

Historic District Designation in Pennsylvania

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PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

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Commonwealth of Pennsylvania

Pennsylvania Historical and Museum
Commission

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Commonwealth of Pennsylvania

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PREFACE

Twenty-six years have elapsed since the most recent edition of *Historic Districts in Pennsylvania* was published. The changes that have been introduced during this time, both in amendments to pertinent federal and state legislation, and in the accumulated experience of persons engaged in the implementation of historic preservation, have necessitated a substantial rewriting of this little book. During the interim, Pennsylvania communities have become more expert in implementing historic preservation planning strategies, notably in such areas as historic district designation, which they have used successfully to protect their historic resources, and as a tool for cultural and economic improvement. This publication offers the reader the accumulated wisdom from those years of success and failure experienced by local governments in the process of initiating and administering historic district preservation ordinances. It is intended as a guide for local government officials, historic preservation organizations, and citizens who are considering establishing historic districts under municipal authority.

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Part I Introduction

At the time the second edition of *Historic Districts in Pennsylvania* was published twenty-six years ago, there were forty-five historic districts protected by local ordinances authorized by the Historic District Act. Since then, another sixty-eight such districts have been created and protected by local historic district ordinances, and several more are pending certification. In addition, a substantial number of historic districts are protected under *other* Pennsylvania legislative acts, which are also discussed in the text. Locally protected historic districts have increased in number, slowly but steadily and continue as a highly effective means of accomplishing the preservation of the Commonwealth's historic resources.

Because many issues must be considered prior to the enactment of a historic district ordinance, the provision of such protection calls for a deliberative process. This publication attempts to lay out what some of these deliberations consist of and to provide a historic preservation context in which to make those deliberations.

The information in this booklet relies substantially on the earlier edition of *Historic Districts in Pennsylvania* prepared by D.G. Schlosser. In addition, important contributions to the text come from the experience of local and state officials, members of Boards of Historical Architectural Review (informally known as HARBs) and historical commissions, colleagues, and local historic preservation

organization volunteers who have been and are intimately involved with the establishment of historic districts. These are the people responsible for the protection of the Commonwealth's cultural resources at the community level. But ultimately it is the property owner who can insure that historic resources are preserved.

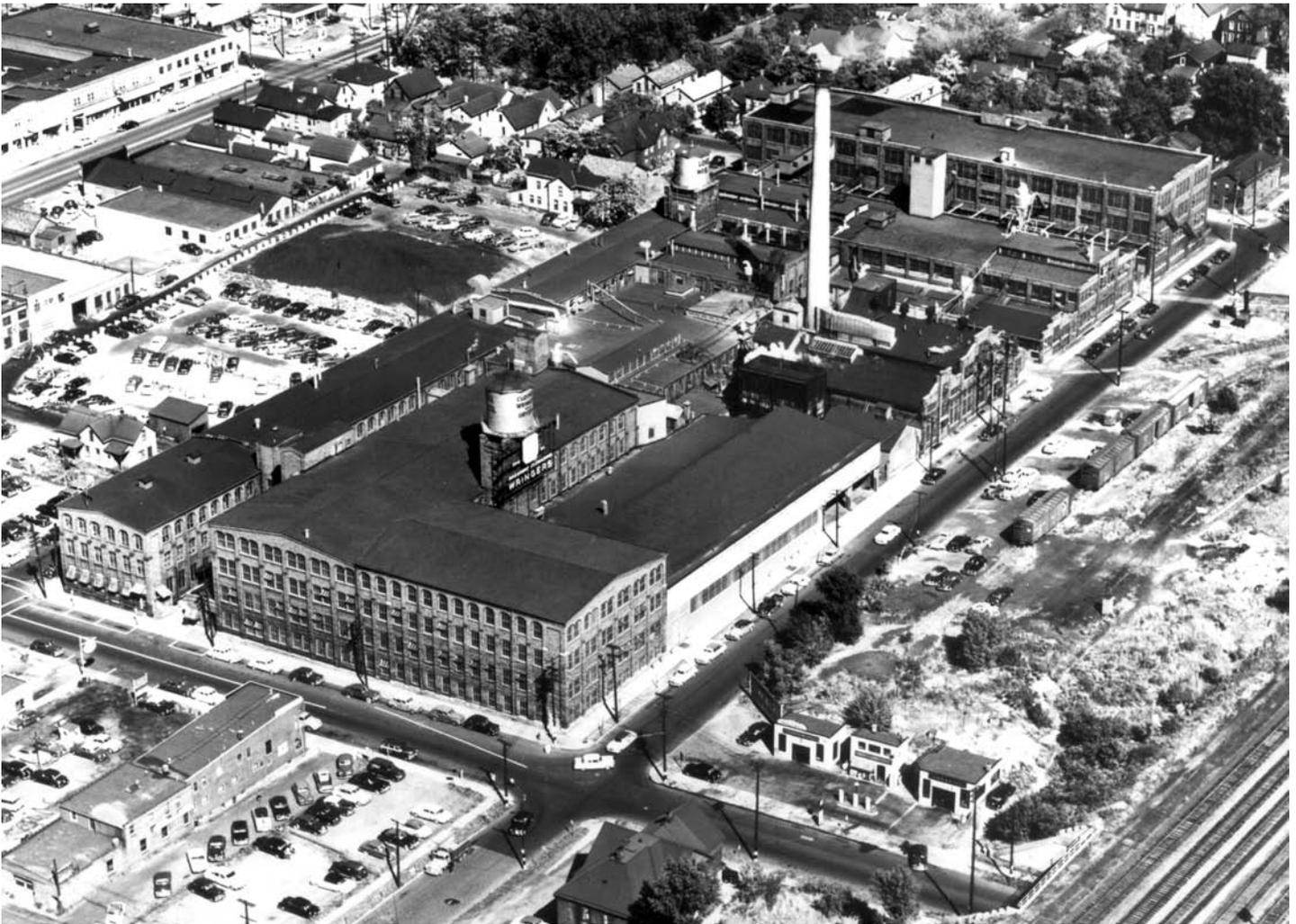
Creating, regulating, and administering historic districts includes specific activities with a beginning and an end, and some that are ongoing. Before launching into the nuts and bolts of establishing a historic district, drafting an ordinance, undertaking a survey, or campaigning for community support, you may want to benefit from the expertise of others who have grappled with the many activities and processes required to establish historic district designation and protection.

The three forms of state enabling legislation that empower local governments to protect historic resources within their municipal boundaries are the Historic District Act, the Municipalities Planning Code, and Home Rule Charters. Some understanding of the advantages, disadvantages and limits of each alternative may help a community to choose the most suitable legal instrument for its own circumstance. A number of particulars need to be outlined before considering protection: for instance, what needs to be protected? How much should be regulated, and why? Is a historic district the best means of implementing the municipality's economic and community develop-

ment plan? Would a conservation district be more useful? Part II, "Historic Districts Regulated and Protected by Ordinance," offers guidelines on answering these and similar questions.

Familiarity with legal issues and prior challenges to historic districts may be useful to governing bodies, solicitors, and Boards of Historical Architectural Review or BHARs when considering the issuance or denial of certificates of appropriateness or building permits for the erection, demolition, or alteration of historic building within a historic district. These issues are clarified in the Part V, "Legal Challenges to Historic District Ordinances."

Once a historic district boundary has been established, and the ordinance has been drafted and enacted (see the section on what constitutes a historic district ordinance), and all of the preliminary steps have been followed, an understanding of the role of the Board of Historical Architectural Review is crucial. Administering a historic district efficiently, fairly, and with firmness is indispensable to the successful protection of the community's historic built environment. In this booklet you will find advice based on the successes and failures of practitioners, including those of the author, who as chief of Preservation Planning coordinates the community preservation technical assistance activities for the Pennsylvania Historical and Museum Commission, and, in addition, was the historic preservation officer for



Aerial view of the Lovell Manufacturing Complex Historic District in Erie County. © W. Craig “Bus” Scott Collection.

the City of Reading for eleven years. Topics in this publication also include:

- Specific grant information available for historic preservation programs and projects;
- The National Register of Historic Places and its role independent of and in relation to the establishment of a local historic district;
- Investment rehabilitation tax credit incentives for eligible historic buildings;
- The Certified Local Government program of the National Park Service; and

- Appendices including the Historic District Act, procedural steps to establish a historic district protected by local ordinance, and a list of municipalities that have established historic district or historic preservation ordinances.

It cannot be emphasized enough that protection of a community’s cultural resources ultimately occurs at the local level. While the National Historic Preservation Act of 1966, as amended, establishes oversight of federally funded and permitted activities, it is at the

local level, with the cooperation of property owners and through the political will of the governing body, that cultural resources are best protected for posterity.

Historic Preservation in Pennsylvania

Since 1961 Pennsylvania municipalities have had a special opportunity to preserve and rehabilitate historic structures, buildings and neighborhoods that possess historical and architectural significance. That year the Pennsylvania General Assembly enacted legislation,

the Act of June 13, 1961. P.L. 282. No. 167 as amended, to enable municipalities, including counties, to designate certain areas as historic districts. To date, 86 local governments have enacted local historic ordinances regulating 112 historic districts, protecting thousands of historic properties. Home Rule Charter governments such as the Cities of Philadelphia and Pittsburgh regulate and protect a combined total of twenty-two historic districts. Additionally, an increasing number of municipalities are regulating and protecting historic resources through zoning and subdivision ordinances.

Over time the historical and architectural heritage of our Commonwealth has been threatened by private and public actions that have either destroyed or irrevocably altered the original appearance of numerous buildings, structures, neighborhoods, and landscapes. With the passage of a local historic district ordinance, communities can determine to what extent they wish to preserve and regulate changes to the exterior of buildings or structures that can be seen from a public way.

Historic district designation in the United States began in the 1930s, and its continued popularity confirms its viability as an important planning and economic tool to assist in the revitalization of residential neighborhoods and central business districts. Historic district designation is reputed to increase or stabilize property values, foster

pride and appreciation of the historic built environment, and consequently contribute to the quality of life of communities. Charleston, South Carolina, enacted the first historic district legislation in the United States in 1931. New Orleans followed in 1937, and as of 2004 over 2,300 municipalities in the United States had passed ordinances to protect historic areas and thousands of buildings. This is a dramatic increase from 1978 when 500 municipalities had passed such ordinances.

In 1959 Rhode Island was the first state to enact statewide historic district enabling legislation, followed by Massachusetts in 1960 and Connecticut and Pennsylvania in 1961. Since 1961, 86 Pennsylvania municipalities have had 112 districts certified as historically significant by the Pennsylvania Historical and Museum Commission, a requirement of the Historic District Act. Historic district ordinances cannot be enforced until the commissioners, appointed by the governor, have by resolution certified the historical significance of the district. This requirement is necessary even if a district has been listed in the National Register of Historic Places. As of June 2004, over five hundred Pennsylvania historic districts, including most of the locally regulated districts, have been listed in the National Register of Historic Places.

Districts and Landmarks

The terms historic district and his-

toric landmark are used in different ways in this booklet. In Pennsylvania, there are two main types of historic districts.

National Register Historic Districts: These are areas possessing a significant concentration, linkage or continuity of historic buildings, structures, objects, or sites that have been designated by the National Park Service as worthy of preservation. The National Register of Historic Places is the official federal list of resources reflecting the nation's cultural heritage. Eligibility or inclusion in the National Register affords the State Historic Preservation Office (Bureau for Historic Preservation), local government, and the public, input from the effects of a federal agency's actions that assist, permit, or license activities on a historic resource.

In 1978, The Pennsylvania Register of Historic Places was established to provide recognition of the Commonwealth's historically significant historic resources. This program has been discontinued and replaced by the National Register of Historic Places. At this time the only official state recognition program for historic properties is listing in the National Register of Historic Places. Income-producing properties that are listed in the National Register of Historic Places may qualify for certain federal tax incentives. In certain cases, buildings or structures eligible to or listed in the National Register, owned or leased by nonprofit organizations or agencies, may be eligible for grants. (See page 34, "Historic Preservation Grants" for further

details.)

Municipally Regulated Historic Districts: These are areas that are either residential or commercial neighborhoods, or a combination of both. They are delineated by boundaries that include buildings, structures, objects, or sites that may be listed in or eligible to the National Register of Historic Places, and are subject to regulation and protection by local ordinance. Historic district ordinances generally contain provisions regulating demolition and exterior alteration of buildings and structures within the historic district. In Pennsylvania, the Historic District Act requires that a Board of Historical Architectural Review (BHAR) be established to review and make recommendations to the elected governing body (city/borough council, supervisors, and commissioners) as to the appropriateness of changes to buildings.

Listing in the National Register of Historic Places does not protect historic buildings or structures from demolition or inappropriate alterations by private property owners using their personal funds. On the other hand, local historic

district ordinances can regulate demolition, alterations, additions and new construction of buildings and structures thereby providing protection of the historic and architectural character of a historic district.

Historic Resources

Historic resources can be buildings, objects, or sites that have been identified as either eligible to or listed in the National Register of Historic Places. Alternatively, a historic resource may be identified as historic by a community solely on the basis of its age and prior importance to that community even if it is not found to be eligible to the National Register; see, for example, protection of such landmarks in historic preservation overlays in zoning ordinances, on page 13, “Protecting Dispersed Historic Resources.”

Recycling Historic Buildings and Structures

Reuse and rehabilitation of buildings and structures became a viable alternative in the 1970s, a radical departure from the massive “slum” clearance programs of the urban

“renewal” era of the 1950s and 1960s, concern over which contributed to the eventual passage by Congress of the National Historic Preservation Act in 1966. During the 1970s, increased energy and raw material costs made certain construction projects prohibitive and the reuse of existing structures more attractive. In addition, federal and state policy makers, in an effort to combat unemployment, targeted building rehabilitation as more labor-intensive than new construction. Preservation and reuse of existing buildings and structures were found to put new life into older neighborhoods while minimizing the dislocation of low-income residents associated with urban renewal. Lastly, the preservation of the historic built environment contributes to the cultural vitality and quality of life of the Commonwealth’s communities, linking the present generation to the past.

Part II Historic Districts Regulated and Protected by Ordinance

How to Create a Historic District

Recognition by a community that a particular area or neighborhood has historic significance may be a gradual process or a sudden revelation. It is often initiated by citizens concerned over the incremental loss of the architectural character of older buildings and structures in neighborhoods, by the unanticipated demolition of a beloved local historic landmark, or by the decline of residential or commercial neighborhoods. Economic development considerations certainly play an important role in galvanizing citizen action. Whatever the reason, there are combinations of approaches that municipalities can take to promote and protect their historic built environment and plan for residential and commercial revitalization. These include listing an area or neighborhood as a historic district in the National Register of Historic Places and protecting the historic district by means of a stand-alone local historic district ordinance or by including a historic preservation section in a zoning ordinance. The choice depends on the municipality's objectives, the status of the historic resource or resources, and the receptivity of the public to local government regulations.

One of the first steps before considering either of the above approaches is to substantiate the extent to which the historic and architectural legacy survives.

Urgency (threatened buildings) and financial considerations (limited budgets) need to be considered to determine the initial level of survey activity required to identify this legacy.

Besides providing a planning document of the present historical and architectural environment, a survey/inventory can be used to inform, educate, and sensitize the public to the cultural and economic value of the community's historic character. With the completed survey, the next step is for the municipality to consider how much of its historic environment it wishes to preserve. In other words, to what extent does the community appreciate what constitutes its built heritage? What does it envision for the future? When consensus has been reached, at least among those citizens interested in the process, the adoption of a historic district ordinance may follow. The final step is the certification of the area's historical significance by the Pennsylvania Historical and Museum Commission as required by the Historic District Act.

Technical assistance (survey guidelines, boundary delineation, ordinance review), or advice to municipalities, historical societies, historic preservation organizations, and private citizens in establishing a historic district is available from the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation. In addition, you may want to refer to the PHMC's Web site at www.phmc.state.pa.us "Historic Preservation" heading and

click on any of the subheadings for a wealth of information on related topics and links.

Survey of the Proposed Historic District

While a comprehensive survey or inventory of historic buildings, structures, sites, or areas in the proposed historic district is the first choice, taking this step in the designation process may not always be feasible because of impending demolition or development pressures affecting historic resources in the proposed district. Moreover, the availability of funding and/or volunteer assistance may be scarce, making an initial, preliminary survey the only practical approach. As long as the community understands the scope and value of its historic resources and can substantiate it with adequate documentation, a thorough survey and building inventory may be postponed to a later date. If funds are available, consider hiring a qualified consultant to undertake this initial step.

Limited funding for surveys and preservation planning is available from the Bureau for Historic Preservation of the Pennsylvania Historical and Museum Commission. The survey should follow the Bureau's "Guidelines for Historic Resource Surveys in Pennsylvania." The state's enabling legislation, the Historic District Act, requires the Pennsylvania Historical and Museum Commission to certify the historical significance of the proposed historic district; this documentation must be provided by using the "Pennsylvania Histor-



The William Mercer Farm in the Paradise Valley Historic District, Chester County. Photo: Frederick Richards.

ical Resource Survey Form” available from the BHP (it can be downloaded from the PHMC Web site). The form includes instructions to assist the applicant. A copy of the historic district ordinance signed in to law by the appropriate local government official(s) must accompany a filled out survey form.

Gaining Owner and Citizen Support

The survey determines the extent of contributing and noncontributing historic buildings and structures in the proposed historic district, and establishes district boundaries. A contributing resource, according to the National Park Service (NPS), “adds to the historic associations, historic architectural qualities, or archaeological values for which a property is significant.” It is recommended that at the beginning stage, citizens be informed about the purpose of the

survey and the potential consequences for establishing a historic district protected and regulated by ordinance. To illustrate, historic district ordinances commonly require review by local government of proposed changes to the exterior of a building or structure. Owners of these properties, therefore, take on additional responsibilities and face recommendations set by the Board of Historical Architectural Review or historical commission on such matters as appropriate repairs or building materials. Accordingly, the majority of property owners affected should support the idea of becoming part of a historic district. Bear in mind that the survey can also be a tool to gain citizen support. Residents of the area may, under professional guidance, assist in the survey process. Publicized survey results will provide citizens with a better understanding and appreciation of the cultural heritage of their community, with the hoped-for conse-

quence of enhancing community pride. A successful survey will also demonstrate the need to preserve this heritage.

Another way of gaining community support for a historic district is to publicize the findings of the survey through a series of newspaper articles or pamphlets, and by organizing a series of public meetings conducted by proponents of historic preservation, neighborhood organizations, and local government planning and economic development representatives. Inviting elected officials, business owners, merchants, and citizens from communities that have a successfully implemented a historic preservation program, and administered a historic district ordinance is convincing evidence that historic district designation and protection is good public policy. Business owners can provide an important perspective on a historic district, demonstrating that such designation will not impede business. Such assurance may allay some of the doubts and fears associated with a new set of rules and regulations. Those opposed to, or skeptical about the effects of a historic district ordinance, should not be dismissed as merely obstructionists. The concept of private property is sacrosanct for many individuals and relinquishing some autonomy is more difficult for some to contemplate than others. Such misgivings ought to be fully aired and considered before a final draft of the historic district ordinance is written.

Perhaps a more inclusive way of

gaining public support for establishment of a historic district or preservation ordinance is to undertake “community visioning.” The concept is simple: provide a forum open to everyone in the community and facilitated by a nonpartisan individual or group where residents can express what they value about their community. Be sure to invite children and youth as their input is as important as everyone else’s. Generally, people will identify the historic built environment of their community as important to the quality of life. After several visioning sessions residents may conclude that some regulatory protection is necessary. Subsequently, by identifying what should be preserved of the historic built environment a historic district ordinance can reflect the preservation goals

of the community. The community visioning approach may result in more buy-in than other approaches, however, when historic resources are under imminent threat of demolition, a municipality or historic preservation advocates may not have the luxury of undertaking community visioning. To find more about the community visioning process contact The Center for Rural Pennsylvania, a legislative agency of the Pennsylvania General Assembly. They can be reached by telephone at (717) 787-9555, or at www.ruralpa.org.

Adopting a Historic District Ordinance

Once the survey has been carried out, the Pennsylvania Historic Resource Inventory Form prepared,

and the historic district ordinance drafted by the municipality and reviewed by the Bureau for Historic Preservation, the stage for adoption of the historic district ordinance by the local government will have been reached. The next step to be taken by the municipality is a public notice advertising a meeting at which the governing body presides and introduces the historic district ordinance. Copies of the ordinance must be made available to the public. It is helpful to attach a brief summary of the purpose of the ordinance with a map clearly delineating historic district boundaries.

The enabling state legislation specifies that, “All counties, cities, (except cities of the first or second class), boroughs, incorporated

Leap-the-Dips Roller Coaster in Altoona, Blair County. Recipient of a Keystone Grant to stabilize and restore the structure, rails, and cars. PHMC file photo.



towns, and townships are hereby authorized to create and define, by ordinance, a historic district or district within the geographic limits of such political subdivision.” The legislation goes on to say that, “no such ordinance shall take effect until the Pennsylvania Historical and Museum Commission has been notified, in writing, of the ordinance and has certified, by resolution, to the historical significance of the district within the limits defined in the ordinance.” This applies not only to passage of the ordinance, but also to subsequent amendments to the ordinance in the form of boundary changes.

Important Elements of a Historic District Ordinance

- A. Refer to the enabling legislation/ authorization (Historic District Act, the Municipalities Planning code, or Home Rule Charter).
- B. State the purpose of the ordinance (refer to specific enabling legislation and/or the state constitution, Article 1, Section 27, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.”)
- C. Define technical terms such as preservation, restoration, demolition, alteration, and so on, which are used in the ordinance.

- D. Provide a verbal boundary description, which describes metes and bounds, streets and property lines, and reference to an official map.
- E. Include criteria for designation of historic districts and land marks if authorized.
- F. Create the Board of Historical Architectural Review (BHAR) and/or Historical Commission.
- G. Describe duties, powers, and responsibilities of the BHAR/Historical Commission.
- H. Explain actions that are reviewable by the BHAR/Historical Commission.
- I. Develop design standards, guidelines and criteria by which recommendations and decisions will be made.
- J. Include a demolition by neglect section.
- K. Include an unreasonable economic hardship section.
- L. Describe the certificate of appropriateness application review procedure.
- M. State the fines and penalties for violation of ordinance requirements.

An annotated model ordinance is available free from the Bureau for Historic Preservation. Bear in mind that the municipality ought to draft a historic district ordinance that best fits that community’s needs. What

and how much is regulated should depend on the community’s willingness and ability to accept regulations. Does the historic ordinance reflect community consensus in protecting and preserving its historic resources? Too much or too little regulation may defeat the purpose of the historic preservation plan.

Other Approaches to Protection

In Pennsylvania, local governments have a degree of flexibility in their approach to the protection of their historic resources. Under authority of Act 167 of 1961, titled Historic District Act, a municipality may adopt a “special purpose” historic district ordinance. In other words, a municipality having no zoning regulations may still enact a special-purpose ordinance to create a historic district.

Another option for protecting a municipality’s historic resources is the Pennsylvania Municipalities Planning Code (MPC) Article VI, which provides local governing bodies with zoning powers for, among other purposes see §604(1) the “preservation of the natural, scenic, and historic values, aquifers and floodplain,” and §605(2) the regulation of “places having unique historical, architectural or patriotic interest or value.” The use of zoning to protect historic resources was further reinforced by amendments to the MPC reflecting changes made by Act 67 and 68 of 2000, specifically under §603 (g) (2), which reads, “zoning ordi-



400 block of Allegheny Street (south side) in the Hollidaysburg Historic District, Blair County. Protected and regulated by a municipal historic district ordinance. Photo: L. Paul.

nances shall provide for protection of natural and historic features and resources.” The MPC authorizes the protection of historic resources independent of the Historic District Act, and several municipalities have proceeded along these lines. (Samples of these ordinances are available from the Bureau for Historic Preservation). This approach may be desirable in communities that have individual historic resources worthy of preservation but lack a concentration of buildings that form a clear-cut district. In localities where the concern is primarily with the preservation of a densely developed historic district,

Act 167 is probably desirable. The specificity of Act 167, designed expressly for the purpose of creating historic districts, provides local authorities with a frame of reference as well as the mechanism for preserving the district by appointment of a Board of Historical Architectural Review.

If the municipality adopts a historic district ordinance, it should note that fact in its zoning ordinance. This will provide an opportunity to consider conflicting goals. It is essential that goals between zoning ordinance and the historic district ordinance be compatible-

this cannot be emphasized enough. Too often zoning regulations require setbacks and parking requirements appropriate for a suburban setting, but which are incompatible with the community’s historic development pattern and therefore in conflict with the preservation of its historic character.

Ordinances are only one means of preserving historically and architecturally significant environments and resources. Other legal tools include various types of easements and deed covenants. Private means of protection include outright

acquisition and appropriate rehabilitation of historic buildings.

The historic district program, however, offers the most advantages, several of which we have already mentioned. Perhaps the most important is that the regulation of the district lies not at the federal or state level but at the local level. In this respect, district designation is a bottom-up decision not imposed or mandated on the community by federal or state regulations. Rather it is a grass-roots initiative, the recognition by a community of the significance of its historic character, and it demonstrates the community's commitment to protect it.

Certification of Historical Significance

The information pertaining to the historical background and significance of the proposed district should be submitted on a Pennsylvania Historic Resource Survey Form and sent to the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation, unless the area in question has already been listed in the National Register. In addition, the municipality must provide a copy of the historic district ordinance signed by the executive authority (chairman of the board of commissioners) of any county, the mayor of any city, except a city of the first class, the president of council of any borough, and so forth), and adopted by the governing body. The boundaries of the proposed historic district must be clearly delineated on a map and accurately

described in a written form. The boundaries of the proposed district are thoroughly reviewed in relation to the area's historical character. The recommendation of the Bureau for Historic Preservation staff is submitted to the executive director of the Pennsylvania Historical and Museum Commission to be placed on the commissioners' (appointed by the governor) quarterly meeting agenda and acted on by formal resolution of that body.

Implementing the Historic District Ordinance

The Pennsylvania Historical and Museum Commission notifies the local government of its certification of the historical significance of the historic district. After receipt of the certificate of appropriateness (coa) the governing body appoints a Board of Historical Architectural Review (BHAR) to "give counsel to the governing body . . . regarding the advisability of issuing any certificate" authorized by Act 167. In other words, the BHAR advises the governing body whether to issue a permit for work proposed on a building within the historic district.

The board is both a quasi-judicial and advisory body composed of a minimum of five members, among whom must be a registered architect, a licensed real estate broker, a building inspector of the municipality, and two or more citizens who have knowledge and interest in disciplines associated with historic preservation. The role of the board is to review plans and speci-

fications for the erection, reconstruction, alteration, restoration, demolition, or razing of any building in the district, and to certify those plans or specifications as appropriate to the historic character of the district. Keep in mind that 90 percent of reviewable projects are of a maintenance and repair nature, requiring a minimal number of specifications.

Persons requesting a permit to do reviewable work in the historic district must be given notice of the meetings of the BHAR and the governing body. At these meetings the applicant must be given the opportunity to explain the reason for the proposed work. If, after review by the BHAR, the governing body rejects the request, it must indicate what changes in the plans and specifications would meet its conditions for maintaining the historic character of the district. Section 4 (b) of Act 167 provides:

The governing body shall pass upon the appropriateness of exterior architectural features which can be seen from a public street or way, only, and shall consider the general design, arrangement, texture, material and color of the building or structure and the relation of such factors to the similar features of buildings and structures within the district.

The historic district ordinance makes it possible to regulate the appearance of more than just the



Pittsburgh Downtown Historic District, northeast side of Sixth Avenue near Smithfield Street, Allegheny County. Protected and regulated by a municipal historic district ordinance. Photo: M. Aurand.

individual building in the district. The ordinance is an effective means of assuming responsibility for a historically and architecturally significant area, such as several

city blocks or a crossroads village. Implementing a historic district ordinance is not always easy. Historic districts that contain a mix of historic and contemporary architec-

ture are more difficult to administer than districts that, in terms of period, reflect a more homogenous development of style and age. Because of this difficulty, the BHAR needs to make its design and rehabilitation recommendations on a case-by-case basis.

PHMC Certified Historic Districts

An updated list of municipalities that have enacted historic district ordinances and have had their historic districts certified as historically significant by the Pennsylvania Historical and Museum Commission as mandated by the Historic District Act can be found in the appendices. For a list that includes names of Boards of Historical Architectural Review chairpersons and municipal staff, their telephone numbers, mailing and e-mail addresses contact the Bureau for Historic Preservation.

Part III Other Approaches to Protection

The Municipalities Planning Code

Zoning is intended to provide a legal means of channeling growth and regulating the use of land by means of designating specific areas for commercial, residential, industrial, or mixed uses. In Pennsylvania it is authorized under the Municipalities Planning Code, (MPC) Act 247 of 1968 as amended. A zoning ordinance should reflect the municipality's comprehensive plan.

Communities proposing to incorporate historic preservation provisions within their zoning ordinances should first look at their zoning classifications to identify conflict between historic preservation and development objectives. The zoning classifications should complement the goals of historic preservation; typical incongruities between zoning and historic preservation objectives center most often on off-street parking and setback requirements. The former regulation may require demolition of contiguous properties to satisfy parking requirements, while the latter regulation may require an inappropriate suburban setback in a historical urban environment these and other related issues can also be addressed in the MPC by Article VII - A, "Traditional Neighbor-

hood Development." In addition, specific zoning incentives such as special exceptions or conditional uses may be a solution to preserving historic buildings. Be sure to examine the zoning issues carefully and plan to make changes to the zoning ordinance that reinforces your historic preservation goals.

For the past several years certain municipalities have combined zoning and historic district regulations (based on the Historic District Act) within their zoning ordinances; however numerous legal problems have come to the fore with this approach. These include but are not limited to the role of Boards of Historical Architectural Review (BHAR), or historical commissions, and the legality of their advisory role in the issuance of zoning permits. A BHAR is created under the Historic District Act, a historical commission, on the other hand, is created by municipal charter, neither body is authorized by the Municipalities Planning Code. To interface either of these bodies with the governing body and/or the zoning hearing board within a zoning regulation will require municipal solicitor input for its legal implications.

Under the Historic District Act the building inspector issues a building permit once a certificate of appropriateness has been reviewed by the BHAR and approved by the governing body. The Historic District Act, in part, authorizes municipalities to review and regulate changes to the exterior of buildings and structures, whereas Article VI

of the Municipalities Planning Code addresses the use of land, although not exclusively. These two state enabling laws complement each other but neither quite fulfills all the requirement of protecting historic buildings and structures and the historic environment. Keeping land use and historic building review regulations separated and compatible with the overall goals of the municipality, may, especially in case of protecting and regulating historic districts, be the best approach. Zoning ordinances emphasize use of property, while historic district ordinances, authorized by the Historic District Act, regulate the erection, reconstruction, restoration, demolition or razing, and alterations (changes only to the exterior of buildings). If a municipality has a zoning ordinance and a separate historic district ordinance, the zoning regulations remain unaffected. In a sense, one could consider the historic district ordinance as an "overlay" on the zoning map. At this time zoning regulations and/or subdivision ordinances appear to be the best legal tool available to municipalities to regulate dispersed historic resources that cannot be included within a historic district.

While, as we have noted, historical commissions are not authorized under the MPC, nevertheless this body can certainly provide testimony when sought by a municipality's planning commission, zoning officer, zoning hearing board, or governing body on issues related to historic preservation. However, final authority to deny or approve

zoning permits must accord with MPC regulations. In those municipalities that have established a stand-alone historic district ordinance and that have added a historic preservation article to their zoning ordinances, the historical commission's responsibilities (with approval from the governing body) can encompass preservation and education planning activities as well as helping to draft historic preservation design standards and guidelines. Historical commissions can and have undertaken such projects as application for grant funding, development of a historic preservation plan, comprehensive survey of historic resources, organizing old house tours or fairs, and other related activities.

Because the MPC, at the present time, does not require the Pennsylvania Historical and Museum Commission's participation in the establishment of historic preservation articles in zoning or subdivision ordinances (in contrast to the Historic District Act), no accurate count of municipalities that have established historic preservation articles in their zoning ordinances exists. However a 2003 municipal survey undertaken by the Bureau for Historic Preservation identified 50 municipalities protecting historic resources through zoning regulations. Municipalities in Chester and Lancaster Counties led the way in this form of protection. In Pennsylvania the boroughs of Lititz and Manheim, Lancaster County, and the townships of Warwick and West Whiteland, Chester County pioneered this approach.



Oak Street in the Marianna Historic District, Washington County. Photo: Helen Mackey.

Generally, municipalities will appoint a historical commission whose responsibility will be to assemble an official historic resource list approved by the governing body. Zoning ordinances that have been amended to include historic preservation article may require that property owners who request permits for demolition or, in some cases, exterior changes to historic buildings or structures apply for a special exception or conditional use approval if their building or structure is included on the official historic resource list. Examples of historic preservation zoning articles are available from the Bureau for Historic Preservation.

Protecting Dispersed Historic Resources

What does the Municipalities Planning Code offer to municipalities that faced with the effects of suburban development wish to protect historic resources from demolition? Until the year 2000, Article VI §604 and §605 was the sole explicit reference acknowledging the importance of historic or patriotic resources. Section 604 authorizes the municipality to “promote, protect and facilitate” the “preservation of the natural, scenic and historic values in the environment.” Section 605 provides for the “regulation, restriction or prohibition of uses and structures at, along or near: (vi) places having unique historical, architectural, or patriotic interest or value.” As stated earlier, the addition of §603 (g) (2) “zoning ordinances *shall* provide for protection of natural and historic features and resources,” reinforces the authority of local government to protect historic resources within

their municipal boundaries. (Emphasis added).

From prior surveys, historic resources can be identified and “overlaid” on the zoning map, possibly classified according to their historical or architectural significance and protected by the addition of a historic preservation article in the zoning and subdivision regulations. As of this writing, such historic preservation articles, to our knowledge, have not been legally challenged in the courts of Pennsylvania. On the other hand, ordinances based on the Historic District Act have been legally challenged since 1977 on constitutional grounds. Pennsylvania courts have affirmed the police powers of municipalities to designate properties as historic and regulate them without the direct consent or approval of property owners. Refer to the Pennsylvania Supreme Court

decision *United Artists’ Theater Circuit, Inc. v. City of Philadelphia Historical Commission* (1993) in reference to the art deco Boyd Theater.

To avoid accusations of arbitrary and capricious rulemaking in the historic resource designation and regulatory process a municipality should develop criteria for inclusion based on sound scholarship and research and undergirded by what Justice William J. Brennan’s majority *Penn Central Transportation Co. v. New York City* (1978) opinion referred to as a “comprehensive historic landmark preservation plan.” The benchmark for historical significance, although not exclusively so, is the National Register of Historic Places. A municipality may create a historic resource list, which includes eligible and listed National Register

resources, but may also legitimately include other resources based on other historic significance criteria.

Historic Districts in Operation

Since the Historic District Act was enacted in 1961, Pennsylvania cities, boroughs, and townships have passed ordinances creating Act 167 historic districts. The City of Bethlehem created the first such district protected by a historic district ordinance in 1962. The benefits of historic district designation have been documented both at the national and state levels.

Advantages to having a historic district have been reported in publications of the National Trust for His-

The Berwind-White Mine 40 Historic District in Cambria County, looking northeast. Photo: Gerald M. Kuncio.



toric Preservation. In 1987, the Trust published a booklet titled *Historic Preservation in American Communities*. The report is composed of testimonials from communities throughout the United States that have implemented historic preservation strategies. Often cited are such positive effects as increased tax revenues, increased tourism, an improved self-image in the community at large, and an increased appreciation for the community's heritage. The physical appearance of main streets has improved; where once demolition was the first and last alternative, buildings have been historically rehabilitated. In addition, some communities stated that they have derived benefits "from having a historic district ordinance, a Board of Historical Architectural Review or a historic preservation commission." When the publication *Historic Districts in Pennsylvania* was written

in 1981, the Department of Community Affairs conducted an informal telephone survey of thirty communities in Pennsylvania that had enacted historic district ordinances. The result of this survey reflected positive responses similar to those reported by the National Trust. However, to be accurate and fair, not all property owners have been in favor of such ordinances. Some business interests in the cities of Allentown and Lancaster initially opposed it for their respective downtowns. Since then, because of the positive impact that historic preservation has had since the inception of their first historic districts, both cities have exploited the economic benefits of historic preservation. Allentown added the West Park Historic District in 2001 under the protection of its historic district ordinance for a total of three historic districts, while Lancaster enacted a Heritage Conser-

vation District in 2000 regulating demolition, new construction and major additions to buildings and structures within the National Register District that includes most of the city. On some occasions a few complaints have been noted regarding permit delays and arbitrary and capricious Board of Historical Architectural Review decisions but overall BHARs have been helpful, moderate, and fair in interpreting historic district ordinances. Since 1961 only two municipalities have rescinded their historic district ordinances Lower Paxton Township, Dauphin County and Straban Township, Adams County, these exceptions prove the rule: the advantages of regulating historic districts outweigh the disadvantages. To expect 100 percent property owner support is unrealistic. Generally, if more than half of property owners are willing to cooperate with the municipal authorities, the prognosis for a successfully administered historic district is relatively good.

When attempting to convince property owners, residents, and public officials that a historic designation or the passage of a historic district ordinance is a worthwhile goal, you should avoid predicting dramatic changes in the economic or physical appearance of a neighborhood, because these may not materialize in the time or to the extent hoped. Historic preservation advocates, enthusiastic in promoting their vision, promise, for example, that property values will increase. It is difficult to attribute historic district designation as the inde-



pendent variable that “causes” an increase in property values. Other variables may have influence as well. News articles or reports purporting to demonstrate the validity of this view have relied more on hearsay than sound statistical research. The Borough of Holidaysburg, County of Blair, and the Borough of West Chester, County of Chester both attribute property value increases to their historic district designation and historic preservation initiatives.

In doing a survey to determine if this is the way for your community to go, you should be sure to include municipal officials in your queries and locate persons who have personal experience living or working in a historic district (someone may have lived within a historic district in another town). The best indicator of the success of historic preservation strategies may be an on-site evaluation, including self-guided tours of historic districts. Communities such as West Chester, Bethlehem, Franklin, Bellefonte, Hollidaysburg, Bedford, Lancaster, Doylestown, Ridley Park, Pittsburgh, Philadelphia, Ambridge, and many others, large and small, urban and rural, can serve as empirical evidence of the success or failure of historic district designation and local historic resource protection.

Home Rule Charters

Home rule as a concept of providing more independence to local governments from state legislatures, originates from the Progres-

sive Era of the first decades of the twentieth century. In Pennsylvania, home rule was introduced in 1922, when the state constitution was amended to include this provision. It was not until 1949, however, that the state legislature authorized home rule for Philadelphia. Two years after, Philadelphia acquired the first home rule charter in Pennsylvania. In essence, home rule enable municipalities greater autonomy through the adoption of a local charter. Home rule municipalities can administer their governmental affairs unless otherwise prohibited by state law.

Philadelphia

The Philadelphia Historical Commission was created in 1955 under the city’s planning powers. The Commission is appointed by the mayor and is charged with listing and protecting buildings, structures, sites, objects, and historic districts that meet the criteria of the Philadelphia Historic Register. In 1984 the city repealed its original “Historic Building” Ordinance, a section of the Philadelphia Code, and rewrote it as the “Historic Buildings, Structures, Sites, Objects, and District” Ordinance. The Commission reviews, advises, and mandates that the effect of proposed work on a building, structure, site or object, such as alteration, demolition, and construction, be compatible with the retention of the historical, architectural or aesthetic significance of the building, structure, site or object, and its historic environment.

Prior to its 1984 ordinance revision, which precluded the city from designating historic districts, the Historical Commission could only designate and protect individual buildings. Approximately six thousand buildings and structures were protected and regulated in this manner, including those in Society Hill. As of 2005, the city also regulates and protects nine historic districts, including the Diamond Street Historic District, the Park Avenue Mall Historic District, the Rittenhouse-Fitler Residential Historic District, Spring Garden, and Old City. See the appendices for a complete listing.

The Philadelphia Historical Commission’s successes in administering its historic preservation ordinance and promoting preservation planning are due to the cooperation of independent authorities, including the Redevelopment Authority, and a good working relationship with the City Planning Commission and the city’s Department of Licenses and Inspections.

Pittsburgh

In 1971, the Pittsburgh City Planning Commission was given the responsibility, without specific enforcement powers, to make recommendations to City Council on the designation of historic districts and landmarks, and to provide historic preservation guidance to city officials regarding activities affecting the disposition of historic buildings and structures. It was not until 1979, when the city’s Building Official Conference of America



Rittenhouse Historic District, Philadelphia County. 1800 block Addison, looking east from 19th Street. Photo: George E. Thomas

(BOCA) Code was amended to include a historic preservation ordinance, that the present Pittsburgh Historic Review Commission was endowed with full police powers to approve or disapprove work to building exteriors. As of 2005, there were eleven historic districts and many dispersed historic landmarks protected and regulated under the historic preservation ordinance. Some of these include Market Square (Downtown), Mexican War Streets, Manchester, Schenley Farms, and Penn-Liberty, for a complete list refer to the appendices.

According to the 1979 historic preservation ordinance as amend-

ed, “The Historic Review Commission shall review all new construction proposals, all demolition applications, all requests to make major alterations to a building, and all changes in materials.” In addition, to facilitate and expedite the administration of the historic districts and certificate of appropriateness process (coa), the Historic Review Commission has authorized professional staff to approve all applications to repair or replace building elements to match existing elements, requests to use standard approved elements, and proposals to restore the exterior of a building to a documented original condition; a similar administrative regulation has been established by

the Philadelphia Historical Commission.

The Historic Review Commission has the authority to establish local historic district review committees. At present, four historic districts are represented in this manner. Review committees range from six to twelve members who are residents and property owners from the district. They have the authority to develop specific design guidelines for their area, and make design and maintenance recommendations about proposed work for the Historic Review Commission’s consideration.

The Conservation District:

An Alternative?

A conservation district may be an alternative approach to maintaining the economic and social viability of older neighborhoods and their overall character and identity, without the emphasis placed on preserving the historical architectural *detailing* of buildings usually reserved for historic districts. A main concern of local government officials and neighborhood activists is to lessen the perceived economic hardships and conformity to regulations associated in property owners' minds with historic preservation.

The subject of conservation districts can be confusing as there is no one definition that fits all situations. Some communities in the United States have defined conservation districts similarly to historic districts, and in fact Memphis, Tennessee has merged the two and identified a specific area of the city as a Historic Conservation District.

On the other hand, a conservation district, as the term is used by other communities, identifies a neighborhood usually residential but not always so for a "treat sensitively" planning and development approach. The idea is to retain the general character-defining features of the area as a whole, such as its scale, setbacks, massing, and salient architectural features (see "Traditional Neighborhood Development" on page 19). Thus, in a particular neighborhood this could be the front entrance stoops, or contiguous front porches, or saw-

toothed gable roofs. What is aimed for is retention of a sense of place, hence the neighborhood's prominent landmarks, such as its religious, social, and public buildings, its parks or schools. Identifying such an area, its important characteristics, and determining which of these characteristics need to be protected from public and private actions—and which may destroy them—is the main reason for establishing a conservation district. Input from residents is crucial so as not to overlook characteristics of the neighborhood that may be overlooked by well-intentioned planners and public officials.

The purposes given for establishing conservation districts will sound familiar. Take, for example, those from the City of Portland, Oregon:

1. To protect and stabilize property values,
2. To protect desirable and unique physical features of the neighborhoods,
3. To prevent blighting caused by insensitive development, renovation, and redevelopment,
4. To provide enhancement of such areas,
5. To provide for the economic revitalization of the conservation district and its surrounding areas,
6. To provide for the economic vitality of the area, and

7. To provide a focus for necessary capital improvements.

What is not emphasized, though not entirely discounted, is the historical architectural environment. While conservation districts are usually located in older areas of urban environments, the housing stock may be modest both in size and architectural detail. It is conceivable that the area might be eligible for listing in the National Register of Historic Places, but it is not a requirement for conservation district designation. However, there may still be enough of the historic fabric to warrant new construction in character with the historic environment of the area; the conservation district will emphasize compatible design.

Some conservation districts are established through ordinance and require property owners to go through a review of proposed work to the exterior of their buildings. The type of activity requiring review varies but it is usually confined to major structural alterations, including demolitions, additions, and new construction. The review may be delegated to a neighborhood design committee or to municipal planners.

In Pennsylvania, the Municipalities Planning Code can provide a municipality with the authority to establish a conservation district. Harrisburg has recently (1995) passed its enabling legislation, titled the "Architectural Conservation Overlay District." This ordi-

nance will provide an opportunity for concerned citizens to petition city council to designate their neighborhood as a conservation district. In Pennsylvania, the Municipalities Planning Code can provide a municipality with the authority to establish a conservation district. However prior to changes to the MPC of 2000 the cities of Bethlehem and Lancaster rejected the MPC alternative and decided simply to enact a historic district ordinance under the Historic District Act and call it a “conservation” district ordinance instead of a historic district ordinance. Both these conservation district ordinances regulate only demolition, new additions to existing buildings, and new construction. The name of the Board of Historical Architectural Review was changed and defined in Bethlehem as the South Bethlehem Historical Conservation Commission and in Lancaster as the Historical Commission. The name change was mainly due to local political realities; planners felt that the public and the governing bodies would be more receptive to the conservation district concept than the historic preservation approach, which has had its share of controversy in both

cities, in spite of the fact that each municipality has had commendable success in regulating its historic districts ordinance for several decades.

The process for certifying both cities’ conservation districts followed those established by the Historic District Act requiring the Pennsylvania Historical and Museum Commission to certify to the historical significance of the proposed “conservation” district, both conservation districts are listed in the National Register of Historic Places. While we think the conservation district concept is useful, critics may question the legitimacy of changing names to deflect political opposition. On the other hand, the City of Harrisburg’s approach to the conservation district idea took the form of an article in the city’s zoning ordinance titled Architectural Conservation Overlay Districts (1995). The district is administered by the city’s planning bureau. The approach of the conservation district in Harrisburg is similar to that of Lancaster and Bethlehem in that the emphasis is on the preservation of neighborhood character rather than on the preservation of historic architectur-

al minutiae.

Traditional Neighborhood Development

Another option for consideration by local governments that wish to maintain the traditional (historical) character of residential and commercial neighborhoods is available through the Municipalities Planning Code Article VII-A, titled “Traditional Neighborhood Development.” While this approach is aimed at preventing the adverse effect of sprawl, it can also be used to maintain the historic character of existing neighborhoods by preventing the intrusion of automobile-oriented design, i.e., parking in front of businesses, curb cuts for drive-through services, and other amenities associated with a suburban environment. The intent is to allow for the “development of fully integrated, mixed-use pedestrian-oriented neighborhoods,” and “to foster a sense of place and community . . .”

The conservation district or traditional neighborhood development approach can provide municipalities with alternatives other than the historic district ordinance, which is

Part IV The National Park Service's "Certified Local Government Program"

limited to regulating buildings and structures. Sample traditional neighborhood development ordinances are available from the Bureau for Historic Preservation.

In 1966 Congress passed the National Historic Preservation Act, which has since gone through several amendments. The Act created the National Register of Historic Places, the Advisory Council on Historic Preservation, the Historic Preservation Fund, and in 1980 the Certified Local Government Program (CLG). This program was established to allow local governments to participate directly in the national historic preservation program and to provide funding to local governments to carry out their historic preservation responsibilities, e.g., survey, inventory, designation and protection of their historic resources. To achieve "certified local government" status in Pennsylvania a municipality applies to the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation. Confusion has arisen over the word

certified because it is used in three different contexts: 1. under Pennsylvania's Historic District Act that a municipality's district has been certified as historically significant by the PHMC; 2. that a municipality has applied for and received the special status of the National Park Service Certified Local Government Program; and 3. that the completed work of a federal investment rehabilitation tax credit project is certified as meeting the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.

As of 2005, of 86 municipalities in Pennsylvania that protect 112 historic districts under Act 167, thirty-two have this National Park Service status. Several critical requirements for CLG designation are: 1. continuing in-service historic preservation training for Boards of Historical Architectural Review and Historical Commission members (eight hours of training are expected of each member annually); 2. regular attendance at BHAR or Historical Commission meetings; 3. a good-faith effort by the governing body to appoint BHAR members with professional qualifications and historic preser-

vation backgrounds; 4. submittal of an annual report of the municipality's historic preservation activities; 5. review and comment on National Register nomination applications within the municipality and, most important of all; 6. continuing enforcement of the municipality's historic district and/or historic preservation ordinance.

These requirements enhance the ability of the municipality to provide sound design and historic-rehabilitation advice and recommendations to applicants and elected officials. All states are required to set aside 10 percent of their federal historic preservation grant funds to Certified Local Governments. These CLG grants are presently offered as a ratio of 60 percent funding from the PHMC and 40 percent match (cash and/or in-kind) from the CLG. The types of projects, programs, and activities funded by CLG grants are intended to advance the preservation of a community's historic resources: some typical examples are historic resource surveys, historic preservation plans, National Register Nominations, hiring of historic preservation staff or con-

Part V Legal Challenges to Historic Ordinances

sultants, and design/maintenance guidelines, and many other planning and educational initiatives.

Courts have clearly established historic preservation as a legitimate public objective for local government under general police powers. The police power is the inherent right of government to regulate property to safeguard the public health, safety, and welfare. Challenges to government's land use regulations are a legacy of our democratic system a permanent healthy tension between private property rights and the community's welfare. Regulation of property for a historic preservation purpose is recognized as a part of the power to control land use through land use regulations as in zoning.

The chronology of historic district ordinances in the United States reaches back to October 13, 1931, with the ratification of Charleston, South Carolina's historic zoning ordinance, followed by New Orleans's establishment of the Vieux Carré Commission in 1936–37, which gave the Commission authority to approve or deny building permits in the French Quarter Historic District. Since then, a slow but steady trickle of local historic district ordinances has been enacted each decade, with over 2,300 now in place throughout the country. In 1961, Bethle-

hem's Moravian neighborhood became the first historic district to be protected under the Commonwealth's Historic District Act, although Philadelphia, under its home rule charter, had already taken a similar step by protecting individually listed properties as early as 1955 as part of its urban renewal plan.

Along with the establishment of historic district ordinances have come legal challenges. In 1941, *City of New Orleans v. Pergament* involved the owner of a gas station and the size and type of sign he proposed to install. The appellant's contention was that his service gas station was not a historic building and that the ordinance ought not apply to his property. In effect the ordinance was challenged as a taking without due process of law. It is as a consequence of this decision that the "toute ensemble" doctrine evolved, namely that the power to regulate or restrict in a historic district or zone applies to all buildings in it, even though various individual buildings are not themselves of historic or architectural importance. In 1953, in *City of New Orleans v. Dan Levy*, the ordinance was challenged on various grounds, including the grounds that aesthetic considerations were unconstitutional "and not within the police powers." The court reaffirmed the ordinance as being "in the interest of and beneficial to the inhabitants of New Orleans generally, the preserving of the Vieux Carré section being not only of its sentimental value but also for its commercial value, hence it consti-

tutes a valid exercise of the police power."

Another leading case on the constitutionality of preservation regulations was *Maher v. New Orleans* (1974). A number of important points can be culled from this case, two of which stand out: 1. demolition by neglect or affirmative maintenance requirements was determined by the United States District Court as "legitimate," and "reasonably necessary to the accomplishment of the goals of the ordinance;" and 2. the issue of an unconstitutional "taking" was revisited in this case, based on the old saw that the Vieux Carré ordinances devalued the owner's property. The court rejected this argument and stated that, "*a zoning ordinance. . . will almost always reduce the value of rights of some individuals, but that does not make it unconstitutional.*"

The milestone case on the issue of historic landmark designation and historic preservation regulatory controls was brought before the United States Supreme Court in the case of *Penn Central Transportation Company v. City of New York* (1978). In 1967 the New York Landmarks Preservation Commission had designated Grand Central Terminal and the property it occupies as a historic landmark, thus requiring review and approval for proposed exterior work on the building. The commission rejected the terminal owners' proposal to lease the airspace above the building for the erection of a fifty-five

story office tower.

The company went to court to appeal the commission's decision, claiming that the city, through the commission, was taking its property for a public use without compensation in violation of its due process and equal protection guarantees under the Fifth and Fourteenth Amendments of the Constitution. A number of crucially important issues were addressed by the court's decision. The court reaffirmed its ruling (see *Berman v. Parker*, 1954) on the legitimacy of aesthetic considerations in government regulation of the public welfare, and by extension the appropriateness of historic landmark and district designation. The idea that regulating property was a taking because of the property's devaluation was rejected. The court made clear that the city's landmark regulation was not invalid just because it prevented Penn Central from developing its property for a more lucrative use. As long as the owners can "earn a reasonable return" on their investment there is no taking. The six-to-three decision of the United States Supreme Court, handed down on June 26, 1978, was a stunning victory for historic preservation efforts across the country. The city's right to make landmark designations to protect specific properties and to halt their demolition or alteration was vindicated. This case settled doubts that existed about the status of laws enacted to protect historic buildings at the local government level.

Although the decision concerned

the status of Grand Central Terminal, it set an important precedent in upholding the validity of local ordinances creating landmark and historic district commissions across the United States. The Court rejected the chief argument used to attack historic commissions that landmark designations deprive the owner of the constitutionally protected right to do with his or her property what he or she will. The Court's argument was based on previous decisions that upheld land use regulations, which affected real property interests as against the interest of the health, morals, or general welfare of the public.

Pennsylvania Cases

City of York

The first case arising in Pennsylvania challenging the constitutionality of the Historic District Act, based on the "taking" issue, was *The First Presbyterian Church of York v. City Council of the City of York*. In June 1976, Commonwealth Court upheld the Common Pleas Court of York County, which had earlier upheld the York City Council in denying a request by the church to demolish York House located within the historic district. Decided prior to *Penn Central*, the Pennsylvania court's decision anticipated Justice Brennan's "reasonable return" concept and stated that the church had not demonstrated that "the refusal of the permit to demolish went so far as to preclude the use of York House for any purpose for which it was reasonably adapted . . . the church, having

failed to show that a sale of the property was impracticable . . . had not carried its burden of proving a taking without just compensation." While "the taking of private property requires that just compensation be paid, it is also well-established that private property may be regulated to promote the public welfare."

The concern of local government officials as to the legality of regulating private property on the basis of its historical and aesthetic character can be laid to rest when the rationale for the regulation is reasonably related to that of the public welfare.

City of Harrisburg

In a second case, the Dauphin county Court of Common Pleas denied an appeal from a property owner who was denied a demolition permit for two buildings in the Harrisburg Historic District, *Cleckner v. Harrisburg*, 1979. The owner had first applied for a demolition permit for two vacant houses to the Board of Historical Architectural Review. The board recommended against the issuance of the permit, not on the basis of the unique architectural or historical characteristics of the structures, but on their contribution to the overall historic character of the district. The court concurred with the board's view that the demolition of the buildings would be "detrimental to the preservation of the fabric of the Historic District" where they are situated. The court could find no evidence the board had committed an abuse of discretion. The

owner of the properties had wanted to demolish the buildings to provide for commercial parking or a new building, as the best and most profitable use of the property.

While the court agreed that repair and rental of the buildings was not economically feasible, it held that “it is not established that the denial of the demolition permit amounts to a ‘taking’ of the property. It has not been adequately demonstrated by appellant that a sale of the property is impossible or impractical.”

And Then There Was Boyd: City of Philadelphia

The Boyd Theater case may be considered a true anomaly, a departure from past historic preservation legal cases. The story begins in 1987 when the Philadelphia Historical Commission designated the interior and the exterior of the Boyd Theater as a historic landmark under the authority of the city’s Historic Buildings, Structures, Sites, Objects, and Districts Ordinance. The building was constructed in 1928 in the art deco style and is located in downtown Philadelphia. This designation recognized the theater as a rare example of an art deco movie palace, and its design by a prominent Philadelphia architectural firm. The theater owner, Sameric Corporation, subsequently challenged the Commission’s landmark designation and filed suit in Philadelphia County Court of Common Pleas. The trial court affirmed the Commission’s decision and denied post-trial relief. The Commonwealth

Court affirmed. Historic preservationists’ elation over the Commonwealth Court’s decision was short-lived when the plaintiff appealed to the Pennsylvania Supreme Court, and the Court’s 1991 decision in *United Artists Theater Circuit Inc. v. City of Philadelphia, Philadelphia Historical Commission* exploded fifty years of jurisprudence supportive of historic landmark designation. The Court ruled that the designation of private property for historic preservation purposes without owner consent is a “taking” under the Pennsylvania Constitution, despite Article 1, Section 27 of the state’s constitution which states in part that

The people have a right to clean air, pure water and to the preservation of natural, scenic, historic and aesthetic values of the environment . . .

The Court’s decision caused an uproar in the historic preservation community of Pennsylvania and the rest of the nation. Amicus curiae briefs were filed from both sides of the issue. Preservationists were represented by the National Trust for Historic Preservation, the Pennsylvania and National League of Cities, the City of Pittsburgh, the United States Conference of Mayors, the American Institute of Architects, the American Planning Association, the Pennsylvania Historical and Museum Commission, and numerous other local and national organizations. Private property rights advocates were represented by the Pennsylvania Builders Association, the Pennsyl-

vania Coal Association, the Independent Oil and Gas Association, the Realtors Association, the Pennsylvania Landowners’ Association, and others.

Equally startling in the Boyd Theater case was the Court’s granting of reargument in August and October of 1991, and as a consequence the Court’s reversal of its earlier July 10, 1991 decision. It now agreed with the Philadelphia Historical Commission et. al. that the Environmental Rights Amendment of the state constitution “reflects a state policy.” Furthermore, it concluded “that the designation of a privately-owned building as historic without the consent of the owner is not a taking under the Constitution of this Commonwealth.”

The Park Home Case: City of Williamsport

Meanwhile, as these events above unfolded, a case in the Lycoming County Court of Common Pleas became especially useful in illustrating the types of arguments marshaled before elected officials and courts to persuade them to issue demolition permits for buildings or structures of historic significance.

The Park Home v. City of Williamsport, 1993, regards a request for a certificate or appropriateness to demolish a Victorian-period hotel constructed in 1865, and which served as a retirement home for twenty elderly women. It is considered a major contributing building to Williamsport’s Million-

aires Row Historic District (also listed in the National Register of Historic Places).

The trustees of the Park Home, a non-profit organization, asserted that city council's action in denying their demolition request was arbitrary and capricious because demolition permits had been issued to other applicants on several occasions. The court responded that "each circumstance is different and cannot be used as a standard." One can interpret this to mean that as long as the decision to recommend for or against a certificate of appropriateness or permit is based

on findings of fact and of law, municipalities can feel reasonably secure that they are enforcing their ordinances judiciously. Another argument of the trustees, too often employed by individuals or public and private organizations, but rarely supported by evidence, was that the building was structurally unsound. The court declared that substantial evidence from both parties contradicted that assertion.

The Park Home trustees raised the taking issue and stated that historic district ordinances are unconstitutional in that they take property for a public use or public purpose

without just compensation. Their argument was based, in part, on the *United Artists* case, which the State Supreme Court had not yet reversed. But the Common Pleas court distinguished between the Philadelphia historic district ordinance and the Williamsport historic district ordinance, in that the latter, authorized under the Historic District Act, applied "the mutuality of benefits and burdens" to all property owners, while the former applied only to specific landmarks, in addition to which it designated historic interiors, which the Historic District Act does not.

The Park Home in Williamsport, Lycoming County is a contributing resource to the Millionaires Row Historic District. Protected and regulated by a municipal historic district ordinance. PHMC file photo.



The court held that the demolition request was based on the trustees' "best use" theory, namely that it would be the most economical and profitable choice for the institution; but while this seems to move many governing bodies to favor demolition, and to issue certificates of appropriateness for work that is blatantly lacking in historical appropriateness, the court did not find this a compelling argument for reasons fully developed in the Penn Central case. As the court stated, no effort had been made to sell the building, hence the Park Home was not "precluded in its use of the property for any purpose for which it was reasonably adapted."

The Park Home also argued that the Historic District Act and the Williamsport ordinance were "void for vagueness." The court clarified this issue by explaining that statutes considered vague are those that deny due process by not giving fair notice "that their contemplated activity may be unlawful, and [by not setting] reasonably clear guidelines." In effect, the court found the local ordinance adequate and reasonable, and rejected this argument as well.

A less common argument, employed by some applicants, asserts that the historic district ordinance should not apply to them since the ordinance was enacted after they had established their residence or business in the historic district. The Park Home accused the City of Williamsport of such a dereliction in violation of the pro-

hibition against retroactive laws. But since the ordinance did not interfere with the Park Home's mission, the court found that the ordinance did not "eradicate the Park Home's rights."

Finally, the Park Home attempted to have city council's denial of its demolition request reversed by filing a Local Agency Law Appeal. In response to the appeal, Judge Clinton W. Smith directed city Council to make a full and complete record of its proceedings, and render a decision containing written findings of facts and reasons upon which city council relied in denying a demolition permit. City council complied and the case proceeded to a new hearing. This could have proved the Achilles' heel in the city's case. Typically it is on procedural grounds that historic preservation cases are overturned by the courts. But because the Park Home did not initially lodge a complaint on procedural grounds, the court dismissed this issue under the new hearing. In conclusion, the city of Williamsport's arguments for denying the Park Home a demolition permit were constructed, once directed to do so by the court, on a sound foundation of findings of fact and attention to procedural and due process detail. In addition, the city called on various experts to substantiate its various claims that preservation of the building was in the public interest and countered those made by the Park Home.

The Weinberg Case: City of Pittsburgh

The Pittsburgh Historic Review Commission denied a certificate of appropriateness to Alvin and Shirley Weinberg for the demolition of a two-and-one-half story frame house known as the Howe-Childs Gateway House, a former gatehouse to the Benedum mansion. The building was constructed circa 1860 in the Gothic Revival style, and was listed in the Pittsburgh Register of Historic Places in 1986. On the basis that the cost of rehabilitating the property would exceed the fair market value of the rehabilitation, the Weinbergs sought a demolition permit for the property. Their argument to the Commission that rehabilitating a severely dilapidated house would be a hardship was rejected by the city. The Commission based its reasoning on the fact that the Weinbergs were aware that the building had received a historic designation, knew the consequences of the designation, and lastly were aware of the deteriorated condition of the building prior to their purchase of the property. The Weinbergs also argued that due to the condition of the house it would be impracticable or impossible to sell the property. The Weinbergs appealed the city's decision to the Allegheny Court of Common Pleas, which overturned the city's decision. The city thereupon appealed the Court of Common Pleas decision to the Commonwealth Court, which affirmed the lower court. The city continued the appeal process to the Pennsylvania Supreme Court. On May 21, 1996 the Pennsylvania Supreme Court,

Western District delivered the following opinion:

... we find that Appellees [the Weinbergs] failed to demonstrate that they could not make any economic use of their property, we agree with the [Pittsburgh Historic] Commission's decision to deny permission to demolish the structure, and therefore, reverse the Order of the Commonwealth Court."

In conclusion, we see that the Penn Central rationale was used by the Supreme Court of Pennsylvania, in that the historic property could offer a reasonable rate of return and that the property was economically viable. It may not have returned the highest investment expectation the owners wished, but the Pittsburgh Historic Commission's decision did not prevent them from a reasonable return on their investment. On a procedural note, the Pittsburgh Historic Commission did not maintain a transcript of the initial Weinberg Commission meeting, and as we saw in the Park Home case, the trial court similarly remanded the case back to the city for the making of a record. As all BHARs and historic commissions are aware that their decision to recommend denial of a certificate of appropriateness for a demolition may be appealed, it would behoove them to arrange for a careful record of the proceedings of a meeting when an application of this nature is to be deliberated.

Boards of Historical Architectural Review and Historical Commissions: The Quasi-judicial Nature of their Functions

The duties and responsibilities of Boards of Historical and Architectural Review (BHARs) are challenging and require of the members an unusual dedication, reaching beyond that expected of the average volunteer. Membership on a BHAR or a historic commission should not be taken lightly. Not only must the members of a BHAR possess the professional credentials and expertise required by the state enabling law, and, if applicable, those of the Certified Local Government Program, but members must comport themselves with the utmost decorum and fairness.

Although all BHARs in Pennsylvania have an advisory function (some historical commissions, i.e., Philadelphia and Pittsburgh, have broader powers), all have *quasi-judicial* responsibilities. This term signifies that boards and commissions are required "to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official actions, and to exercise discretion of a judicial nature." (*Black's Law Dictionary, Fifth Edition*)

Although BHAR or commission meetings need not be quite as formal as courts of law, meetings must be held according to general-

ly accepted rules of order. The chairman must be in charge of the meeting, and the members must follow the direction and procedures of the chairman. Complaints by both applicants and board members regarding the length of meetings are due, not usually to an excessively burdensome agenda, but to haphazardly run meetings in which the chair has relinquished control.

BHAR and commission members must be well informed as to the historical and architectural significance of the district in which property owners will be bringing forth requests for certificates of appropriateness. It is incumbent on each member to be knowledgeable in disciplines, which fall under the wide umbrella called historic preservation. No board or commission member can, in good conscience, make recommendations regarding project proposals to applicants unless he or she has working knowledge of historical architecture, historic rehabilitation, American history, and architectural design. In addition, the board and commission *must* be clear as to the objective or purpose of the state enabling legislation under which their historic district ordinance is authorized, whether it is the Historic District Act or the Municipalities Planning Code; members will then be able to ascertain how the project under review will affect the historic district. For discussion on this topic refer to: *A Manual for Pennsylvania Historical Architectural Review Boards and Historical Commissions*, published by the Pennsylvania Historical and Muse-

um Commission.

The Historic District Act was enacted by the General Assembly:

[f]or the purpose of protecting those historical areas . . . which have a distinctive character recalling the rich architectural heritage of Pennsylvania . . .

This does not mean that historic districts must maintain museum-like environments, frozen to some historical period. Neither does it mean that the retention of architectural details and historic environ-

ments should be disregarded. Property owners have the responsibility of complying with the historic district ordinance, and the municipality has the responsibility of implementing the ordinance through its staff and BHAR. All need to reach some agreement as to the degree of historic character to be preserved in the historic district. Consideration should be given to the demographic profile of the historic district because the particulars of that profile will indicate the extent to which property owners will be willing and/or able to cooperate with the ordinance. Know your community! Another consideration

is the physical characteristics of the historic district; for example, are the buildings large and ornate, are they detached or attached, are they frame, brick or stone? If, for instance, there is a preponderance of absentee landlords and low-income and elderly homeowners, and the buildings in question have high maintenance costs, property owners even with the best of intentions may not be able to fulfill essential repairs and maintenance, as compared to a neighborhood where the buildings are more modest in size.

Is the district a mixture of residen-

Part VI The Historic Preservation Plan

tial and commercial properties, or is it composed primarily of commercial buildings? The financial ability of property owners, their willingness to cooperate with the requirements of the ordinance, and the degree to which a consensus has been reached as to the historic character of the area to be preserved will determine the success or failure of preserving the historic district.

In the haste to save a threatened historic landmark, or in the process of building support for the passage of a historic preservation ordinance, there is the tendency either to not consider a historic preservation plan or to delay developing one. In fact, the plan may be put off permanently with the consequence that the community's preservation objectives, goals, and tasks become confused or lost entirely. Another common consequence is that efforts being expended for historic preservation will not be tied to or will be incompatible with the larger goals and objectives of the municipality. Ideally the historic preservation plan should be incorporated into the community's comprehensive plan.

What Constitutes a Preservation Plan?

The importance of a historic preservation plan cannot be understated. This is borne out by the addition of a historic preservation plan component requirement in county and municipal plans in the Municipalities Planning Code,

Article III § 10301 (7) which states, "in addition to any other requirements of this act, a county comprehensive plan shall "identify a plan for historic preservation."

A historic preservation plan requires an assessment of the present status of the community's historic resources, knowledge of past historic preservation efforts, and a list of goals and objectives to be attained in the future. In observing Boards of Historical Architectural Reviews' deliberations, and reviewing the minutes of these meetings, it is clear that some boards are not interpreting the criteria of the historic district ordinance within a larger historic preservation framework. They inadvertently sabotage their own efforts to preserve the built heritage by being either too lax, too severe, or inconsistent in their reviews. A historic preservation plan helps maintain both a focus and a vision for board members, as well as community residents.

A municipality needs to maintain an inventory of its historic and archaeological resources; it also needs to keep it current. This inventory helps a community understand and define its historic character. Inclusion of an economic development component in the historic preservation plan—the potential effects of historic preservation strategies on the economic vitality of the community—will acknowledge their interconnection.

Taking advantage of historic

preservation incentives available at the national, state, and local governmental levels, including grants, investment rehabilitation tax credits, low-interest loans, and local tax abatements, will contribute considerably to the success and acceptance of preserving historic buildings in the community.

Relating local historic preservation efforts to state and national programs will provide a broader perspective, and in that regard, identifying national, state and local historic preservation organizations and government agencies as resources is useful.

The classic journalistic questions, who, what, where, when, and why, are applicable to the historic preservation plan. Who will take the responsibility to implement the plan? Where are the historic resources located? What is historic? When will it be done? And why should it be done? All need to be answered.

Public Education and Public Relations

In their enthusiasm to protect threatened historic landmarks and districts, preservation advocates sometimes forget the groundwork required for the acceptance of historic district ordinances. What they may personally be willing to do to repair or rehabilitate older buildings may not be the same as others are willing or able to do. While there is a strong association between historic district designa-

tion and economic benefits, historic preservationists ought not to forget that the appreciation and enjoyment of historic environments is a learned interest and not necessarily an intrinsic one.

You need to develop a long-term educational strategy to promulgate historic preservation values. Historic survey results are an ideal resource for preparing self-guided tour booklets, house tours, ideas for newspaper articles, “coffee table” books on the architecture and history of a community, posters of a community’s historic landmarks, etc. In addition, the local school district could incorporate a historic preservation curriculum for elementary and secondary school grades. The Reading School District’s Social Studies Department did so several years ago. More recently, Mercersburg Borough, Franklin County, published *A Historic Architecture Coloring Book* along with a study guide for

teachers (funded, in part, by a Certified Local Government grant). The publication of design guidelines, BHAR brochures (explaining the purpose of the historic district and the responsibilities of property owners), old house fairs, the use of cable television public access channels, and even sports events like the City of Reading’s former Historic Reading Run, a six-mile run through the city’s historic neighborhoods, can help promote an appreciation of a community’s historic buildings. Public lectures about the history of the community and oral history projects by the local library or historical society can build a feeling of the past and link it to the present for future generations.

A locally designated historic district protected by ordinance will affect many in the community other than property owners and residents in the district: contractors, for example, real estate bro-

kers and agents, municipal employees, the print and electronic media, and even the local magistrates/district justices. These individuals and many others in the community need to understand the value and the importance of historic environments, and through this understanding support the goals and objectives of historic preservationists. When the time is ripe for introducing the historic district ordinance to the township supervisors, or the borough or city council, municipal officials need to know there is a broad constituency supportive of your efforts. The ordinance will be less likely to be seen as representing the interest of one group in town, because you will have tied historic preservation and the ordinance to the welfare of the community as a whole.

When the governing body holds a hearing to consider public opinion, there may be persons with a spectrum of opinions who are against

Part VII The National Register of Historic Places

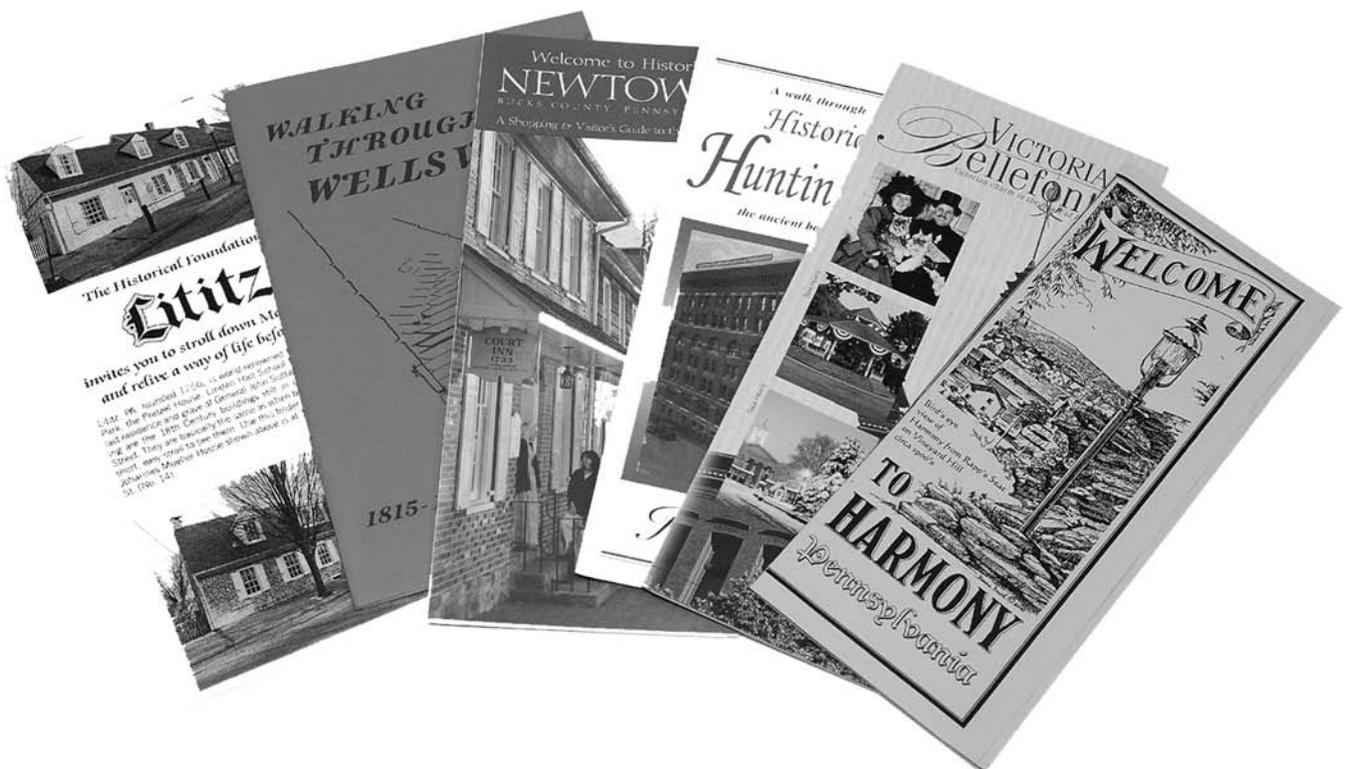
the enactment of the ordinance. Too often there is a tendency to dismiss those who question or oppose our values. In fact, they may have valid concerns that should be fully considered. Overly restrictive ordinances may backfire by creating conflict and controversy. Everyone for or against historic preservation regulations deserves an opportunity to help shape the ordinance for wider acceptance. Established by the National Historic Preservation Act of 1966, the National Register of Historic Places is the official list of the nation's cultural resources worthy of preservation. The Pennsylvania Historical and Museum Commission is charged with administering the National Register program for Pennsylvania. It is responsible for

reviewing nominations for historic districts, individual buildings, structures, objects, and archaeological sites prior to their submission to the National Park Service.

Direct and Indirect Benefits

There are direct and indirect benefits associated with listing properties and districts in the National Register. These can be considered as economic, cultural, and requiring review and commenting procedures. On the economic side are direct benefits through eligibility for federal investment rehabilitation tax credits, and in the potentially increased marketability of historic properties. Regarding the cultural factor, National Register

recognition can enhance a community's self-esteem by awakening interest in and appreciation of the community's heritage. Equally, if not more important, is the review process initiated by federally funded or permitted activities for their effects on eligible or listed National Register properties. The review, and the subsequent recommendations, conducted by the Bureau for Historic Preservation (BHP) and by the Advisory Council on Historic Preservation provide an opportunity, when the effects are adverse, to bring the parties to the table for negotiations. Refer to section 106 of the National Historic Preservation Act of 1966 as amended for a full exposition of the review process, or summaries and explanations of Section 106



sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. For example, a district may reflect one principal activity, seen in a mill, a farmstead, or a coal patch town, or it may encompass several interrelated activities, seen in an area that includes industrial, residential, or commercial buildings, sites, structures, or objects. A district must be important for historical, architectural, archaeological, engineering, or cultural values.

Examples of historic districts include: business districts, canal systems, groups of habitation sites, college campuses, estates and farms with large acreage or numerous buildings, industrial complexes, irrigation systems, residential areas, rural villages, transportation networks, and rural historic districts.

In addition to utilizing this National Park Service definition as a basis for its reviews and recommendations, the Bureau for Historic Preservation considers the following characteristics of a historic district:

- A. The area should possess a high degree of historic and architectural integrity with a minimum of non-historic buildings and features, i.e., parking lots.
- B. The area should possess an implied cohesiveness through characteristics of architectural style such as height, proportion, scale, rhythm, and detail.
- C. The area should possess a particular and identifiable character, a special historical or aesthetic atmosphere that distinguishes it from the surrounding area.
- D. The area should be readily

definable by physical factors, i.e., railroad, highways, or topographical boundaries, i.e., hillsides, stream, and historic factors, i.e. boundaries of original settlements, concentrations of historic buildings and sites.

- E. The area should be significant in the historical or cultural life of the locality, the state, or the nation.

The district need not represent a particular architectural style, and may, in fact, contain a wide variety of styles, providing they are in a harmonious relationship.

National Register Historic Districts in Pennsylvania

For an updated list of National Register historic districts in Pennsylvania contact the Bureau for Historic Preservation or go to www.arch.state.pa.us.

Part VIII Preservation Tax Incentives for Historic Buildings

available from the Bureau for Historic Preservation.

Inclusion in the National Register

The National Register of Historic Places considers a district as a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of Before we launch into a brief introduction of the Internal Revenue Code's tax incentives for historic buildings, prepare yourself to encounter the term *certified* used in varying contexts. You will read about a *certified* historic structure, a *certified* rehabilitation, and a *certified* historic district. The certification process is one through which an application is submitted to the National Park Service through the Bureau for Historic Preservation. Some or all of these certifications need to be in place for a property owner to benefit from the 20 percent investment rehabilitation tax credits for his or her historic rehabilitation project.

A *certified historic structure* is a structure listed individually in the National Register of Historic Places, or a contributing structure in a district listed in the National Register, or a contributing structure in a district *certified* by the National Park Service as substantially meeting National Register criteria. Note that this latter certification enables property owners to benefit from the income tax incentives without needing to have the district listed in the National Register. A *certified rehabilitation* is any reha-

bilitation of a certified historic structure that has been approved as meeting the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, & Reconstructing Historic Buildings*.

What Kinds of Incentives are Available?

Since its inception in 1978, the Rehabilitation Investment Tax Credit (RITC) program is one of the most widely used incentive programs in Pennsylvania to promote the preservation of historic resources. There are two credits, a 20 percent credit for historic buildings and a 10 percent credit for non-historic, non-residential buildings built before 1936. Each credit is based on the total amount of rehabilitation expenses. The 20 percent tax credit is available to owners of and certain long-term leases of income producing (depreciable) properties that are listed in the National Register of Historic Places or contribute to a National Register Historic district. The 20 percent tax credit is also available to owners of income-producing properties that are not in a National Register district but contribute to a municipal historic district certified by the National Park Service for IRTC purposes. Expenses incurred during the rehabilitation of a historic building must exceed the value of the building to be eligible for the credit. A tax credit *cannot*

be taken on a private residence, as this is not a depreciable property. However, the credit can be used on rental residential properties.

Note the 10 percent tax credit is not available for rehabilitations of certified historic structures. Hence, a property owner should ascertain whether a building proposed for the tax incentives in a historic district is a contributing historic resource. If it is not a contributing historic resource, there is no other rehabilitation review requirement needed by the Bureau for Historic Preservation or National Park Service. This may puzzle some property owners whose buildings are located in a historic district regulated by a local government historic district ordinance, which requires them to provide plans and specifications to a Board of Historical Architectural Review before they can make exterior alterations. Why, they ask, should they conform to the requirements of a local historic ordinance if, in fact, their building is not considered historic by the federal government? It should be kept in mind that the Tax Reform Act of 1986 is a federal law, while the historic district ordinance is enforced under local government authority, and the one cannot abrogate the other.

Property owners who apply for the federal income tax credit sometimes make the assumption that because their rehabilitation plans have been approved by a Board of Historical Architectural Review or a Historical Commission, their tax certification application will be

automatically approved by the Bureau for Historic Preservation or National Park Service. This is not correct. Local government approval of a historic preservation project is not a substitute for Bureau for Historic Preservation or National Park Service approval.

Interested parties should consult their accountant and/or tax advisor to be sure they can utilize the credit as new regulations were added to the credit as part of the Tax Reform Act of 1986. These regulations include Passive Activity Rules and Alternative Minimum Tax and could severely limit the ability of a historic property owner to take advantage of the credit. For more information on this program, please contact Bonnie Wilkinson

Mark at the Bureau for Historic Preservation at (717) 787-0772.

How to Obtain the Necessary Certifications

Contact the Pennsylvania Historical and Museum Commission's Bureau for Historic Preservation to obtain the Tax Certification Application and information on complying with procedural requirements for certification, and to enquire regarding the National Register status of the structure

Which Expenditures Qualify?

“Rehabilitation expenditures must be capital in nature and depreciable as real property to qualify for a

credit. This includes new plumbing, mechanical, and electrical systems, sprinklers, life safety systems, elevators, stair towers, brick and façade cleaning, and any other work including cosmetic changes to the structural components of the buildings. Architect's fees and construction period interest and taxes are also allowable as part of the qualified rehabilitation expenditures. Acquisition, site work such as landscaping, parking lots, sidewalks, and building enlargement costs do not qualify. Furniture, appliances, and other personal property items do not qualify.”
From the Preservation Information Series of the National Trust for Historic Preservation “A Guide to Tax-Advantaged Rehabilitation” (Boyle, Ginsburg, Oldham, and

Part IX Historic Preservation Grants

Rypkema, 1994).

WARNING: If you begin the rehabilitation project before conferring with the Bureau for Historic Preservation or a reliable consultant, you may forfeit the benefits of the tax credit due to inappropriate filing or rehabilitation procedures. Don't jeopardize the opportunity to benefit from these tax incentives.

Certified Local Government Grants

As stated above, the National Historic Preservation Act of 1966 established the Historic Preservation Fund (HPF). State Historic Preservation Officers are required to award 10 percent of their annual Historic Preservation Fund monies

to CLGs. Local governments meeting the Certified Local Government certification may apply for CLG grants, which are available annually on a competitive basis. Contact the CLG coordinator at the Bureau for Historic Preservation for further information and assistance.

History and Museum Grant Program – Historic Preservation Grants

Under the PHMC's state grant program, there is a category for historic preservation projects and activities. Grant are available annually on a competitive basis to local governments and nonprofit organizations in Pennsylvania that have Internal Revenue Service tax-exempt status (501) (c) (3), and have been incorporated for a minimum of two years. Historic preservation activities such as survey, planning, National Register nomination applications, historic structure reports, design guidelines, historic tour brochures, and projects limited only by the applicant's imagination. However, no "bricks and mortar" projects are funded under these grants. For information, visit the PHMC Web site at www.phmc.state.pa.us and click on the heading "PHMC Grants," or contact the coordinator of the History and Museum Grant Program, Bureau for Historic Preservation.

View of the lobby of the Warner Theater, Erie. PHMC file photo.



The Keystone Historic Preservation Grant

Program

The Keystone Historic Preservation grants are available annually on a competitive basis to non-profit organizations and local governments that own or support a publicly accessible historic property listed in or eligible for listing in the National Register of Historic Places, or

who own or support a contributing property in a National Register Historic District. The organization must have been in existence a minimum of five years and be located in Pennsylvania.

Eligible activities include preserving or restoring historic properties to the Secretary of the

Interior's *Standards for the Treatment of Historic Properties*. The institution may apply for an award up to \$100,000. There is a 50/50 cash match requirement. Again, information and applications can be found on the PHMC Web site at www.phmc.state.pa.us or applicants may contact the Bureau for Historic Preservation, Divi-



*Before: Regent-Rennoc Court, Philadelphia, Pa., 1985.
Photo: Clio Group*



*After: Regent-Rennoc Court, Philadelphia, Pa., 1989.
Photo: Eric Mitchell*

Appendices

sion of Grants and Planning.

The Historic District Act of June 13, 1961, P.L. 282, No. 167 as amended, 53 P.S. § 8001, et. seq.

An Act

Authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The term “governing body” as used in this act, shall mean the board of commissioners of any county, the council of any city, except cities of the first or second class, the council of any

borough or incorporated town, the board of commissioners of any township of the first class and the board of supervisors of any township of the second class.

The term “executive authority,” as used in this act, shall mean the chairman of the board of commissioners of any county, the mayor of any city, except cities of the first and second class, the president of council of any borough or incorporated town, the president of the board of commissioners of any township of the first class and the chairman of the board of supervisors of any township of the second class. (As amended 1980 P.L.257, No. 74, (53 P.S. § 8001et seq.).

Section 2. For the purpose of protecting those historical areas within our great Commonwealth, which have a distinctive character recalling the rich architectural and historical heritage of Pennsylvania, and of making them a source of inspiration to our people by awakening interest in our historic past, and to promote the general welfare, education, and culture of the communities in which these distinctive historical areas are located, all counties, cities, except cities of the first and second class, boroughs, incorporated towns and townships, are hereby authorized to create and define, by ordinance, a historical district or districts within the geographic limits of such political subdivisions. No such ordinance shall take effect until the Pennsylvania Historical and Museum Commission has been notified, in writing,

of the ordinance and has certified, by resolution, to the historical significance of the district or districts within the limits defined in the ordinance, which resolution shall be transmitted to the executive authority of the political subdivision. (P.L. 282, No. 167 as amended, 53 P.S. §8001, et. seq.).

Section 3. The governing body of the political subdivision is authorized to appoint a Board of Historical Architectural Review upon receipt of the certifying resolution of the Pennsylvania Historical and Museum Commission. The board shall be composed of not less than five members. One member of the board shall be a registered architect, one member shall be a licensed real estate broker, one member shall be a building inspector, and the remaining members shall be persons with knowledge of and interest in the preservation of historic districts. A majority of the board shall constitute a quorum and action taken at any meeting shall require the affirmative vote of a majority of the board. The board shall give counsel to the governing body of the county, city, borough, town, or township, regarding the advisability of issuing any certificate which the governing body may issue pursuant to this act. (As amended 1963 P.L. 27, No. 24.)

Section 4. (a) Any governing body shall have the power and duty to certify to the appropriateness of the erection, reconstruction, alteration, restoration, demolition or razing of any building, in whole or in part,

within the historic district or districts within the political subdivision. Any agency charged by law or by local ordinance with the issuance of permits for the erection, demolition or alteration of buildings within the historic district shall issue no permit for any such building changes until a certificate of appropriateness has been received from the governing body.

(b) Any governing body in determining whether or not to certify to the appropriateness of the erection, reconstruction, alteration, restoration, demolition or razing of a building, in whole or in part, shall consider the effect which the proposed change will have upon the general historic and architectural nature of the district. The governing body shall pass upon the appropriateness of exterior architectural features which can be seen from a public street or way, only, and shall consider the general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings and structures in the district. The governing body shall not consider any matters not pertinent to the preservation of the historic aspect and nature of the district. Upon giving approval, the governing body shall issue a certificate of appropriateness authorizing a permit for the erection, reconstruction, demolition, or razing of a building in whole or in part. Disapproval of the governing body shall be in writing, giving reasons therefore, and a copy thereof shall be given to the applicant, to

the agency issuing permits, and to the Pennsylvania Historical and Museum Commission.

(c) Any person applying for a building permit within a historic district shall be given notice of the meeting of the Board of Historical Architectural Review which is to counsel the governing body, and of the meeting of the governing body which is to consider the granting of a certificate of appropriateness for the said permit, and may appear before the said meetings to explain his reasons therefore. In the event of a failure to recommend, the board, and, in the event of its disapproval, the governing body shall also indicate what changes in his plans and specifications would meet its conditions for protecting the distinctive historical character of the historic district.

(d) Any person aggrieved by failure of the agency charged by law or by local ordinance to issue a permit for such building changes by reason of the disapproval of the governing body may appeal therefore in the same manner as appeals from decisions of the agency charged by law or local ordinance with the issuance of permits for such building changes.

Section 5. The agency charged by law or by local ordinance with the issuance of permits for the erection, demolition or alteration of buildings within the historic district shall have power to institute any proceedings, at law or in equity, necessary for the enforcement of this act or of any ordinance

adopted pursuant thereto, in the same manner as in its enforcement of other building, zoning or planning legislation or regulations.

Section 6. The provisions of this act are severable and, if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent this act would have been adopted had such unconstitutional provisions not been included herein. The provisions of this act shall not be construed to limit the powers and duties assigned to the Pennsylvania Historical and Museum Commission.

Section 7. This act shall take effect immediately.

Steps to Establish a Historic District Ordinance Authorized by the Historic District Act

- A. Obtain and complete a Pennsylvania Historic Survey Form of the area you propose for historic district designation from the Bureau for Historic Preservation (BHP) at www.phmc.state.pa.us under the heading “National Register of Historic Places” or by telephone at (717) 787-0771.
- B. Submit the completed form to BHP staff to evaluate the eligibility of the area to the National Register of Historic Places. *For purpose of the Historic District Act the area in question does not need to be listed in the National Register of Historic Places.*
- C. Schedule a site visit with BHP staff to establish the proposed historic district boundaries. Note: the historic district ordinance may regulate a smaller area than the National Register

Historic District but not a larger area than defined by National Register boundaries.

- D. Submit a draft of the historic district ordinance for BHP staff review and comment prior to submittal for final approval to the municipality’s governing body. Request for BHP historic district ordinance model is available from PHMC Web site under the heading “Community Preservation” or by calling (717) 787-0771.
- E. Consult with BHP staff concerning strategies to gain local support for the proposed historic district ordinance.
- F. Follow appropriate municipal regulations regarding enactment and passage of ordinances, i.e., schedule a public hearing (if required by your charter) for public consideration of the proposed historic district ordinance.
- G. The local governing body adopts the historic district ordinance.
- H. In a letter addressed to *Jean H. Cutler, Director, BHP*, the chief elected official of the local government requests that the Pennsylvania Historical and Museum Commission certify the historical significance of the proposed historic district.

A certified (signed and dated) copy of the ordinance must accompany this request, with a

- map clearly showing the historic district(s) boundaries. (**Note:** Do not confuse Bureau for Historic Preservation review of documentation of the Historic Resource Survey Form and determination of eligibility to the National Register of Historic Places with the official resolution by the Pennsylvania Historical and Museum Commission (the commissioners appointed by the governor) certifying the historical significance of the district).
- I. The Pennsylvania Historical and Museum Commission will notify the local government of its official action. The historic district ordinance can only be enforced on the date of certification by resolution of the Commission. The Commission meets four times a year and will consider the historical significance of the proposed district at its regular meeting.

All completed documentation must be received at least forty-five days prior to the next scheduled meeting of the Commission at which it will be considered.

Note: In spite of a district’s eligibility or listing in the National Register it must still be certified as historically significant by the Commission as required by state law. For further information and guidance please contact:

Michel R. Lefevre, Chief

Preservation Planning and
Education Outreach
Pennsylvania Historical and
Museum Commission
Bureau for Historic
Preservation
400 North Street
Harrisburg, PA 17120-0093

Telephone: (717) 787-0771
Fax: (717) 772-0920
Email: mlefevre@state.pa.us

Historic Districts in Pennsylvania

established under the Historic District Act of 1961, including Historic Districts established under Home Rule for the cities of Philadelphia, Pittsburgh and Scranton

** indicates there is a corresponding National Register Historic District, though name and district boundaries may be different. Please contact the Bureau for Historic Preservation or your municipal office to confirm district boundaries.*

Adams County

Township of Cumberland
Cumberland Township Historic District

Borough of Fairfield
*Fairfield Historic District**

Borough of Gettysburg
*Gettysburg Historic District**

Township of Straban

Straban Township Historic District

Allegheny County

Borough of Homestead
*Homestead Historic District**

Borough of Munhall
*Homestead Historic District**

Borough of Sewickley
Boundary-Beaver Historic District
Old Thorn Farm-Broad Street Historic District
Sewickley Historic District

Borough of Sewickley Heights
Sewickley Heights Historic District

Borough of West Homestead
*Homestead Historic District**

Township of Moon
Mooncrest Historic District

Beaver County

Borough of Ambridge
*Ambridge Historic District**

Bedford County

Borough of Bedford
*Bedford Historic District**

Berks County

Township of Marion
*Charming Forge Historic District**

Township of Oley
*Spangville Historic District**
*Oley Township Historic District**

City of Reading
Callowhill Historic District

Centre Park Historic District
Prince Street Historic District
Penn's Commons Historic District

Blair County

Borough of Hollidaysburg
*Hollidaysburg Historic District**

Bucks County

Borough of Bristol
*Historic Radcliffe Street Historic District**

Township of Buckingham
*Spring Valley Historic District**

Borough of Chalfont
Historic District of Chalfont

Borough of Doylestown
*Doylestown Borough Historic District**

Township of Doylestown
Edison Historic District

Township of Falls
*Village of Fallsington Historic District**

Borough of Hulmeville
*Historical District of the Borough of Hulmeville**

Borough of Langhorne
*Langhorne Borough Historic District**

Township of Lower Makefield
*Village of Edgewood Historic District**

Borough of New Hope
*New Hope Historic District**

Borough of Newtown
*Newtown Borough Historic District**

Township of Newtown
*Sycamore Street Historic District**

Township of Solebury
*Carversville Historic District**
*Phillips Mill Historic District**

Township Of Upper Makefield
*Village of Brownsburg Historic District**
*Village of Dolington Historic District**

Borough of Yardley
Yardley Historic District

Butler County

Borough of Harmony*
Harmony Historical District

Cambria County

Township of Adams
*South Fork Fishing & Hunting Club Historic District**

Centre County

Borough of Bellefonte
*Bellefonte Borough Historic District**

Borough of Millheim
*Millheim Historic District**

Chester County

Township of Birmingham
*Dilworthtown Historic District**

Township of Charlestown
*Charlestown Village Historic District**

Township of East Bradford
*East Bradford Historic District**

Township of East Marlborough
*Village of Unionville Historic District**

Township of East Pikeland
*Kimberton Historic District**

Township of Franklin
Kemblesville Historic District

Borough of Kennett Square
*Kennett Square Historic District**

Borough of Phoenixville
*Phoenixville Historic District**

Township of South Coventry
*Coventryville Historic District**

Township of Tredyffrin
Tredyffrin Historic District

Township of Warwick
*Coventryville Historic District**
*North Warwick Historic and Archaeological Historic District**
Reading Furnace Historic District
*Warwick Furnace Historic District**

Borough of West Chester
*West Chester Historic District**

Township of West Pikeland
Anselma Mill Historic District
*Chester Spring Historic District**

Columbia County

Town of Bloomsburg
*Bloomsburg Historic District**

Cumberland County

Borough of Carlisle
*Historical Carlisle Historic District**

Borough of Mechanicsburg
*Mechanicsburg Local Historic District**

Township of Upper Allen
Rosegarden Mill Historic District
Shepherdstown Historic District
Trout Run Historic District
Yellow Breeches Historic District

Borough of Shippensburg
*Shippensburg Historic District**

Dauphin County

City of Harrisburg
*Allison Hill Historic District**
*Old Midtown Historic District**
*Old South Historic District**
*Old Uptown Historic District**
Fox Ridge

Delaware County

Township of Chadds Ford
*Chadds Ford Historic District**
*Dilworthtown Historic District**

Borough of Media
Courthouse Square Historic District
Historic District of Churches
Lemon Street Historic District
Providence Friends' Meeting

Borough of Ridley Park
Ridley Park Historic District

Borough of Upland
Upland Historic District

Franklin County

Borough of Mercersburg
*Mercersburg Historic District**

Indiana County

Borough of Saltsburg
*Historic Saltsburg Historic District**

Lancaster County

Borough of Columbia
*Columbia Historic District**

City of Lancaster
*Historic Lancaster**
*Heritage Conservation District**

Borough of Strasburg
*Strasburg Historic District**

Lackawanna County

Township of Abington
*Waverly Historic District**

Lebanon County

Township of Annville
*Annville Historic District**

Lehigh County

City of Allentown
Old Allentown Historic District

Old Fairgrounds Historic District
West Park Historic District

Lycoming County

City of Williamsport
*Millionaires Row Historic District**

McKean County

City of Bradford
*Historic Bradford Historic District**

Mercer County

Borough of Mercer
Mercer Historic District

Montgomery County

Township of Cheltenham
*Historical LaMott**
*Wyncote Historic District**

Township of Lower Merion
Ardmore Commercial Historic District

*Harriton Historic District**
*Mill Creek Historic District**
Gladwyn (Merion Square) Historic District
*Merion Friends Meetinghouse/General Wayne Historic District**

Borough of North Wales
North Wales Historic District

Borough of Norristown
*Norristown Historic District**

Township of Lower Moreland
Huntingdon Valley Historic District

Township of Plymouth and

Whitemarsh
*Plymouth Meeting Historic District**

Borough of Pottstown
*High Street Historic District**
*Pottstown Historic District**

Montour County

Borough of Danville
*Danville Historic District**

Northampton County

Borough of Bath
Bath Historic District

City of Bethlehem
*Historic Bethlehem**
South Bethlehem Conservation Historic District

City of Easton
*Easton Historic District**

Pike County

Borough of Milford
*Milford Historic District**

Schuylkill County

City of Pottsville
*Historic Pottsville**

Borough of Tamaqua
*Tamaqua Historic District**

Tioga County

Borough of Wellsboro
Wellsboro Historic District

Union County

Borough of Lewisburg
*Historic Lewisburg**

Venango County

City of Franklin
*Franklin Historic District**

York County

City of York
*Historic York**

Home Rule Historic Districts

Allegheny County

City of Pittsburgh
*Allegheny West Historic District**
*Alpha Terrace Historic District**
*Deutschtown Historic District**
*East Carson Street Historic District**

*Manchester Historic District**
Market Square Historic District
Murray Hill Avenue Historic District
Oakland Civic Center Historic District
*Penn-Liberty Historic District**
*Schenley Farms Historic District**
*Mexican War Streets**
*Oakland Square Historic District**

City of Philadelphia

Diamond Street Historic District
*Park Mall-Temple University's Campus Historic District**
Rittenhouse-Fitler Residential Historic District
Historic Street Paving Thematic

District
Society Hill (and Pennsylvania

For more complete information about Pennsylvania municipalities that protect historic districts under the Historic District Act and protect historic resources under the Municipalities Planning Code contact the Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission.

*Hospital of Washington Square West) Historic District**
Girard Estate Historic District
League Island Park a.k.a. F.D.R. Park Historic District
*Spring Garden Historic District**
*Old City Historic District**

Lackawanna County

City of Scranton
Historic Preservation Overlay Historic District

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Cover photo - 200 block of Clymer Street, Park Line Historic District, Reading, Pennsylvania, looking southeast. Photo: Frederic deP. Rothermel Jr.