

## Local Preservation Legislation: Questions and Answers

By Robert E. Stipe

During the last decade there has been a dramatic increase in the number of historic district and landmark ordinances in the United States. From the first such ordinance, adopted in Charleston, South Carolina, in 1930, the number grew to about 250 in 1970, and today there are almost a thousand. About 100 of these ordinances have been enacted by municipalities across New York State, and the number is growing. The purpose of this leaflet is to provide answers to some of the most commonly asked questions about these sometimes controversial laws for those citizens who are unfamiliar with them.

### What is a historic district or landmark ordinance?

It's nothing more or less than a local ordinance, passed for the purpose of protecting buildings and neighborhoods of special historic, architectural, or cultural character from destruction or insensitive rehabilitation. There's truth to the saying about these buildings and places: you can't make one, you can't buy one, and when it's gone, it's gone forever!

When an ordinance to designate and protect an individual building is passed, it is called a "landmarks" ordinance. When an area with a number of buildings or sites is designated, it is called a "historic district" ordinance. In this case, all the buildings in the district, old and new alike, are protected. Some ordinances provide for the designation of both individual buildings and historic districts.

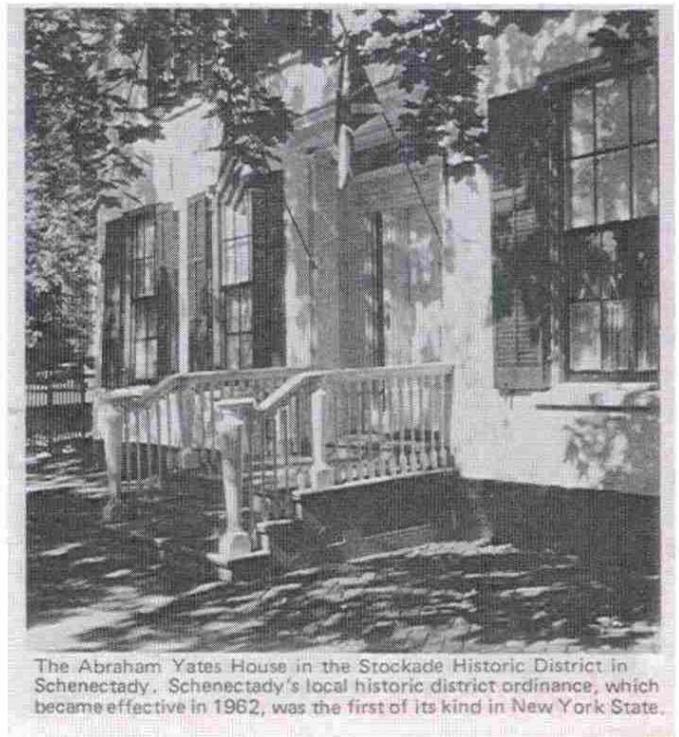
### Yes, but suppose my property becomes a designated landmark or winds up in a historic district?

Simple. You are subject to one additional layer of regulation, over and above the usual building and zoning ordinances governing the use of property. Historic district and landmark regulations generally require that before you demolish the building, move it, or alter it in ways that would affect its character and that of the neighborhood, you must obtain a permit, which is sometimes called a

"certificate of appropriateness." The permit is issued by a special local review board called the historic district board, landmarks commission, or something similar. There is an appeal procedure available to you or your neighbors if anyone is dissatisfied with the commission's decision.

**I thought a man's home was his castle — that no one could tell him what to do with his property!**

Let's be realistic about that. However much we might like to think otherwise, it's never been true! The result would be complete chaos, and no one's property would be worth



The Abraham Yates House in the Stockade Historic District in Schenectady. Schenectady's local historic district ordinance, which became effective in 1962, was the first of its kind in New York State.

anything for very long. In fact, it has always been the law in New York State — and in England for 500 years before that — that a person could not use his or her property in any way that interfered with a neighbor's peaceful use and enjoyment of land. In short, these 20th century land use controls, which include zoning and building laws, are merely modern adaptations of these ancient rules.

#### **Are there any positive benefits in it for me?**

That depends on what you think is important. At one end of the spectrum, historic district and landmark laws prevent the hasty, thoughtless demolition of or inappropriate alterations to buildings and places with important historical and architectural qualities. Remember: when they're gone, it's forever! From another standpoint, the review process provides opportunities to ensure that the worst kind of new development is not put up where it can depreciate your property. So historic district and landmarks legislation can provide a good measure of protection — especially when it is part of a good community planning program.

There are also some potential economic benefits. For example, experience shows that historic preservation regulations have the potential of stabilizing property values and, other things being equal, may even increase values.

Also, if you are rehabilitating or restoring an income-producing property which is designated a local landmark and is also listed in the National Register of Historic Places or contributes to the character of a historic district, you may be eligible for a 25 per cent up-front credit of rehabilitation costs, dollar-for-dollar, against your federal income tax. Or, depending on your tax bracket, you might want to consider taking a tax deduction for the value of certain of your property rights in a historic building or land donated to an appropriate tax-exempt organization. Finally, location in a historic district tends to increase both the loan value and the sales potential of your property. These are especially important when times are tough.

#### **It all sounds like a very high-bracket, up-scale kind of thing . . .**

The notion of historic districts did start out that way, and many districts are middle-class neighborhoods. However, in recent years these regulations have helped residents to conserve and rehabilitate older, inner-city districts once thought to be beyond salvation, except through urban renewal and new construction. Now, with much better odds for saving the remaining buildings and having some say over how the visual character of a neighborhood will be treated, both residents and investors have more assurance that efforts to improve will succeed.

#### **You make historic districts sound like the answer to all our problems!**

Not really. You must understand that these regulations are not ends in themselves — they are tools that work best when they are balanced against other planning elements, and when they are part and parcel of a larger package of area or neighborhood rehabilitation efforts. This includes everything from good zoning control over land use and its side effects like traffic congestion, off-street parking, and so on, to improving the quality and quantity of public facilities and services — police and fire protection, schools, garbage collection, street landscaping, and so on.



Plymouth Avenue, in Rochester's Third Ward Preservation District. The local ordinance was passed in 1969.

In short, historic district and landmark regulations don't automatically produce clean, beautiful places. Used alone, they may prevent the worst abuses. But used in conjunction with other tools for neighborhood improvement, they can be a powerful force for creating better environmental design, as well as a key to saving good architecture.

#### **Are these ordinances legal?**

The word "legal" has several meanings. Such ordinances have been authorized by state government, from which all cities, towns, villages, and counties derive their power. Almost 100 municipalities in New York State have already adopted these regulations.

But to be "legal," the regulations must also stay within the permissible limits of the state and federal constitutions. In this respect, both the United States Supreme Court and the New York Court of Appeals have said that as long as these ordinances are fairly administered and allow an owner a reasonable return or beneficial use of his property, they will be upheld.

It was once thought that because landmark and historic district regulations also involved a kind of "aesthetic" control over private property they were illegal. But the New York courts now generally do not accept that view. In fact, it was 20 years ago this year that the New York Court of Appeals decided in *People v. Stover*, one of the leading American state court cases in this area, that aesthetic purposes are a legitimate objective of police power regulations. Furthermore, the leading United States Supreme Court case upholding historic district and landmark controls is the famous 1978 *Penn Central* case in New York City. It holds that such controls do not amount to an unconstitutional "taking" of private property without just compensation so long as the owner continues to receive a reasonable return.

#### **Who administers these review procedures? How do they work?**

A fair question. As mentioned above, the review board is usually called a historic district or landmarks commission,

a preservation board, or something similar. Or the planning board might be designated. The members of the board are usually appointed by the mayor and city council. They serve for staggered terms and, in most cases, are unpaid, lay citizens of the community. The local ordinance usually requires that some of the members on the board be knowledgeable about architecture, history, design, and so forth. Sometimes they represent a special economic interest, such as the real estate or development industry.

Procedurally, when the owner of a designated landmark building — that is, one that is individually designated as architecturally or historically distinctive — or the owner of a building within a historic district wants to change, alter, or demolish that building, he or she has to take the plans to the commission to be reviewed and approved. In a historic district, even the owner of a modern, non-historic building must do this. In a historic district, the board formally reviews the changes and then decides whether the new building, addition, or alteration will be compatible with its immediate surroundings and the district as a whole. In the case of an individual landmark, the board reviews the effects the proposal will have on that property. Once the suitability of the proposal is affirmed by the board's approval, the certificate of appropriateness is issued. The owner then proceeds to obtain other necessary building and zoning permits.

Except in instances where the owner proposes to demolish a notable structure, a commission will rarely deny a certificate, and even in those instances it is usually possible to change the design or proposal to make it acceptable.

#### **But suppose the board is just being arbitrary?**

It *can't* be — not without running a big risk that a court will overturn its decision. There are always guidelines within which it must operate, and they are normally derived from the character of the district itself and will be fairly obvious. The property owner's ultimate protection lies in a

right of appeal to the courts if there is ever any suspicion of arbitrariness.

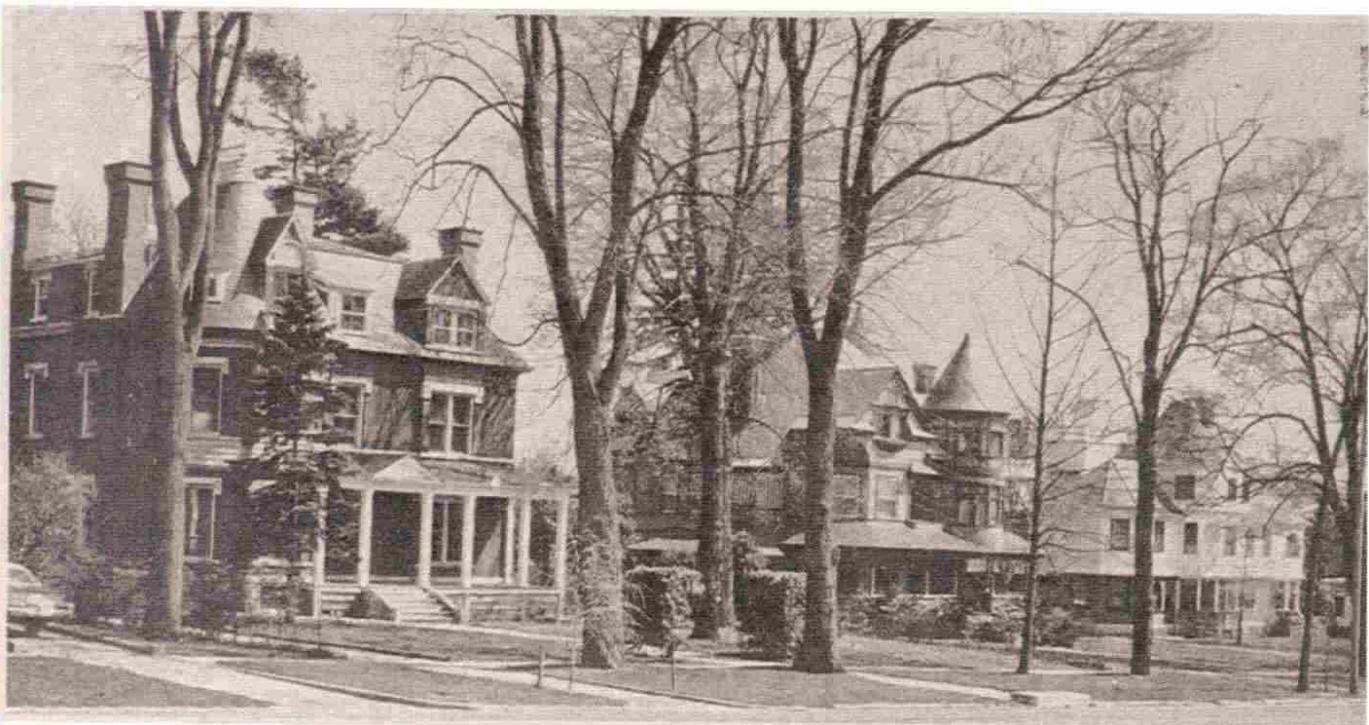
#### **Suppose I'm not in a historic district — suppose I own just a single building?**

Then you own what is called a "landmark" building, which has special and verifiable historical associations or architectural significance. Its significance can arise from the importance of the designer or builder, the workmanship or detailing of the building, its age, or perhaps some combination of these and similar attributes. In other words, it is a building worth saving for its intrinsic, individual value.

One of the important jobs of a preservation board or landmarks commission is to conduct a survey of the entire town or county to identify and evaluate all of these "landmarks" and historic districts. Those that are found to be especially important will usually be recommended to the governing board by the commission for an official designation as a landmark or historic district. However, before this is done, a public hearing is held at which owners and all other interested parties can have their say about the building. If the building or district is thereafter designated by ordinance, then an owner who wishes to demolish or alter a property in some significant way must get a certificate of appropriateness before this can happen. These procedures allow interested parties, with the help of the commission, to work out a plan for saving the building.

#### **What else do these commissions do?**

In addition to administering the historic district and landmark regulations, they sometimes administer planning studies and issue recommendations regarding historic areas. When the character of the area or an important building is threatened, not by some act of the owner, but by some proposed action of the state or federal government, the commission may be asked to comment in an official way under applicable federal or state environmental protection



The Broadway Historic District in Saratoga Springs. The local ordinance was passed in 1977.

laws. Sometimes the board or commission will recommend buildings for nomination to the State Register or to the National Register.

### **State Register? National Register? What are they?**

What's been discussed up to this point is a *local* historic district or landmarks ordinance, which is locally adopted and locally enforced.

A local historic district may also be a National Register historic district, designated by the U. S. Department of the Interior. It may have identical or similar boundaries to a local district. And by the same token, just as a single building may be designated by the city or county as a landmark, a single building may also be placed by the Department of the Interior in the National Register.

The National Register of Historic Places has been around for nearly 20 years. It includes buildings, structures, districts, and objects of national, state, and local importance which have the architectural or historical attributes we mentioned earlier.

### **What is different about how buildings and districts become listed in the National Register, and what happens as a result?**

The National Register is just that: an official list which is maintained for the federal government by the Secretary of the Interior. New listings may be suggested by individuals, groups, or official commissions to the state's experts in the Office of Parks, Recreation and Historic Preservation (OPRHP). Once a building or district is recommended by the state, a nomination form is sent to the Department of the Interior in Washington, where official designation takes place by virtue of publication in the *Federal Register* (the newspaper through which the federal government gives legal notice of its actions), and entry in the National Register by the Keeper, an employee of the National Park Service.

Once listed in the National Register, the building or district is to some extent protected against harmful acts of the federal government itself or any entity which is funded or licensed by the federal government. When you consider the wide variety of federally funded and licensed programs, this can be quite important. The protection stems from an elaborate environmental review and mediation process that the federal government and anyone licensed or funded by them must comply with before a potentially harmful program or project can go forward. This review is conducted by a federally-funded Washington agency called the Advisory Council on Historic Preservation, which by law must be given an opportunity to review the proposed project and comment on it. This agency does not have a veto over such projects, however, and has to rely on its ability to influence other parties to recognize the importance of protecting historic resources.

### **Can the owner still use the property as he likes?**

Yes. Restrictions apply only when the owner wants to obtain a matching federal preservation grant or when he or she wants to apply for one of the federal income tax credits mentioned earlier. In those cases, the owner has to comply with the Secretary of the Interior's guidelines for rehabilitating the property. To take advantage of the tax credit, the owner should arrange to have both the property and

rehabilitation work "certified" before construction starts. The Secretary's guidelines are both reasonable and flexible. The federal income tax benefits can be very substantial. For more information, contact the Office of Parks, Recreation and Historic Preservation, Field Services Bureau, Agency Building 1, Empire State Plaza, Albany, N.Y. 12238, 518-474-0479.

The New York State Register of Historic Places is another list of historic resources, which was created by the State Historic Preservation Act of 1980. Structures and districts which are nominated to the National Register by the State Historic Preservation Office (OPRHP) are automatically listed in the State Register. The State Historic Preservation Act also provides for a review of the impact of a state funded or licensed project on historic resources listed in the State Register.

### **Where can I get more information if I need it?**

The Preservation League of New York State will be pleased to help. Our office is located at 307 Hamilton Street, Albany, N.Y. 12210, 518-462-5658.

## **Suggested Reading**

**A Primer on Preservation Law in the State of New York.** National Center for Preservation Law, 1981. \$10.00, postpaid. Available from Berle, Butzel, Kass & Case, 45 Rockefeller Plaza, New York, N.Y. 10111.

The following publications are available, postpaid, from Preservation League of New York State, 307 Hamilton Street, Albany, N.Y. 12210:

**A Guide to the New York State Historic Preservation Act of 1980.** Wendy E. Feuer. 1982. \$1.00. This leaflet describes the act's basic provisions and how citizens can utilize it to preserve historic resources.

**A Primer: Preservation for the Property Owner.** 1978. \$3.00. This handbook contains 15 articles from the Preservation League's syndicated newspaper series.

**Preservation: Building Community Identity.** 1981. \$2.50. This handbook includes articles on Main Street revitalization, farmland preservation, adaptive use of estates and religious properties, among other topics.

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Additional copies of this leaflet are available for \$1.50, postpaid, from the Preservation League of New York State, 307 Hamilton Street, Albany, N.Y. 12210. Bulk rates are available. Printed in U.S.A. Copyright 1982.