

## Historic Preservation Tax Incentives

### Preservation Platform Briefing Paper: Spring 2001

At the root of many historic preservation success stories throughout New York City, New York State and around the nation is the common element of tax incentive programs that support and stimulate preservation and reuse of historic buildings. Not only do these programs provide assistance to renovate historic buildings, they also help in efforts to combat sprawl and revitalize communities while providing a community a tangible link to the special character of its past.

Tax incentives for preservation attract new private investment to the historic cores of cities and towns. They also generate jobs, enhance property values, and augment revenues for State and local governments through increased property, business and income taxes. The preservation and restoration of New York City's numerous and diverse historical and cultural resources must continue to be used as building blocks for the city's revitalization.

This paper describes both state and federal historic preservation tax credit programs available in New York State, as well as vital legislation pending in the New York State Legislature and the U.S. Congress. The existing tax credits outlined here are already powerful influences in the City's revitalization; the proposed credits are considered essential new tools for furthering this economic success and preserving the City's vast and diverse historical and cultural resources.

#### NEW YORK STATE PROGRAMS

**Residential:** A historic home rehabilitation tax credit would provide a state income tax credit to owners of qualified historic homes. The value of the credit is equal to a specified percentage of qualified expenditures incurred in the historically appropriate rehabilitation of the property.

Several historic home tax credit bills are pending before the New York State Legislature; such legislation appears poised for passage in 2001. The Legislature has carried a historic home tax credit bill for three years, gaining support each year. In 2001, as a result of the tax credit's endorsement at meetings of the Lt. Governor's Quality Communities Interagency Task Force, Governor Pataki introduced an alternate version of such legislation in his Executive Budget.

The Governor's Historic Home Rehabilitation Assistance Tax Credit (Part E of S1149/A2001-A) is included in his FY 2001-2002 budget bill. The bill proposes a \$50,000 tax credit or rebate per residence for owner-occupied historic homes listed on the National Register or located within a registered historic district. The credit value equals 15% or 25% of the approved rehabilitation expenditures, and covers both interior and exterior renovations. A minimum of \$20,000 in approved rehabilitation expenditures is required to qualify for the credit. Targeting provisions in the bill lower this minimum expenditure to \$5000 for qualified homes in State Empire Zones or federally certified distressed census tracts.

The Governor's bill is notable for supplementing its credit feature with a rebate provision, creating the means for those without sufficient state income tax liability to receive a direct rebate of rehabilitation expenditures, allowing for further investment in rehabilitation, mortgage payments, or other home improvements. This feature would set a national precedent for tax credit program design and will soon be adopted as a feature of Maryland's existing state income tax credit for historic homes. The Governor's tax credit proposal has received the endorsement of numerous preservation organizations and municipalities across the state.

Both the Assembly and Senate have reintroduced their Historic Homeownership Rehabilitation Tax Credit in the 2001 Legislative session (A0042/S4557). This bill matches the intent and structure of the Governor's bill, but allows the state income tax credit to be converted to a mortgage certificate at the discretion of banks that chose to participate in the program. There is, however, no mandate that banks participate in the program, raising concerns about inequitable availability of this component of the credit.

An estimated 62,000 residential structures in New York State are listed on the National Register and are eligible to take advantage of this tax credit.

**Commercial:** A commercial building state income tax credit would provide a state income tax credit to owners of income producing qualified historic buildings.

New York State does not currently have a commercial building tax credit program, but members of the State Legislature have begun to express interest in supplementing the federal commercial building tax credit with a parallel program at the state level. Legislation is under consideration for the 2002 Legislative session.

**Real Property:** In many communities, property tax is one of the largest single expense items for owners of commercial buildings and it can also be a heavy burden to individual homeowners. New York is one of 34 states that have passed enabling legislation to allow municipalities to provide relief from local real property taxes for property owners to rehabilitate historically significant properties in a manner consistent with the historic character of the building. This provision encourages significant private investment in historic properties and neighborhoods.

**New York State passed enabling legislation in 1997. The state law allows municipalities to exempt historic property improvements from local property taxes for five years, followed by a 5-year tax rate phase in at the rate of 20% per year. A number of communities have since passed local legislation; however, New York City has not. In 1999, a push to secure such legislation for New York City stalled over disagreements as to the number of affected properties and the resultant fiscal impact.**

### FEDERAL PROGRAMS

**Commercial:** The federal government offers a 20% rehabilitation tax credit for commercial (income producing) properties. The credit is available for any project that the Secretary of the Interior designates as a certified rehabilitation of a certified historic structure. Such a structure is a building listed in the National Register of Historic Places or a building that is located in a registered historic district.

**Numerous projects in Manhattan and the boroughs were made economically viable through use of this federal credit, including rehabilitation of the New Amsterdam Theatre; the Metropolitan Life Building; 40 Wall Street; Times Square Hotel; 66-72 Water Street (Dumbo - Brooklyn); 445, 451, 455, 481 East 140<sup>th</sup> Street (Mott Haven - Bronx); and additional smaller projects in Harlem, Greenpoint, Bedford Stuyvesant, among others.**

**Residential:** A historic home ownership tax credit would provide a federal income tax credit to owners of qualified historic homes. The value of the credit is equal to a specified percentage of qualified expenditures incurred in the historically appropriate rehabilitation of the property.

H.R. 1172 has been introduced in the House of Representatives to create a 20% federal income tax credit for historic home rehabilitation.

Governor Pataki and preservation organizations from across the state have endorsed this proposal and are lobbying the New York State Congressional delegation to secure co-sponsorship in the House and introduction of a companion bill in the Senate.

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Additional information and details about these state and federal tax credits can be obtained by contacting Daniel Mackay, Director of Public Policy at the Preservation League of New York State: (518) 462-5658 x18.

# **The Need to Preserve Historic Public Schools in New York City**

## **Preservation Platform Briefing Paper: Spring 2001**

New York City possesses one of the finest collections of historic schools in the country. Many of these structures are the grandest and most magnificent buildings in their immediate neighborhoods. In fact, many are community anchors and are genuinely treasured by local families whose memories of the school span generations. In particular, the schools built between 1890 and 1915 under the tutelage of CBJ Snyder mirror very advanced theories of public education and are a testament to a time when the city made a major financial commitment to educate all of its children, even those of the poorest immigrants, and to do so in school buildings worthy of a great and enlightened metropolis. They were carefully designed and detailed so as to provide the maximum amount of light and fresh air, to provide ample recreational space and to provide flexible floor plans to accommodate different class sizes. Their construction was extremely solid and employed the finest materials. They were built to last and they have.

This collection of historic public schools is both a legacy and an asset to New York City. Sometimes those in charge of their upkeep regard them as liabilities. Our goal is to transform this thinking and convince the agencies in charge of the schools to preserve these important community structures. The first step in this effort would be to conduct an accurate survey listing all historic school buildings in the city and identifying those eligible for inclusion in the State and National Registers of Historic Places. Once identified, all repair and rehabilitation work proposed for these schools would preserve and restore the building's significant features. This list would be useful to agencies such as the School Construction Authority (SCA) when determining which projects would need to be reviewed by the State Office of Historic Preservation.

We believe that the SCA and the Board of Education have already done good work to repair and restore these schools properly. However, their record is inconsistent. Examples such as PS 31 in the Bronx and PS 109 in East Harlem attest to the fact that some of these historic schools have been threatened with improper rehabilitation and even demolition. We need to assure the citizens of New York who care about community, education, and neighborhood schools that these treasures will be restored, properly updated and kept in good condition for the benefit of the children and all New Yorkers.

## **A Well-funded and Independent Landmarks Preservation Commission**

### Preservation Platform Briefing Paper: Spring 2001

*In 1965, the New York City Council “declared as a matter of public policy that the protection...of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest...and welfare of the people.” In keeping with this decisive declaration, the New York City Charter created the Landmarks Preservation Commission – an independent City agency with specific powers to safeguard the city’s historic, aesthetic and cultural heritage as detailed in the New York City Administrative Code.*

Since the enactment of the Landmarks Law and the creation of the Commission, more than 22,000 buildings have been protected through designation as individual landmarks or as part of historic districts. The Commission’s autonomy within City government has enabled it to consider on the merits the value and importance of the city’s architecture, history and culture, and to develop regulatory policies that best serve the public interest. While preservation has enjoyed increasing support over the years among private citizens and elected officials, the Commission itself has been criticized for not acting quickly enough to designate and protect threatened historic resources, for causing unnecessary delay to property owners who seek to make changes to their designated historic buildings, and for failing to enforce the law when property owners violate it.

During the Giuliani administration, the Commission has sought to address these issues through the passage of new rules and regulations to make its process more efficient. But efficiency and streamlining can only go so far: the pronounced reduction in the Commission’s funding throughout the last decade has seriously undermined the agency’s efforts to do its job – and this is a loss to all New Yorkers.

A cursory look at ten years of the Commission’s budget and staff history reveals that as its stewardship of the city’s architectural heritage has grown, the agency itself has shrunk. In 1992, the Commission had a budget of \$3.4 million and a staff of 56 people to regulate approximately 19,000 designated properties and protect endangered buildings citywide. By 1997, the Commission’s budget had fallen to \$2.8 million, with a staff of 45, to deal with 21,198 designated landmarks. For 2001, the Commission has a budget of \$3.1 million; and despite the fact that the number of designated buildings now exceeds 22,000 (77 historic districts, 1,065 individual landmarks, 103 interior landmarks, 9 scenic landmarks), the Commission staff remains at 45. Percentage-wise, the Commission now regulates 21% more buildings than it did in 1992, with a 10% smaller budget. This year the agency’s workload includes processing more than 8,000 permit applications – 63% more than it processed in 1992 – with a staff decreased by 24% since that time.<sup>1</sup>

Over the years, the decline in the Commission’s funding has negatively affected an increasing number of property owners awaiting permits, communities who are seeking landmarks protection but have been unable to get the Commission’s attention, and the valiant but overworked professional staff at the Commission. In addition, the implementation of some important new programs has been severely hampered – most significantly, the enforcement program. The Commission strengthened the Landmarks Law in 1998 with the addition of a civil penalty provision to punish violators. However, it can only afford to employ one inspection officer to monitor and inspect over 22,000 buildings citywide for potential violations. Without sufficient staff, the program cannot become fully operable and has fallen far short of expectations. In the area of designation and protection, the Commission has been operating without a survey department since 1993. The defunct department’s work has fallen to the research department, which, with four full-time employees, is the smallest the Commission has had since its inception. (In 1992, the Commission had a research staff of ten and four survey staff members.)

The Commission’s success as an independent agency is contingent upon a sufficient budget that enables it to make timely individual and district designations that protect threatened historic buildings, to regulate designated properties effectively, and to enforce the Landmarks Law. The Commission is operating as efficiently as it can with the limited resources it has. But without increased funding and staffing, it will always be scrambling to meet its obligations. Bottom line: more funding is crucial. We therefore call upon the next Mayor to increase the Commission’s budget. Full funding of the Commission, and an adequate number of professional staff members, will enable the agency to fulfill its important mandate and provide the protection that New York City’s architectural heritage deserves.

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<sup>1</sup> Mayor’s Management Reports 1992-2000

## Zoning Reform

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#### INTRODUCTION

Zoning is an important tool of city building. While it is by no means the only tool, by and large, zoning shapes both New York City's skyline and its neighborhoods. And while some aspects of the current state of the NYC Zoning Resolution are in good shape, there is broadly-based consensus among those close to the issue that planning and zoning as practiced in New York City today needs a major overhaul. This represents a critical quality of life issue for citizens and visitors alike. What draws out-of-towners to visit and makes residents value the special character of their neighborhoods may not be easy for everyone to describe, but it has to do with building form, scale, style and appearance, as well as the relationships between buildings and their surroundings.

New York City is unusual for its vast size both in population and geography, as well as in its diverse housing stock that includes both high-rise luxury towers in Manhattan and a wide range of single family houses in the other boroughs. Identifying and protecting the elements of the cityscape that characterize the uniqueness and vitality of both the central business districts and the many neighborhoods are important tasks. In New York City, this is the responsibility largely of those who administer the zoning and landmark laws and regulations. Thus the fourth tenet of the Preservation Platform for 2001:

Zoning reform should begin with the protection of urban fabric in livable neighborhoods throughout the city. Where appropriate, mapping of contextual zones around historic districts will encourage sympathetically-scaled new buildings in the areas surrounding designated historic districts. Contextual zoning is especially important around designated brownstone neighborhoods throughout the boroughs where there are many blocks of outstanding, low-scale historic buildings outside of the historic districts' boundaries. Rezoning to match the existing built fabric within historic districts will reinforce the strength of the district and could prevent as-of-right "blockbusters" from destroying the contextual integrity of these landmark law protected neighborhoods.

#### OVERVIEW

The New York City Zoning Resolution is the set of laws and regulations that govern land use and development within the five boroughs. With a framework of zones that separate residential, commercial and manufacturing uses, zoning deals with the size and shape—known as "bulk"—of a building that can be built at a given location. Overseeing the Zoning Resolution is the New York City Planning Commission, a body with thirteen members appointed by seven different elected officials. The Chairman of the City Planning Commission also serves as the Director of the New York City Planning Department, where planners, architects, urban designers, engineers and demographers provide professional staff support. The city agency charged with enforcing the Zoning Resolution, the Building Code and the multiple dwelling laws which govern new construction and renovation, however, is not the Commission or the Department of City Planning, but rather, the Department of Buildings. As one might suspect, this is the source of many problems, most prevalent of which is that the employees who review building plans rarely have adequate familiarity with the zoning rules to do a great job of enforcement.

The New York City Landmarks Law authorizes the Landmarks Preservation Commission (LPC) to designate particular buildings and areas as individual landmarks or historic districts on the basis of special historical, cultural or aesthetic characteristics. Once a building or site has been designated or included within an historic district, the owner must obtain approval from the Landmarks Preservation Commission for any alteration to a designated landmark or a building in an historic district, or the construction of any new building within an historic district. The Landmarks Preservation Commission has eleven members, all appointed by the Mayor. The membership must include at least three architects, a historian, a realtor, and a city planner or landscape architect. Among them must be a representative from each of the five boroughs.

The LPC can issue a "certificate of no effect" for work requiring a permit from the Department of Buildings that will not affect significant protected features of the landmark building or a "permit for minor work" for construction activity that may affect significant protected features, but does not require a permit from the Department of Buildings. Any major work that will affect protected features requires a "certificate of appropriateness". In determining whether to

grant a “C. of A,” the LPC holds a public hearing and considers the effect of new construction or alteration on the designated building, and in historic districts, on other buildings in the district as well.

Conflicts arise when the zoning mapped within an historic district permits a significantly larger building envelope than the LPC would ordinarily approve given its procedures and the proper scope of its review. Even more common problems are the jarring juxtapositions of scale, height and bulk between low-rise historic buildings within designated districts and the very large, overscaled structures which sometimes get built just outside their boundaries. Here it is not unusual to find a row of four-story structures overshadowed by a forty-story skyscraper, and the resulting urban form feels to the pedestrian to have lost a sense of balance. There are solutions that can be applied through zoning measures which will adjust the regulatory framework so the voice of the pedestrians and residents, and not just that of the real estate development interests, can be heard.

### CONTEXTUAL ZONING

By the mid-1980’s, out-of-scale construction in low-rise areas has changed the character of neighborhoods comprised of one and two-family houses. Typically, they would be replaced by larger and bulkier multi-family apartment buildings. In 1989, New York City enacted the first comprehensive revision of lower-density zoning since 1961. Lower density contextual zoning strengthens the bulk distinctions, better defines acceptable building configurations and acknowledges the narrower lot sizes common in many older residential neighborhoods. By controlling curb cuts, it also provides more on-street parking and discourages excessive paving of front yards as well as the insertion of garages on the ground floor of buildings.

Contextual districts can be mapped in low-rise neighborhoods of all boroughs. They are particularly necessary in those nineteenth century brownstone areas where the historic district boundaries are drawn especially tight. Contextual zoning, which should be mapped both inside the historic districts themselves and around them, applies height limits to appropriate blocks and also mandates midblock continuity by insisting that new buildings line up with old ones at the streetwall and by introducing restrictions on the cutting of curb cuts on sites narrower than forty feet. With proper zoning, the general scale and character of a neighborhood can be protected while allowing new development to occur within the traditional context.

### LIMITED HEIGHT

There are other tools of zoning in New York City that should be subject not to reform, but more extensive application. While the New York City Zoning Resolution allows for the designation of limited height districts, the only one that has been mapped over a broadly based area of the neighborhood’s historic district is Brooklyn Heights and Cobble Hill. In essence, limited height is overlay zoning which, according to the Zoning Resolution, “ensures that the height of new buildings is in scale with existing buildings in the area”. Limited height has helped to maintain the contextual scale of Brooklyn Heights. This reduces the pressure on the LPC to approve tall buildings allowed under the zoning rules but not likely to be found appropriate to the designated historic district. This is a tool which is promising in its future potential application especially within historic districts.

### SPECIAL DISTRICTS

Almost half of the pages in the New York City Zoning Resolution lay out one particular tool of zoning, special districts, technically known as “special purpose districts”. The purposes of these districts vary immensely, from promoting development by giving special bonuses to preserving Natural Areas and steep hillsides dangerous to build on. They are designed to work by laying down special provisions regulating use, bulk, and sometimes other things that apply only in areas mapped for this particular purpose. Many of them have a preservation function in that they are intended at least in part to preserve a particular character or ambience in a defined area by restricting uses and building envelopes there. For example, in the theater Sub-district, Broadway theaters and uses connected to them such as rehearsal spaces and theatrical supply houses are encouraged or mandated. In the Atlantic Avenue Special District, zoning rules suggest adhering to an aesthetic program with paint colors that are original to the nineteenth century storefronts. This is a rare example of fine-grained zoning mirroring closely the role of the Landmarks Commission.

The problem with special districts in New York City zoning has not been in creation or intent, they rest, rather, in regulation. The Department of City Planning has no regulatory capacity; it relies on the Department of Buildings to ensure compliance with zoning rules. The Buildings Department inspectors, in turn, do not have the training or the knowledge, or sometimes the will to detect violations, for example those forbidding specific uses that might be legal in adjacent areas. Although a few special districts have worked adequately where there has been significant political or

other pressure, City Planning has, on the grounds of the ineffectiveness of enforcement, largely abandoned the designation of new special zoning districts even though as a basic zoning tool they still make eminent sense and are applied successfully in other cities, largely under the label of neighborhood conservation districts.

### COMMUNITY FACILITIES AND THEIR PROBLEMS

The Community Facilities provision in the zoning law is often a source of contention in residential neighborhoods. For example, the expansion of a doctor's office on the ground floor of a brownstone in a residential neighborhood is a typical case around which neighborhood opposition often coalesces. The Community Facilities provisions, as in this case, permit additions to existing buildings that would normally not be permitted in residential zones provided that the use in the building falls in certain categories conceived of as serving the larger community or a wider area. In the Zoning Resolution, these uses fall into categories which are lumped together under the title of Community Facilities. Frequently, these additions take the form of expansions, some multi-story, into the backyards of buildings, and neighbors become understandably concerned at the impending loss of light and air or the loss of the open green character of the back yards of a block. If they are classifiable as Community Facilities, such additions or even large new buildings can be built "as-of-right," meaning that there is no review process by any city agency other than the Buildings Department even though construction would not be allowed under the zoning that applies to all other buildings in the same neighborhood.

In historic districts, this puts the Landmarks Preservation Commission in the difficult position of either opposing an as-of-right project or allowing additions it would not approve for the house next door for the enlargement of living space. The rationale of the Community Facilities provision, as with other exceptions to the general application of zoning, is that a Community Facility is of benefit to the neighborhood or a larger area and may need to be larger than normally allowed on the location in order to fulfill its function.

This argument is less persuasive in the preceding example than it might be in the construction of a major addition to a hospital, where the positive benefits of the larger facility provide a service to a larger number of people and can offset the negative of the greater bulk. But many of the disputes over Community Facilities are not about large additions to hospitals or other major institutions. Rather, they involve much smaller intrusions in residential neighborhoods. As it is in these areas that the justification for exemptions is most tenuous, modifying the rules here should be less controversial and quite welcome. Since the large-scale Community Facilities are also proposed by politically influential institutions able to wield powerful moral arguments, repeal or substantial modification of the Community Facilities provision is highly unlikely. Instead, we propose an approach that could eliminate much of the contention, at least as it applies to historic districts and their immediate surroundings.

We suggest that modification be made in the classes that qualify for as-of-right Community Facilities to eliminate many of the smaller uses currently allowed in residential neighborhoods such as physician's offices or private schools. The uses eliminated could still be allowed but only on a special permit basis. Especially in historic districts, this would place the discussion as to whether the particular contemplated use warranted violating the zoning envelope where it belongs, within the planning process, rather than at the level of Landmarks Preservation Commission design review where use is not supposed to be a factor. Notably, this approach will not affect the large-scale projects associated with major institutions serving the general population.

### SUMMARY

In summary, there is much to be done to make the New York City Zoning Resolution responsive to the laudable goal of combining the forces of zoning and landmark reviews. Streamlining these reviews will require real political will on the part of leaders in government and strong community support. Expanding greatly the mapping of contextual zones, the most recent powerful zoning tool to aim at these ends, would be a responsible start. Contextual zoning is a sophisticated approach which helps define the building envelope and not just the height of the building. Much more of it needs to be mapped, particularly in brownstone neighborhoods. It is widely agreed that preservation and protection of our historical architectural and cultural assets is vital to New York City's future. Zoning reform is fundamental to advancing the preservation ethic which should be imbued in the work of all city agencies and private owners whose plans impact the character of our great city.