from the northwesterly line of Maple Street; thence northeasterly along a line distant two hundred feet northwesterly from and parallel to said northwesterly line of Maple Street to the southwesterly line of the railroad right of way; thence southeasterly along said southwesterly line of the railroad right of way to a point distant two hundred feet southeasterly from the southeasterly line of Maple Street; thence southwesterly along a line distant two hundred feet southeasterly from and parallel to said southeasterly line of Maple Street to a point distant two hundred feet northerly from the northeasterly line of Massachusetts Avenue; thence southeasterly and then northeasterly and easterly along a line distant two hundred feet northeasterly, northwesterly and northerly from the northeasterly, northwesterly and northerly line of Massachusetts Avenue to the westerly lot line of the property now numbered four hundred and twenty-one Massachusetts Avenue; thence southerly along said westerly lot line and said westerly lot line extended to a point distant two hundred feet southerly from the southerly line of Massachusetts Avenue; thence westerly and then southwesterly and northwesterly along a line distant two hundred feet southerly, southeasterly and southwesterly from and parallel to the southerly, southeasterly and southwesterly line of Massachusetts Avenue to the northerly line of Marrett Road; thence easterly along said northerly line of Marrett Road to the southwesterly line of Massachusetts Avenue; thence northerly in a straight line across Massachusetts Avenue to the point of beginning.

The East Village Historic District shall also include an area bounded and described as follows: Beginning at a point on the easterly line of the 1966 East Village Historic District boundary said point being N 84°-43'-07" E distant 17.5+- feet from an iron pin as shown on a plan entitled, "Plan of Land in Lexington, Mass., Scale 1"=40', January 15, 1981, Joseph W. Moore Co.," on file with the Town engineer; thence N 84°-43'-07' E distant 188+- feet to a point; thence N 85°-31'-53" E distant 18.00 feet to a point; thence S 13°-56'-31" E distant 168.86 feet to a point; thence S 74°-50'-45" W distant 36.07 feet to a point; then S 15°-09'-15" E distant 40.93 feet to a point, thence S 66°-48'-45" W distant 171+- feet to a point on the aforesaid East Village Historic District boundary; thence by said line northwesterly 272+- feet to the point of beginning.

Wherever only part of any building or structure is within an historic district according to the boundary lines as heretofore defined in this section, there shall be included within the historic district the entire land area occupied, or to be occupied, by all of said building or structure so that the whole building or structure shall be considered to be within the historic district for the purposes of this act.

Section 3. Definitions. - As used in this act, the following words and terms shall have the following meanings: -

"Building", a combination of materials having a roof and forming a shelter for persons, animals or property.

"Building inspector", the building inspector of the town of Lexington.

"Commission", the historic districts commission established by section four.

"Erected", the word "erected" includes the words "built", "constructed", "reconstructed", "restored", "altered", "enlarged", and "moved".

"Exterior architectural feature", the architectural style and general arrangement of such portion of the exterior of a building or structure as is designed to be open to view from a public street, way, or place including the kind, color and texture of the building materials of such portion and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such portion.

"Historic districts", the districts established by section two.

"Person", the word "person" includes an individual, a corporate or unincorporated organization or association and the town of Lexington.

"Person aggrieved", the applicant, the owner of any adjoining property, any owner of property within the same historic district as the applicant's property, any owner of property within one hundred feet of the applicant's property lines, and any charitable corporation the purposes of which include the preservation of historic structures or districts."

"Structure", a combination of materials, other than a building, ~~sign or billboard~~ including a sign, fence, wall, terrace, walk, sidewalk or driveway, and any similar structures.

Section 4. Creation and Organization of Historic Districts Commission. - There is hereby established in the town of Lexington an Historic Districts Commission consisting of five unpaid members who shall be residents of the town of Lexington, to be appointed by the selectmen of the town as follows: - two from four candidates nominated by the Lexington Historical Society, one from two candidates nominated by The Lexington Arts and Crafts Society, Inc., one from two candidates nominated by the trustees of the Cary Memorial Library and one member selected at large by the selectmen. The members initially appointed hereunder shall serve, in the case of one member appointed upon nomination of the Lexington Historical Society, for a term expiring one year; in the case of the member appointed upon nomination of The Lexington Arts and Crafts Society, Inc., for a term expiring two years, in the case of the member appointed upon nomination of the trustees of the Cary Memorial Library, for a term expiring three years, in the case of the second member appointed upon nomination of the Lexington Historical Society, for a term expiring four years, in the case of the member appointed at large by the selectmen, for a term expiring five years, from January first following the year of such appointments. The selectmen also shall appoint for terms of five years from January first following the year of such appointments four associate members of the commission selected from candidates nominated by the aforesaid organizations and trustees, each such organization and trustees to nominate two each when two or more associate members are to be appointed and to nominate one each when only one associate member is to be appointed.

For any appointments following January 1, 2019, the selectmen shall appoint, for terms of five years, five unpaid members who shall be residents of the town of Lexington, as follows: - two from four candidates nominated by the Lexington Historical Society, two from four candidates nominated by the Lexington Design Advisory Committee, and one member selected at large by the selectmen. From and after January 1, 2019, the selectmen also shall appoint for terms of five

years, four associate members of the commission selected from candidates nominated by the aforesaid organizations, each such organization to nominate two each when two or more associate members are to be appointed and to nominate one each when only one associate member is to be appointed.

To implement the change in appointing authority from that in effect through December 31, 2018, the Lexington Design Advisory Committee shall have the nominating authority formerly assigned to the Lexington Arts and Crafts Society and the trustees of the Cary Memorial Library upon the expiration of the term of any member nominated by either of said organizations or the expiration of the term of any associate member, regardless of which organization initially nominated such associate member.

In case of the absence, inability to act, or interest on the part of a member of the commission his place may be taken by an associate member designated by the chairman of the commission. In case of a vacancy on said commission the chairman may designate an associate member to serve as a member of the commission until said vacancy is filled as provided in this section. As the term of any member or associate member expires, his successor shall be appointed in like manner for a term of five years. Vacancies in the commission shall be filled in the same manner as aforesaid for the unexpired term. Every member and associate member shall continue in office after the expiration of his term until his successor is duly appointed and qualified. Any member or associate member may be removed for cause by the appointing authority upon written charges and after a public hearing.

In making such appointments, and to achieve a balanced and competent commission, the selectmen shall consider the following criteria: candidates should demonstrate an understanding of the importance of historical heritage, historic preservation, and Lexington's special townscape and the concept of architectural continuity. Candidates should represent a cross-section of professional expertise and community interests and concerns.

The commission shall elect a chairman ~~and a secretary~~ from its membership. In the case of absence of the chairman from any meeting, the commission shall elect a chairman pro tempore for such meeting.

Section 5. Limitations. - (a) No building or structure, except as provided under section six, shall be erected within the historic districts unless and until an application for a certificate of appropriateness as to exterior architectural features which are subject to view from a public street, way, or place shall have been filed with the commission and either a certificate of appropriateness, or a certificate that no exterior architectural feature is involved, shall have been issued by the commission.

(b) No building or structure within the historic districts shall be changed as to exterior color features which are subject to view from a public street, way, or place unless and until an application for a certificate of appropriateness as to change in such color features shall have been filed with the commission and such certificate shall have been issued by the commission.

(c) No building or structure within the historic districts, except as provided under section six, shall be demolished or removed unless and until an application for a permit to demolish or remove the same shall have been filed with the commission, and such permit shall have been issued by the commission.

(d) No occupational, commercial, or other sign, except as provided under section six, and no billboard shall be erected or displayed on any lot, or the exterior of any building or structure within the historic districts unless and until an application for a certificate of appropriateness shall have been filed with the commission, and such certificate shall have been issued by the commission. In the case of any such sign or billboard erected or displayed prior to the effective date of this act, there shall be allowed a period of five years, subsequent to said effective date, in which to obtain such certificate. (See note 1)

(e) Except in cases excluded by section six: -

(1) No permit shall be issued by the building inspector for any building or structure to be erected within the historic districts, unless the application for said permit shall be accompanied either by a certificate of appropriateness or a certificate that no exterior architectural feature is involved, issued under section nine.

(2) No permit shall be issued by the building inspector for the demolition or removal of any building or structure within the historic districts unless the application for said permit shall be accompanied by a permit issued under said section nine.

Section 6. Exclusions. - (a) Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of any building or structure within the historic districts; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration, or demolition of any such feature which the building inspector and the director of the Lexington Public Health Division and/or the chief of the Lexington Fire Department shall certify to the commission is immediately required ~~by-for~~ the public safety because of an unsafe or dangerous condition; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration, or demolition of any such feature under a permit issued by the building inspector prior to the effective date of this act. ~~(See note 2)~~

(b) The following structures and signs may be erected or displayed within the historic districts without the filing of an application for, or the issuance of, a certificate of appropriateness: -

1. Section 2, Chapter 579, Acts of 1966 provides: "In the case of any sign or billboard erected or displayed on the effective date of this act within an historic district established by this act or within any territory added by this act to an existing historic district there shall be allowed a period of five years subsequent to said effective date in which to obtain the certificate of appropriateness required by paragraph (d) of section five of chapter four hundred and forty-seven of the acts of nineteen hundred and fifty-six."

2. Section 3, Chapter 579, Acts of 1966 provides: "The provisions of this act shall not be construed to prevent the erection, construction, reconstruction, restoration, alteration, or demolition of any exterior architectural feature, under a permit issued by the building inspector prior to the effective date of this act, within an historic district established by this act or within any territory added by this act to an existing historic district."

(1) Temporary structures or signs for use in connection with any official celebration or parade, or any charitable drive in the town, provided that any such structure or sign shall be removed within three days following the termination of the celebration, parade or charitable drive for which said structure or sign shall have been erected or displayed. Any other temporary structures or signs which the commission shall determine from time to time may be excluded from the provisions of section five, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify~~without substantial derogation from the intent and purposes of this act.~~

(2) Real estate signs of not more than three square feet in area advertising the sale or rental of the premises on which they are erected or displayed.

(3) Occupational or other signs of not more than one square foot in area and not more than one such sign, irrespective of size, bearing the name, occupation or address of the occupant of the premises on which such sign is erected or displayed where such premises are located within an R-1 one family dwelling district as defined in the Zoning By-Law of the town of Lexington.

~~(e) The exterior color of any building or structure within the historic districts may be changed to white without the filing of an application for, or the issuance of, a certificate of appropriateness.~~

Section 7. Applications to be Filed with Commission. - Excepting cases excluded by section six, any person who desires to erect, build, construct, reconstruct, restore, alter, move, demolish, remove, or change the exterior color features of any building or structure now or hereafter within the historic districts, or to erect or display within the historic districts any sign or billboard for which a certificate of appropriateness is required under paragraph (d) of section five, shall file with the commission an application for a certificate of appropriateness or a permit for demolition or removal, as the case may be, together with such plans, elevations, specifications, material and other information as shall be deemed necessary by the commission to enable it to make a determination on the application.

Section 8. Meetings, Hearings, Time for Making Determinations. - Meetings of the commission shall be held at the call of the chairman and also when called in such other manner as the commission shall determine in its rules. Five members, including associate members, of the commission shall constitute a quorum.

The commission shall determine promptly after the filing of an application for a certificate of appropriateness as to exterior architectural features, whether the application involved any such features. If the commission determines that such application involves any exterior architectural features, the commission shall hold a public hearing on such application. The commission also shall hold a public hearing on all other applications required to be filed with it under this act,

except that the commission may approve an application for a change in exterior color features without holding a hearing if it determines that the color change proposed is appropriate.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice thereof by publishing notice of the time, place, and purpose of the hearing in a local newspaper at least fourteen days before said hearing and also, within seven days of said hearing, mail a copy of said notice to the applicant, to the owners of all property within 100 feet of the applicant's property, at the address for such owners ~~deemed by the commission to be affected thereby~~ as they appear on the most recent local tax list, to the planning board of the town, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or within such further time as the applicant shall allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within said sixty days, or within such further time allowed by the applicant, the commission shall be deemed to have approved the application.

Section 9. Powers, Functions, and Duties of Commission. - The commission shall have the following powers, functions and duties:

(a) It shall pass upon: -

(1) The appropriateness of exterior architectural features of buildings and structures to be erected within the historic districts wherever such features are subject to view from a public street, way, or place.

(2) The appropriateness of changes in exterior color features of buildings and structures within the historic districts wherever such features are subject to view from a public street, way, or place.

(3) The demolition or removal of any building or structure within the historic districts. The commission may refuse a permit for the demolition or removal of any building or structure of architectural or historic interest, the removal of which in the opinion of the commission would be detrimental to the public interest.

(4) The appropriateness of the erection or display of occupational, commercial or other signs and billboards within the historic districts wherever a certificate of appropriateness for any such sign or billboard is required under paragraph (d) of section five.

In passing upon appropriateness, demolition or removal, the commission shall determine whether the features, demolition or removal, sign or billboard involved will be appropriate for the purposes of this act and, if it shall be determined to be inappropriate, shall determine whether, owing to conditions especially affecting the building, structure, sign or billboard involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and

purposes of this act. If the commission determines that the features, demolition or removal, sign or billboard involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without substantial detriment or derogation as aforesaid, the commission shall approve the application; but if the commission does not so determine, the application shall be disapproved.

In passing upon appropriateness the commission shall consider, among other things, the historical value and significance of the building or structure, the general design, arrangement, texture, material, and color of the features, sign or billboard involved and the relation of such factors to similar factors of buildings and structures in the immediate surroundings. In the case of new construction or additions to existing buildings or structures, the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity. When ruling on applications for certificates of appropriateness for solar energy systems, the commission shall also consider the policy of the Commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider ~~relative size of buildings and structures, or detailed designs,~~ interior arrangement and other building features not subject to public view.

In approving an application the commission may impose conditions which, if the certificate of appropriateness is acted upon, shall be binding upon the applicant, the owner of the property and his successors in title.

The concurring vote of three members, including associate members, of the commission shall be necessary to make a determination in favor of the applicant on any matter upon which the commission is required to pass under this act.

(b) In the case of an approval by the commission of an application for a certificate of appropriateness or a permit for demolition or removal, or in the event an application is deemed approved through failure to make a determination within the time specified in section eight, the commission shall cause a certificate of appropriateness or a permit for demolition or removal, as the case may be, dated and signed by its chairman or chairman pro tempore, to be issued to the applicant.

(c) In the case of disapproval of an application for a certificate of appropriateness or a permit for demolition or removal, the commission shall cause a notice of its determination, dated and signed by its chairman or chairman pro tempore, to be issued to the applicant, setting forth therein the reasons for its determination, and, as to applications for a certificate of appropriateness, the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, color, and similar factors. The commission shall not make any recommendations except for the purpose of preventing developments obviously incongruous to the purposes set forth in this act.

(d) In the case of a determination by the commission that an application for a certificate of appropriateness does not involve any exterior architectural feature, the commission shall cause a

certificate of such determination, dated and signed by its chairman or chairman pro tempore, to be issued forthwith to the applicant.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations, and may make such rules and regulations consistent with this act and prescribe such forms as it shall deem desirable and necessary.

(f) The commission shall file with the town clerk a notice of all determinations made by it, and approvals of applications through failure of the commission to make a determination within the time allowed under section eight, except that no notice of a determination that an application for a certificate of appropriateness does not involve any exterior architectural feature shall be filed.

(g) The commission may incur expenses necessary to the carrying on of its work within the amount of its appropriation.

Section 10. Appeals. - Any person aggrieved by a determination of the commission or by an approval of an application through failure of the commission to make a determination within the time allowed under section eight, whether or not previously a party to the proceeding, or any officer or board of the town may, within fifteen days after the filing of a notice of such determination or approval with the town clerk, appeal to the superior court sitting in equity for the county of Middlesex. The court shall hear all pertinent evidence and determine the facts and if, upon the facts so determined, such determination or approval is found to exceed the authority of the commission, the court shall annul such determination or approval and remand the case for further action by the commission. The remedies provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases.

Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted in bad faith or with malice in the matter from which the appeal was taken.

Costs shall not be allowed against the party appealing from such determination or approval of the commission unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

Section 11. Enforcement. - ~~Whoever violates any of the provisions of this chapter shall be punished by a fine of not less than ten dollars or more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense. Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than five hundred dollars.~~

The superior court sitting in equity for the county of Middlesex shall have jurisdiction to enforce the provisions of this act and the determinations, rulings, and regulations issued thereunder and may restrain by injunction violations thereof and issue such other orders for relief of violations as may be required.

In addition to the foregoing, the town of Lexington may by by-law, not inconsistent with section 21D of chapter 40 of the General Laws, provide for the noncriminal disposition of violations of

this act and the determinations, rulings and regulations issued under this act. (Added by Chapter 426 of the Acts of 2000)

Section 12. Severability of Provisions. - The provisions of this act shall be deemed to be severable; and in case any section, paragraph or part of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the validity of any other sections, paragraphs or parts of this act.

Section 13. Effective Date of Act. - This act shall take effect upon its acceptance by the town by vote of its town meeting members at an annual town meeting or any special town meeting called for the purpose.

Approved June 11, 1956.

Chapter 447, Acts of 1956 accepted at a Special Town Meeting held November 19, 1956 (Article 5.).