

Appendix B

The Restrictions Historic District Designation Imposes Upon Property Owners

The designation of an historic district triggers a series of restrictions on building construction and modification that are likely to affect property values and sales prices in historic districts. The restrictions are described in detail in Appendix B. In brief, Any property owner in New York who wants to undertake construction work that goes beyond “ordinary repairs and maintenance” must apply for appropriate permits from the Department of Buildings (DOB) (and in some cases, other city agencies).¹ If the property in question is in an historic district, the owner also must request and receive one of three determinations from the LPC: (1) a “permit for minor work,” (2) a “certificate of no effect,” or (3) a “certificate of appropriateness.”² Until the LPC issues one of these notices, the Department of Buildings may not approve a building permit for construction, modification or demolition of property in a historic district,³ and the owner may not proceed with the construction or modification.

The LPC has issued guidelines delineating types of work that constitute ordinary maintenance and thus do not require LPC approval (for example, installing window air-conditioning units) and work that does require LPC approval (for example, painting wood or metal cornices a different color).⁴ But for anything other than ordinary maintenance, even “minor work,”⁵ the LPC requires an owner to submit an “Application Form for Work on Designated Properties.”⁶

The LPC forwards the Application to the DOB, which determines whether the proposed work requires a DOB building permit.⁷ If the project requires a building permit, the LPC will not grant a minor work permit, and instead will consider whether the work qualifies for a certificate of no effect or a certificate of appropriateness.⁸ If the project does not require a building permit, the LPC will determine whether the proposal would “change, destroy or affect any exterior architectural feature” of property located in an historic district.⁹ If the proposal does not have such an effect, the LPC will grant the minor work permit.¹⁰ If the proposal would have such an effect, however, the application will be considered for a certificate of appropriateness,¹¹

¹ See N.Y.C. Admin. Code § 25-302(r) (defining ordinary repairs and maintenance as work to “correct any deterioration or decay of or damage to such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.”)

² N.Y.C. Admin. Code § 25-315(c)

³ N.Y.C. Admin. Code § 25-305(b).

⁴ New York City Landmarks Preservation Commission, Guidelines and Materials Checklist for Performing Work on Landmarked Buildings *available at* <http://www.nyc.gov/html/lpc/downloads/pdf/pubs/workguide.pdf>.

⁵ N.Y.C. Admin. Code § 25-310(a)(1).

⁶ New York City Landmarks Preservation Commission, Application Form for Work on Designated Properties *available at* http://www.nyc.gov/html/lpc/downloads/pdf/forms/application_form_full.pdf.

⁷ N.Y.C. Admin. Code § 25-310(b).

⁸ *Id.*

⁹ N.Y.C. Admin. Code § 25-310(c)(1)(a). Note also that there are particular rules regarding installation of new awnings on both residences and commercial buildings. See Rules of the City of New York, Title 63, Landmarks Preservation Commission Rules 2-12 (July 2003).

¹⁰ N.Y.C. Admin. Code § 25-310(c)(2).

¹¹ N.Y.C. Admin. Code § 25-310(c)(1)(b).

A property owner undertaking to “construct, reconstruct, alter or demolish” a building in an historic district who has applied for a permit from the DOB may use the Application Form to apply for “certificate of no effect” from the LPC in order to proceed with the project.¹² In the case of an existing building, the LPC considers whether “the proposed work would change, destroy or affect any exterior architectural feature” in an historic district.¹³ In the case of new construction, the LPC considers whether the proposed building will “affect or not be in harmony” with the historic district.¹⁴ If there is no problematic effect, the LPC will grant the certificate of no effect.¹⁵ The LPC is required to respond to each request within 30 days after it is initially filed.¹⁶ If the certificate request is denied, there is an appeals process within the LPC,¹⁷ and if the denial is sustained the applicant may request a certificate of appropriateness.¹⁸

An owner may request a certificate of appropriateness from the LPC either when a certificate of no effect has been denied, or initially (that is, without first seeking a certificate of no effect) at the time the owner seeks a building permit.¹⁹ In evaluating a request for a certificate of appropriateness, the LPC will consider “aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color.”²⁰ In particular, the LPC is required to take into account how the proposed work will affect the exterior architectural features of the building, and “the relationship between the results of such work and the exterior architectural features of other, neighboring improvements” in the historic district.²¹ Each request for a certificate of appropriateness must be considered at a public hearing, and the LPC must make a determination regarding the request within 90 days after the request is filed.²²

Beyond the LPC’s certificate and permit requirements, the LPC requires that property in historic districts be kept “in good repair.”²³ In particular, the LPC requires that property owners maintain and repair “all exterior portions” of buildings in historic districts, as well as all interior portions which, if not maintained, may “cause the exterior portions” to “deteriorate, decay or... fall into a state of disrepair.”²⁴ This provision has been used by the LPC to obtain a court order requiring the property owner to undertake repairs.²⁵

¹² N.Y.C. Admin. Code § 25-306(a)(1).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ N.Y.C. Admin. Code § 25-306(a)(2).

¹⁷ *Id.* If the LPC does not grant the certificate of no effect, it issues a “proposed denial” of the request to the applicant, who then may file a written demand. *Id.* The LPC is then required to “confer with the applicant” and then is permitted 30 days to make a final determinate as to the request for certificate of no effect.

¹⁸ N.Y.C. Admin. Code § 25-306(a)(3).

¹⁹ N.Y.C. Admin. Code § 25-307(a).

²⁰ N.Y.C. Admin. Code § 25-307(b)(2).

²¹ N.Y.C. Admin. Code § 25-307(b)(1).

²² N.Y.C. Admin. Code § 25-308.

²³ N.Y.C. Admin. Code § 25-311(a).

²⁴ *Id.*

²⁵ *City of New York v. 10-12 Cooper Square, Inc.*, 793 N.Y.S.2d 688, 693 (Sup. Ct. N.Y. Co. 2004) (ordering the property owner to “permanently repair and restore the exterior of the Skidmore house to a state of “good repair” in an expeditious manner” and “to maintain the Skidmore House and to keep in

“good repair” all exterior portions and all interior portions which if not so maintained may cause or tend to cause the exterior portions of such improvement to deteriorate or otherwise fall into a state of disrepair.”)