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## Design Review in Historic Districts

*by Rachel S. Cox*



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Over the last 70 years, design review has become an effective and popular way for American communities to preserve and protect the irreplaceable character of their historic districts. It has been used in various settings and with various specific goals—from protecting the environs of a colonial-era landmark to maintaining the small-scale residential quality of a pre-World War II suburb. Design guidelines may be strictly enforced or may simply advise and educate property owners. But in general, all share the common goal of maintaining the character of an existing historic district on the basis of architectural history and design considerations and by means of a municipally appointed board with the power to review proposed changes to the built environment.

America's first historic preservation review board was established in Charleston, S.C., to protect the charm and character of an antebellum neighborhood faced with threats of demolition and intrusive new construction. The Historic District Zoning Ordinance of 1931 established a five-member Board of Architectural Review, nominated from organizations representing real estate agents, architects, engineers, city planners, and artists, and appointed by the mayor. It gave the board approval power over all applications for building permits and certificates of occupancy in a small section of the old city called the Old and Historic Charleston District.

The Charleston ordinance addresses three of the essential elements in a design review process: the area of review, the composition of the reviewing body, and the mechanism for enforcement. It specifically limits the scope of the board's review powers to "exterior architectural features that are subject to public view from a public street or way."

Guidelines for design review—that is, the criteria by which proposals would be evaluated—were included in the ordinance itself: "The Board of Architectural Review in passing upon cases, shall consider, among other things, the general design, arrangement, texture, material and color of the building or structure in question and the relation of such factors to similar features of buildings in the immediate surroundings." It limited those criteria as well, continuing: "The Board of Architectural Review shall not consider detailed design; relative size of buildings in plan; interior arrangement; or building features not subject to public view, nor shall it make requirements except for the purpose of preventing developments obviously incongruous to the old historic aspects of the surroundings."

Other famous historic areas introduced similar regulatory innovations. New Orleans initiated a state constitutional amendment to permit the city to protect the Vieux Carré, or French Quarter, and in 1937 the city passed a local ordinance that set standards to regulate changes there. In 1939 San Antonio, Tex., adopted an ordinance to protect



*Appropriate signage maintains the character of commercial areas in historic districts*

— Photo by Linda Gilsson

La Villita, the original Mexican village marketplace, and in 1950 the U.S. Congress enacted legislation to protect the Georgetown neighborhood in Washington, D.C. By 1965, 51 communities nationwide had enacted preservation ordinances. A study by the National Trust for Historic Preservation in 1975 identified 421 historic preservation commissions active at the local level, and by 1983 that number had doubled. Within 10 years it would more than double again: in 1993 the count topped 1,800. Today there are more than 2,300 historic preservation commissions.

In each historic district, individual property owners gave up a measure of control over the looks of their own properties in order to protect the character of their neighborhood as a whole. With time, they found that protecting historic resources yielded additional benefits: a strengthened

*Cover. Many of the picturesque wood frame buildings in Oysterville, Wash., are protected by a preservation ordinance and design guidelines.*

— Photo by Polly Friedlander

local economy as well as a strengthened sense of community pride. Not only did preservation serve as a catalyst for the revitalization of neighborhoods, it also generated millions of tourist dollars. In Savannah, Ga., which passed a historic preservation ordinance in 1972, more than \$2.75 million in private funds were spent on restoration in designated areas between 1965 and 1970. Meanwhile, tourist spending increased from \$1 million in 1962 to \$75 million in 1977.

Along with financial rewards, economic growth has brought challenges. As historic districts draw visitors and investment, the number and scale of proposed new developments often increase. Charleston, for example, has grappled with a controversial proposal for a new downtown convention center. A plan to build an aquarium near the Vieux Carré divided New Orleans. In the face of strong economic enticements, the design review powers conferred by historic district ordinances gave local residents a legal hook to ensure that these projects addressed their concerns.

As the number and responsibilities of preservation commissions have expanded, valuable lessons in how to plan and administer a successful design review process have emerged. Court challenges and judicial rulings have clarified the requirements for drafting a legally sound ordinance. The techniques of community education and political diplomacy that can ease the adoption of an ordinance and the formulation of enforceable design guidelines have been refined. Characteristics common to useful and effective guidelines and processes that minimize acrimony and confusion during implementation have been defined.

This booklet provides an introduction to the design review process in historic districts and summarizes the legal and procedural requirements for success. It provides background information on how the process generally works and offers case studies to illuminate three specific examples. Detailed discussion of the fine points of the design review process is omitted in order to speak to readers who may be considering design review for the first time. The booklet nonetheless spells out some important lessons about the strengths and weaknesses of design review boards and highlights key considerations to help commissions meet the challenges of future change successfully.

Several other National Trust publications offer more detailed discussions of specific aspects of the design review process. *Maintaining Community Character: How to Establish a Local Historic District*, by Pratt Cassity, lays out the benefits of creating a local historic district and the advantages of establishing a design review process to protect historic resources. Cassity supports his argument with numerous examples and offers advice on how to establish a historic district, with emphasis on encouraging public education and involvement and building political support.

Two other booklets, by Ellen Beasley, address specific problems that may confront an existing review board: *Design and Development: Infill Housing Compatible with Historic Neighborhoods* and *Reviewing New Construction Projects in Historic Areas*. A list of additional references and sources of organizational help appears at the end of this booklet.

### The Legal Foundation for Preservation-Oriented Design Review

Generally speaking, a historic preservation commission obtains its power to regulate design from a local preservation ordinance. This law empowers the commission to regulate to a greater or lesser degree the design of exterior changes to structures within a defined area, as well as aspects of new construction. Sometimes incentives are provided to encourage the maintenance and restoration of buildings within the area, but these benefits are derived from laws independent of the historic preservation ordinance itself.

In many cases a historic preservation ordinance is incorporated into a municipality's zoning code. Local zoning powers are generally delegated by the states, whose right to regulate private property under their "police-power" authority was affirmed by the Supreme Court in 1926. Although every state now authorizes local communities to prepare preservation ordinances or protect historic structures, legal requirements vary from state to state. "The legal framework in each state must be carefully considered before a local preservation ordinance is adopted," writes the attorney Richard J. Roddewig in *Preparing a Historic Preservation Ordinance*, his 1983 guide to the subject. "The case law interpreting that legal basis also varies somewhat from state to state. It, too, must be researched and considered to determine the constitutional basis of historic preservation in each state and the substantive and procedural points that must be addressed in a preservation ordinance."

The U.S. Supreme Court affirmed the basic constitutionality of historic preservation ordinances in 1978 in *Penn Central Transportation Co. v. City of New York* (438 U.S. 104 (1978)). The court's findings highlighted three important criteria that a local ordinance must meet in order to be found constitutional.

- It must promote a valid public purpose; that is, it must somehow advance the public health, safety, morals, or general welfare.
- It must not be so restrictive as to deprive a property owner of all reasonable economic use of his or her property. The court emphasized, however, that this does not mean that an owner is entitled to make the most possible money from the land, only that he or she must retain a "reasonable beneficial use" of the property.
- It must honor a citizen's constitutional right to due process. In other words, fair hearings must be provided and rational procedures must be followed in administering an ordinance. In addition, it must comply with relevant state laws.

"Preservation ordinances can be tailored to fit the needs of every community with historic neighborhoods and buildings," Roddewig continues. An ordinance may protect individual landmarks, entire areas or historic districts, or both. Most ordinances provide protection against changes that affect the exterior of a structure, leaving property owners free to modify interiors as they wish. A few ordinances also restrict changes to historic interiors, particularly those used as public space, such as a restaurant, movie theater, or lobby

of an office building. Typically, historic district ordinances regulate the design of new construction as well, to ensure the compatibility of neighboring buildings.

In all cases, historic preservation ordinances should ensure that due process concerns are fully addressed. Historic preservation programs must be administered consistently and fairly. This means that ordinances, at a minimum, must establish criteria and procedures that provide a property owner with a clear understanding of the standards by which his or her application will be judged, an opportunity for a full and fair hearing, and a written decision by an impartial decision-making authority based on the criteria in the ordinance, along with a right to appeal either at the administrative level or in court.

### What Constitutes a Historic Preservation Ordinance?

While ordinances vary from place to place, several basic elements can be identified.

#### 1. Statement of purpose

This section spells out the "public purposes" that the law addresses. While historic preservation is surely a legitimate concern, other public benefits should be identified, such as economic development, enhanced environmental quality, stabilization and improvement of property values, and growth management.

#### 2. Definitions

This section explains technical terms such as alterations, demolition-by-neglect, environmental settings, and others.

### 3. Creation of a preservation commission

This section identifies and/or establishes the entity within the local government that will administer the ordinance. Usually this is a preservation or design review commission composed of local citizens. This section may set qualification requirements for commission members—expertise in such disciplines as architectural history, architecture, law, or real estate, for example—to guard against claims of arbitrary and capricious decision making. It may require that other municipal officers be included, such as a member of the planning board or a representative of the zoning department, to ensure the coordination of municipal agencies. This provision generally spells out the process for selecting members and the duration of their terms.

### 4. Commission duties and powers

Most commissions are charged with the duty of conducting historic surveys, maintaining inventories, and keeping adequate records of their actions. The extent of their authority to designate and regulate historic properties varies, however, from community to community. Some commissions may make only recommendations to other governmental bodies—a planning board or city council, for example—while others have the final word on whether and how historic properties may be altered. Some commissions have the power to deny proposals to demolish historic buildings, others may only delay demolitions.

**5. Criteria for designating historic properties**

Here the ordinance defines the criteria that will be used to determine which properties merit protection. Factors generally considered are the property's role in national, state, and local history; its association with prominent historical figures; architectural or engineering excellence; and cultural significance. Many communities use the criteria for nominations to the National Register of Historic Places, or modified versions thereof.

**6. Process for designating historic landmarks and districts**

This section sets forth the process for designating a property as historic. It must allow for an adequate notice period and an opportunity for property owners to be heard before designation. It should explain who can nominate properties for historic designation, how and when affected property owners are notified, how many public hearings are needed, who must approve designations, and the timetable for these actions.

**7. Procedures and standards for reviewing proposals for alteration**

This section sets out timetables and standards for commission decision making in order to assure timeliness and fairness. Some of the issues it should resolve are what types of changes are subject to review and what standards the commission will use to evaluate those changes. Many cities have incorporated *The Secretary of the Interior's Standards for Rehabilitating Historic Buildings* into their ordinances. Although the standards are a use-

ful set of guiding principles, they are, generally speaking, too broadly phrased for local applications.

**8. Addressing claims of economic hardship**

Here the ordinance establishes a process and a standard for evaluating a property owner's claim that historic preservation requirements may result in true "economic hardship." While many commission actions will have an economic impact on a property owner, relief is generally afforded only when a property owner has been denied "all reasonable or beneficial use" of his or her property, the constitutional standard for determining whether a taking has occurred.

This section should explain the process for obtaining a hardship finding, spell out what information the commission needs to review hardship claims, and define the timing of reviews. Generally, hardship claims should be considered only after an application to alter or demolish has been denied, not when properties are still being considered for historic designation or before applications for alterations are reviewed.

**9. Penalties**

Historic preservation ordinances should include an enforcement provision. Penalties for violating the ordinance may include fines (usually levied for each day a violation continues), requirements to restore or pay for willfully damaged landmarks, denial of permission to rebuild on sites where landmarks have been demolished illegally, and even jail terms. The stiffness of the penalty should correspond with the likelihood of noncompliance and the nature of the offense.

**10. Appeals**

A citizen always has the right to challenge a commission's ruling in court. In addition to specifying the process for appeal to the courts, some ordinances also provide an administrative appeal process, generally to a board of zoning appeals or the planning commission. If an administrative appeal is chosen, it is important to ensure that decisions made on appeal are based on the same criteria used by the historic preservation commission. Otherwise the appeal may be decided on the basis of political considerations or unproven assertions of economic hardship on the part of the property owner. In considering whether a decision was made arbitrarily or capriciously, the appeal board should limit its review to the record developed by the preservation commission.

**Laying the Foundation for Successful Design Review**

In practice, the criteria by which a design review board or historical commission assesses proposals for alterations and new construction may be as simple as the two paragraphs in Charleston's Historic District Ordinance (see Case Study I). They may consist of little more than a local adaptation of *The Secretary of the Interior's Standards for Rehabilitation*, a statement of 10 principles drawn up by the federal government for federally funded rehabilitation projects and private projects receiving federal historic rehabilitation tax credits. In general, however, a truly effective, efficient, and relatively conflict-free program demands a more site-specific articulation of community goals, along with more detailed guidelines for achieving them.

Design review is an important tool in the kit of a historic preservation commission. Other techniques are at least equally important, however, in ensuring the protection of a community's historic resources. Educating the public and supporting private preservation efforts are crucial tasks for a commission, and effective design review operates in tandem with them to achieve a community's overall preservation goals. Developing design review guidelines through public debate and discussion is an educational process for all involved, and the guidelines themselves will clarify the character-defining features of a district and educate the public about how to preserve them.

Design review boards and historical commissions also need to gain the cooperation of other governmental bodies, such as the planning and building departments, zoning board, and others whose decisions affect the appearance of a historic district through property maintenance and land-use and tax policies. Developing design guidelines can help to educate these groups about the district's historic character and provide them with specific guidance for protecting it.

### The Most Basic Tool: A Historic Resources Survey

One of the key elements in developing design review criteria is a survey of historic resources. It can help to answer the most basic questions: Why do we have a historic district? What is it we are preserving and why? Why do we need design guidelines? What will they accomplish?

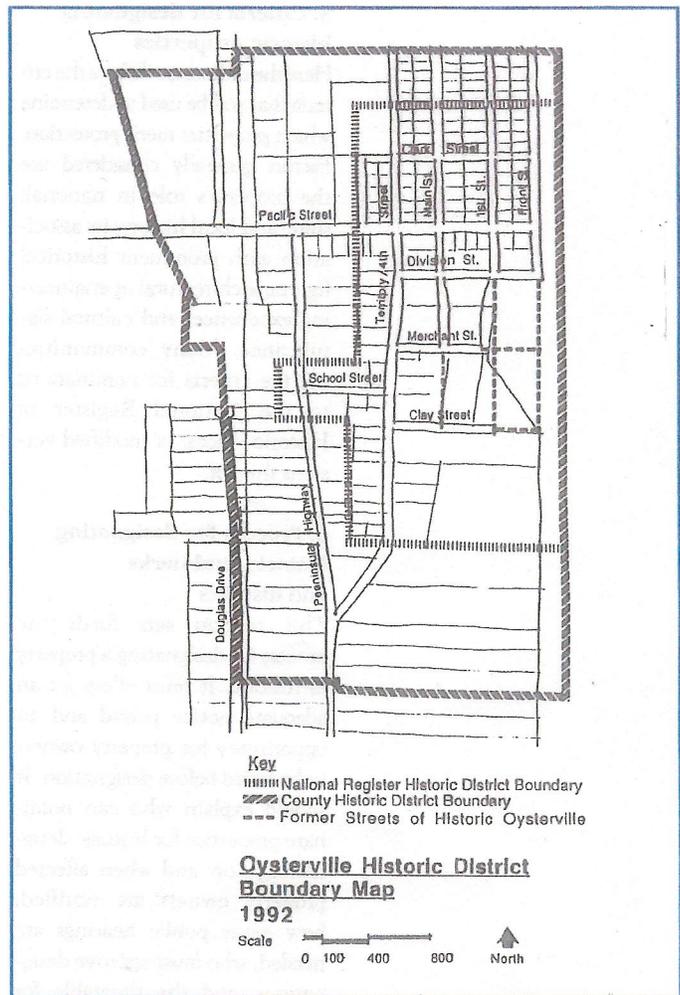
An architectural survey is an inventory that identifies and describes the resources within a historic district. Yet it is more than

this, too. In the process of describing the historic resources, it also identifies the sources of the district's value. It establishes the significance of the district, or why it merits protection, and it identifies the character-defining features of the structures within the district. Later, the survey will serve as an essential tool to help board members and staff (if any) make informed determinations. It may be useful to other city or town agencies that are making related decisions, and it can form one basis for a program of public information and involvement.

### What to Include

Surveys can vary greatly in scope and complexity depending on who is available to complete them and how much time and money can be spent, among other practical factors. A survey may delve into the history of each building and include extensive photographic documentation of both current conditions and historical appearance. But a survey that will be truly useful should at a minimum include a clear photograph of each building along with the following information about the building and, possibly, its surroundings:

- Architectural description noting important features;
- Approximate date of construction and historical importance; that is, what important events occurred there or people of note lived or visited there, its role in the history of the community, what important cultural practices or themes it embodies;
- Structural condition, including how much of the building is authentic and what has been altered and/or added; and



- Relationship of the building to its setting, including compatibility of use and contribution to the historic character and appearance of the area.

Noting the location of vacant lots can also be useful to preservation planning.

This information should be recorded on a standard, easy-to-read form. Many communities use National Register survey forms, which are available from state historic preservation offices. The information can be summarized on a map of the district, coded to show the features most important to commission goals, such as age, condition, use, and contribution to neighborhood character.

*Design guidelines might include maps to highlight district boundaries and original streets*

— Illustration by Nore Winter, Winter & Company