

ZONING PRACTICE

APRIL 2017

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER 4

PRACTICE HISTORIC PRESERVATION



4

Protecting Value Through Historic Preservation Regulations

By Lane Kendig

Most communities recognize the need to protect historic and cultural sites, buildings, or neighborhoods, yet many qualifying places remain vulnerable across the country.

Clearly, the preservation of a community's historic assets enhances the community's attractiveness as a place to live and work and assists in providing a unique character that differentiates it from its neighbors. As with any new regulation, though, historic preservation regulations can raise fears. For example, landowners commonly fear that these regulations may adversely affect property values and destroy their freedom to do as they wish with their property. While such fears are largely groundless, it is important in developing regulations to seek to address these concerns. The landowner's fears are best addressed by recognizing that preservation may require continued investment that needs to be offset by an enhanced property value.

PLANNING

Ideally, each jurisdiction would have a historic preservation chapter in its comprehensive plan that links preservation to community character and economic development. Where such plans do not exist, there needs to be a significant planning effort in coordination with historic zoning updates. In cities, planning generally focuses on historic neighborhoods or streets. In counties, the focus is more commonly on individual historic structures or historically or archaeologically significant sites. These present different challenges for zoning, as they may involve preserving land in its current agricultural or natural state as well as protecting buildings. With sites that are subject to development, it is more important to recognize owner concerns about economic value.

The traditional goal of historic preservation planning has been to add candidate buildings, sites, or districts to national or

state historic registers. There are two distinct advantages of being listed on the National Register of Historic Places. First, Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of federally funded projects on historic properties. Second, commercial properties on the register are eligible for 20 percent federal tax credits. Meanwhile, state statutes may provide additional incentives for historic preservation.

The research, planning, and public participation associated with adding properties to national or state registers is often time consuming and costly. Buildings must be carefully analyzed for age, style, or other historic elements. The federal rules are not that onerous, but historic preservation planning requires design or architectural expertise. This is not quickly learned on the job, so planners without this expertise need professional consultants or volunteer assistance.

For historic districts, additional work is necessary to define boundaries. With most zoning districts, boundaries follow differences in land use or lot size. Meanwhile, historic preservation focuses on individual properties meeting the historic guidelines. In practice, there are difficult choices to make about including non-historic buildings or vacant land in order to minimize having very irregular district boundaries. Inclusion can trigger property owners' fears and result in opponents. Too irregular a district reduces the protection on the edge of the district. Advocates for a purist approach to historic preservation can make this worse by stoking landowner fears that the regulations will be overly strict.

LANDOWNER CONCERNS

The primary concern of landowners is that his-

toric preservation regulations will adversely affect the value of their property. The owners of non-historic buildings within a proposed historic district often fear regulations will impose major burdens on their property. For historic buildings one problem is that the interior may be unsuited to modern use. Another is that the building's maintenance costs may exceed economic returns.

Outside of urban areas, preservation of historic farms or estates typically requires the preservation of some surrounding land—which would otherwise be suitable for subdivision—and this can greatly alter property value. A means of preserving without reducing value is needed.

Old homes may be expensive to heat or cool, or to reconfigure for modern living needs. Large dwellings may be under pressure to convert to multiple residences because they have too much space for a single family. Small, older homes often require extensive remodeling or additions to adapt to modern lifestyles. Without regulatory protections, teardowns are common.

Old buildings of stone, brick, log, or wood frame may be very expensive to maintain. Landowners may be fearful that these costs cannot be offset by enhanced value under a historic designation. If these concerns are not addressed, owners will fight the designation and ultimately seek demolition.

Individual historic structures scattered in urban areas raise additional concerns. Commercial historic buildings are typically relatively small. When historic buildings are small in comparison to the size of the building that could be built if they were torn down, there may be considerable redevelopment pressure. For commercial historic buildings located in



Lane Kendig

➡ In a historic district with houses similar to the stick Victorian at the top left, the Tudor at the top right is clearly out of character. What should be done if the building seeks an addition? Since it cannot feasibly be made to look like a stick Victorian, mitigation is necessary. A color change would draw less attention from the contributing historic homes (bottom left). And adding landscaping to screen the Tudor home from the street enhances the effect (bottom right).

residential neighborhoods, the designed use may be nonconforming under current zoning, which can limit property investment.

HISTORIC DISTRICTS

The historic district mapped to contiguous properties is the most common historic preservation zoning technique. Often jurisdictions apply these districts as an overlay to an existing base zoning district. Essential elements of a historic district are mapped boundaries, a description of the historic style, design guidelines, the appointment of a board to review and approve applications in the district, and criteria for approval.

District Boundaries

The boundaries are generally easy when all the buildings in a block or group of blocks are historic. The difficulties arise when buildings that do not meet the criteria for designation or vacant lots are interspersed with historic properties. Districts with vacant lots or non-historic buildings require design standards or guidelines that work for historic buildings, new construction, and non-historic buildings.

If the district cannot be mapped to whole blocks of historic properties, reduce the number of vacant or non-historic structures as much as possible, consistent with effective district boundaries. While there is a general

rule to avoid spot zoning, it is possible exclude lots within a historic district because there is an existing reason for the exclusion and their inclusion is likely to create major issues for the landowners.

Style Description

The description of style should be straightforward. If it is a national register district, the district documentation will contain detailed information about the architectural styles in the district, materials, and other elements contributing to its historic merit. For a locally designated district there is a need for original classification work. The recommended

resource for this work is *A Field Guide to American Houses*, first published by Alfred A. Knopf in 1984 and revised in 2013. This book has numerous drawings, photos, and descriptions of the styles that can be used as the basis for the code language and in evaluation of existing buildings. It is important in doing this to specifically identify style or styles in the district. This makes it easy to review any proposed exterior change to determine if the changes are consistent.

Design Guidelines

Design standards and guidelines are intended to preserve the existing historic character and prevent any exterior activities that would destroy or be inconsistent with that style. The design rules for exterior modifications to historic properties should derive from the documentation of the historic styles in the district. They should address style, colors, materials, and landscape elements that create the district's character, while avoiding overtly subjective elements. The task of developing design standards and guidelines for new construction and non-historic buildings is more difficult.

Most current development has an architectural style that is neo-eclectic. The homes are modern interpretations of past styles like colonial, Tudor, or Victorian; while they have some historic style elements, they will never be like the historic structures. For new construction, what is needed is a detailed list of the elements that must be incorporated to conform to the desired historic character. The design rules should contain a list of mandatory elements and a group of optional elements, from which a certain number must be chosen. The jurisdiction should consult with local home builders to ensure the guidelines produce a compatible building that will be marketable in the neighborhood. With builder support it is easier to include vacant lots in a district.

Meanwhile, the development of design guidelines for existing non-historic buildings requires a very careful analysis of each such building in the district for style, materials, color, use, type of construction, massing, and existing condition. Condition is important because it provides information about the likelihood that a building will need permits that require the historic board's approval. An assessment of each such building should be developed using the same style and design elements used in the historic analysis.

Formulate a design strategy for each type of non-historic building that might seek to add a room or do minor exterior work.

The design guidelines should provide clear policy to apply in approving applications for major repair or additions on these buildings. It is a mistake to require them to choose between disinvestment and meeting impossibly expensive conversion costs. The experience with nonconforming uses is a cautionary lesson. Planners originally thought that nonconforming buildings would be torn down. History shows they rarely disappear, and they generally suffer from disinvestment that lowers all property values in the neighborhood. In drafting standards, a list of enhancements that have reasonable costs should be developed so landowners have several options. For example, a porch across the entire front is an expensive requirement, but adding some trim to a small existing porch is a more acceptable solution. Avoid requiring major facade and roof changes, as they are very expensive.

When style and massing are dramatically different, consider mitigation that seeks to hide the incompatibility. Two mitigation strategies are obvious: color change and landscaping. Painting eliminates a sharp color contrast that draws attention to the building's differences. Greenery can hide a multitude of sins because it represents a mass that screens the view of the building from the street. Requiring the planting of canopy trees and large evergreens in the front yard will screen the view of the upper stories of the building. Foundation plantings and understory trees can reduce the ground-level view. The sidebar includes language that can be used to provide the desired level of mitigation in the design guidelines.

Mitigation assumes that non-historic buildings are likely to remain. The idea is to provide actions that allow an owner to make needed exterior repairs or reinvest in the dwelling. It hides the incompatibility rather than eliminating it. These strategies do not involve major costs for a land owner. In all cases the effort to address incompatible buildings in the districts should be designed to encourage reinvestment to preserve the economic value of the district.

Developing design guidelines for commercial areas can be easier as the focus is on street-facing facades. Many historic commercial district buildings will be largely compatible, with only modest style or height differences. An analysis should look at block faces.

If more than 15 percent of a block face is out of the style, the suitability for a historic district is questionable, and the community may want to consider design guidelines without a historic designation. An exception is a building whose facade was "modernized" in the last century. If the business community can be convinced that historic designation and restoring facades will enable the area to generate substantially more revenue, such restoration may be supported. Government grants to assist in the cost makes this more feasible.

For new buildings, only the street facade needs review. Height, general window proportions, floor to floor heights, colors, and materials are elements that should be the primary focus, as these can be addressed easily in new buildings. The cost of making a new building compatible should not be too great. Some style elements like terra cotta details are very expensive and should be avoided. Commercial uses often use false facades to produce a desired skyline, so this can be a reasonable approach to achieving a matching style.

Sample Mitigation Provisions

Mitigation. Lots XX, XX, and XX in the historic district have been identified as so different from the styles and character of the district that there is no practical means of making them compatible in style. When any such lot applies for a building permit that involves an increase in the floor area of the building or substantial structural repair, the historic preservation board may approve the application provided the following mitigation steps are undertaken:

1. One plant unit shall be planted in the front yard for every 1,600 square feet of land area in that front yard. The board shall count existing canopy trees and evergreen trees that are in good health and over 40 feet tall toward the requirements. The shrubs and understory trees shall be installed to maximize the screening of the lower levels of the building.
2. The building shall be painted in approved colors for the district to better match the adjoining buildings.

Administration

State statutes generally will specify the composition of a historic preservation board. It is critical that these boards have the technical capability to help landowners gain approval of an application that permits construction. Historic preservation requires architects or design professionals who have considerable experience in designing buildings and the skills to guide applicants to a satisfactory solution. Two other groups are desirable as members: builders and people who understand market dynamics and project financing. In large cities or urban counties, this expertise is likely to be available. In smaller cities and more rural areas, finding these people may be difficult. If the board does not have the expertise, the regulations should delegate reviews to staff and consultants.

Approval Criteria

The most basic approval criterion for proposed changes to historic structures, vacant land development, or improvements to existing non-historic structures is that the proposal would enhance the character of the historic district by meeting all required design criteria. If the proposal requests any exceptions from these design criteria, the regulations should require applicants to submit a detailed report indicating the economic, architectural, or other reasons for the deviation from strict adherence.

Demolition of an existing structure requires a different approach. One reason for approval would be that the structure is unsafe for habitation, and the cost of restoring it to a safe condition is so high that it is likely that the owner will let it continue to decline. In this case the historic board needs to explore with the owner whether there are things the jurisdiction can do that will alter the economics (see flexibility discussion below). To approve demolition, the board must find that denial would create a severe hardship and cause the structure to become blighted. That the owner can make more money through demolition is not an acceptable criterion for approval.

REGULATORY FLEXIBILITY

In many cases, historic districts will need to incorporate flexible zoning techniques to overcome landowner concerns about the impact of historic district designation on property values. These include flexible use permissions and incentives for maintenance.

Change of Use

If the existing use of a historic property fails to meet current demand, and rents do not support maintenance and reinvestment, consider allowing changes of use. Permitting large, older homes in a single-family district to be converted to two, three, or more residences is often a good solution. Jurisdictions can accomplish this by modifying the district density standard or incorporating special rules for historic structures in the district, allowing more units in those structures. Neighbors will need to be convinced that preserving the old homes is better than allowing disinvestment and teardowns.

For residential uses adjacent to downtown or on major streets where nonresidential uses are more valuable than housing, consider permitting the conversion of residential buildings to office or institutional uses. In these cases, additional parking may be necessary. This parking should be to the rear, where a drive or alley provides access. Parking in the front yards should be prohibited. If they are on the National Register, commercial structures may be eligible for a 20 percent tax credit, making preservation easier.

Sample Incentive Provisions

Pro forma: A pro forma shall be submitted by the developer justifying the proposed incentive. It shall document the costs of acquisition, improvements, and long-term maintenance. It shall indicate projected changes in revenue due any change in use. These costs shall be summarized and included in a proposed value with the change in use and density permitted. The pro forma shall demonstrate that the incentive provides additional revenue to pay for the maintenance and improvement costs and reasonable profit.

The planning director in conjunction with the historic commission or board shall evaluate the pro forma and its documentation to determine if the proposed incentive is adequate to persuade the landowner to invest but not so large as to provide increases in income over that of neighboring property. They are empowered to grant such incentives.



Brian Sansberry (Laurel-terrace-knoxville-tn1.jpg, Wikimedia CC BY 3.0)



This historic home in Knoxville, Tennessee, has been subdivided into apartments without undermining its contribution to the Fort Sanders Historic District.

URBAN HISTORIC SITES

Name	Existing Building Tsfc*	Existing FAR	Zoned TDR	Site Area Tsfc (Existing Building Tsfc / Existing FAR)	Maximum Floor Area (Site Area x Zoned FAR)	TDRs (Maximum Floor Area—Existing building Tsfc)
Oreo Factory	200	0.31	0.44	645	283.9	83.9
Richfield Mansion	13	0.40	1.00	32.5	32.5	19.5
5th Street Church	15	0.18	2.50	83.3	208.3	193.3

*Tsfc = thousands of square feet

Incentives for Maintenance

Stone, brick, log, or wood frame structures often have high maintenance and upkeep costs. This is particularly true of rural buildings or where disinvestment has already occurred. The absence of insulation and obsolete heating, air conditioning, kitchen, and bath facilities are also potential costs associated with preservation. These costs may be addressed by a change in use; if not, other incentives are needed to encourage landowners to invest. The question becomes how much of an incentive should be provided. Incentives can include an increase of density on the property or transferable development rights (TDR). If this cannot be worked out before a district is created or a property designated, incorporate a process in the regulations to guide the historic board in evaluating the need for incentives on a case-by-case basis. Provide what is needed and don't offer too little or too much. See the sidebar on page 5 for an example.

SCATTERED-SITE PRESERVATION

Preserving individual historic structures and sites located outside of historic districts presents a distinct set of challenges. For these properties, existing development densities may be far below permissible densities for their zoning districts, and carefully calibrated incentives are necessary to gain landowner support for preservation.

Urban Historic Structures

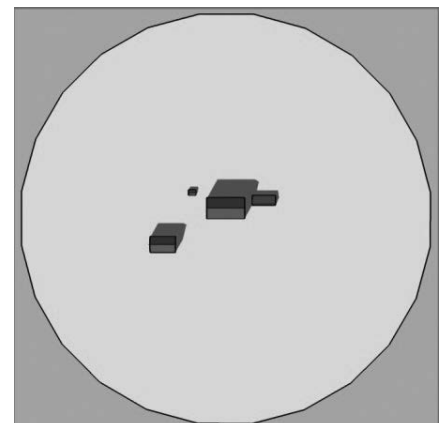
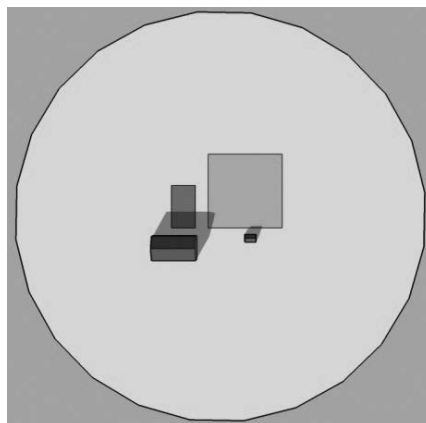
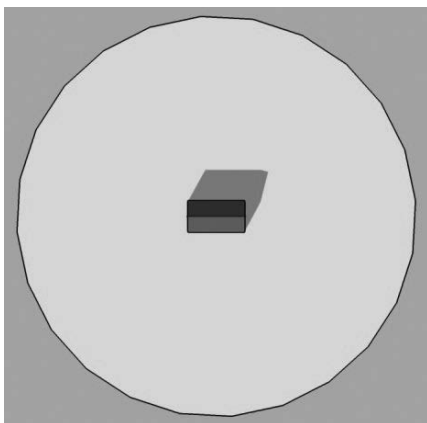
A common problem in urbanized areas is that individual historic structures often have floor areas well below the maximum permissible floor area or density of their zoning districts. For example, a historic structure with only 15 percent of the maximum floor area permitted creates a strong economic argument for demolition and redevelopment. The historic site is burdened by higher maintenance costs and less income potential compared to neighboring properties. TDR is the ideal tool for this

situation, as upheld by the Supreme Court in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

The table above illustrates how this system would work in a hypothetical community. The TDRs available are determined by subtracting the existing floor area of the site from the maximum permitted by the zoning. The measurements are in thousands of square feet, so one TDR is based on 1,000 square feet. To ensure a willing buyer and willing seller, the purchaser would be able to build 1,100 feet for each TDR.

Historic Sites

Historic sites require a different focus. The preservation of the historic buildings is only part of the job. Just preserving the buildings ignores their function and the setting for which they were built and robs visitors of the purpose and context of the historic site. Many



Left: A historic building (e.g., a plantation, homestead, leading citizen's home, or historic event). Middle: A historic building with important landscape and gardens. Right: A site with multiple historic buildings (e.g., farm, ranch, or plantation with multiple outbuildings).

Lane Kendig

of these sites are on largely rural or urban fringe sites.

A major part of a site's historic value is seeing the building in its historic setting of farmland, gardens, or yards. For example, a Greek revival plantation house with 10 acres of gardens surrounded by 200 acres of farmland needs at least the home and gardens to be preserved. If the grounds around the house and garden contained many mature live oaks or other large trees, this would be the critical area to preserve, while the farmland would not be as important.

Too often a historic building is preserved on an acre or so and surrounded by a subdivision of much smaller lots. This only preserves the home, but the site's value—mature trees and gardens that provided the historic context—is lost. The building simply becomes a large old home, and its visibility to the community lost in the subdivision. This sort of preservation does nothing to make it a historic attraction. Historic sites need to have surrounding land preserved as well as the buildings to provide the context of their original function to make it an attraction.

The illustrations on page 6 show several versions of historic sites. The idea is to preserve enough land to display them in context for visitors. Preserving the surrounding land lowers property value for development. Tools such as clustering, alternative uses, incentives, and TDR applied individually or in combination represent ways to restore the property's value. In suburban or rural environments, where the size of the property is adequate, clustering is an ideal tool to allow the needed open space to be protected without causing a loss of value.

How much land is needed for context? Key variables in determining this are historic use, ancillary buildings, vegetation, or type of event. In a forested area, a relatively small site that retains the trees to screen future uses will suffice. There is no definitive measure, but in general a radius of 200 to 500 feet is desirable. Trees, topography, property lines, existing homes on nearby property, and current use of surrounding land need to be evaluated in setting the protected area.

Also consider the approaches to the site via roads. Clustering allows the site to be protected as common open space while allowing the district's maximum density to be achieved. The size of the parcel is critical. If the protection area is no more than 30 per-

cent of the site in suburban character areas, clustering is a viable option. Up to 50 percent open space will provide a suburban character. In estate character areas the percentage of open space is 45 to 65 percent. Clustering will be very difficult in urban areas unless the property is very large.

With smaller sites, additional incentives will be required. Consider permitting farm buildings to change uses; for example, the barn or other buildings may be converted to residential use to increase development value. Additional incentives may be needed to ensure maintenance. Since old farm buildings or homes may require costly work to make them habitable, a pro forma can be used to determine the degree of an incentive that is needed to achieve preservation. When a site is just slightly too small for clustering to work, the code could allow a 10 percent density increase as an incentive.

TDR is the most efficient way to provide an incentive when the property is too small for clustering to work. Allowing a 10 percent density bonus with the purchase of TDRs is typically workable. Clustering must be a permitted use in the district, not a conditional use. The ordinance should provide a receiving zone with five times the potential to use TDRs than there are TDRs available on the historic site so that there is an ample market for the TDRs. Ensuring a market for TDR also requires consideration of the value a seller wants and what a buyer is willing to pay. TDR works on a willing seller, willing buyer basis.

It works best when the buyer is willing to pay more than the seller asks. Permitting 1.1 units for each TDR is a way to ensure purchasers want to buy TDRs. TDR makes creating larger open areas around the historic site feasible.

CONCLUSIONS

In drafting historic preservation regulations, it is important to try to offset the concerns of the landowners with incentives. A variety of approaches can be used to address specific concerns. Allowing a change in use is a simple strategy that is widely adaptable. A more complex problem is addressing the concerns about the costs of preserving and maintaining structures, which requires very specific zoning regulations that enable landowners to recoup these costs.

Preserving historic sites in rural or urban fringe areas is a very different problem. When

preserving a substantial amount of open land is essential to providing the historical context, regulations that allow or require clustering are important.

Finally, transfer of development rights is useful for preserving individual buildings in urban environments and for greenfield development.

ABOUT THE AUTHOR

Lane Kendig is the founder and former president of Kendig Keast Collaborative. He has been practicing and writing about the relationship between community design, planning, and regulatory tools for more than 45 years. In addition to the recent books *Community Character* and its companion, *A Guide to Planning with Community Character*, Kendig is the author of *Performance Zoning* and the PAS reports *Too Big, Boring, or Ugly* and *Traffic Sheds, Rural Highway Capacity, and Growth Management*.

Cover: Photo by AtlasPDX82,
Wikimedia (CC BY SA 3.0)

Vol. 34, No. 4

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). James M. Drinan, JD, Chief Executive Officer; David Rouse, FAICP, Managing Director of Research and Advisory Services. *Zoning Practice* (ISSN 1548-0135) is produced at APA. Jim Schwab, FAICP, and David Morley, AICP, Editors; Julie Von Bergen, Senior Editor.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or subscriptions@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

Copyright ©2017 by the American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927. The American Planning Association also has offices at 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; planning.org.

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601-592



ARE YOUR HISTORIC
PRESERVATION REGULATIONS
SENSITIVE TO LANDOWNER
CONCERNS?

4