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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
~~City~~ of MONTGOMERY  
~~Town~~  
~~Village~~

Local Law No. 1 of the year 19 97

A local law RELATING TO THE ESTABLISHMENT OF LANDMARKS OR HISTORIC DISTRICTS  
(Insert Title) IN THE TOWN OF MONTGOMERY

Be it enacted by the TOWN BOARD of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of MONTGOMERY as follows:  
~~Town~~  
~~Village~~

SECTION I - PURPOSE

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmarks and historic districts is necessary to promote the economic, cultural, educational and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the Town of Montgomery has significant historic, architectural and cultural resources which constitute its heritage, this act is intended to:

- a. protect and enhance the landmarks and historic districts which represent distinctive elements of the Town of Montgomery's historic, architectural and cultural heritage;
- b. foster civic pride in the accomplishments of the past;
- c. protect and enhance Town of Montgomery's attractiveness to visitors and the support and stimulus to the economy thereby provided, and
- d. insure the harmonious, orderly and efficient growth and development of the Town of Montgomery.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

SECTION II - HISTORIC PRESERVATION COMMISSION

There is hereby created a commission to be known as the Town of Montgomery Historic Preservation Commission.

a. The Commission shall consist of seven (7) members to be appointed, to the extent available in the community, by the Supervisor as follows:

at least one shall be an architect or construction contractor or have particular expertise in this area;

at least one shall be a historian or have particular expertise in this area;

at least one shall be a licensed real estate broker or have particular expertise in this area;

at least one may be an attorney;

at least one shall be the owner of an historic property;

other members shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment or volunteer activity in the field of historic preservation, or other serious interest in the field;

and all members shall have a known interest in historic preservation and architectural development within the Town of Montgomery.

b. Commission members shall serve for a term of three years with the exception of the following:

1. the initial term of two members shall be one year, and

2. the initial term of two members shall be two years

c. The Chairman and Vice-Chairman of the Commission shall be

elected annually by and from among the members of the Commission and must be approved by the Town Board.

d. The powers of the Commission shall include the:

(i) Employment of staff and professional consultants as necessary to carry out the duties of the Commission, subject to the approval of the Town Board.

(ii) Promulgation of rules and regulations as necessary for the conduct of its business.

(iii) Adoption of criteria for the identification of significant historic, architectural and cultural parks and for the delineation of historic districts, subject to the other provisions of this law.

(iv) Conducting of surveys of significant historic, architectural and cultural landmarks and historic districts within the Town of Montgomery.

(v) Proposing to the Town Board the designation of identified structures or resources as landmarks and historic districts.

(vi) If authorized by the Town Board, acceptance on behalf of the Town of Montgomery government of the donation of easements and development rights; the making of recommendations to the Town government concerning the acquisition of easements or other interests in real property as necessary to carry out the purposes of this act.

(vii) Increasing public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs.

(viii) Making recommendations to Town government concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the Town.

(ix) Recommending acquisition of a landmark structure by the Town government where its preservation is essential to the purposes of this act and where private preservation is not feasible.

(x) Approval, approval with conditions or disapproval of applications for Certificates of Appropriateness pursuant to this act and ruling on any hardship applications.

e. The Commission shall meet at least semi-annually, but meetings may be held at any time on the written request of any three of the Commission members or on the call of the Chairman or of the Supervisor of the Town.

f. A quorum for the transaction of business shall consist of four (4) of the Commission's members, but not less than a majority of the full authorized membership may grant, grant with conditions or deny a Certificate of Appropriateness, or grant or deny a hardship application regarding a proposed demolition.

### SECTION III - DESIGNATION OF LANDMARKS OR HISTORIC DISTRICTS

a. The Town Board, either on its own initiative or upon recommendation of the Commission, may designate an individual property as a landmark if it:

(i) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or

(ii) Is identified with historic personages; or

(iii) Embodies the distinguishing characteristics of an architectural style; or

(iv) Is the work of a designer whose work has significantly influenced an age; or

(v) Because of a unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.

All such designations that are proposed by the Town Board in the absence of a recommendation of the Commission shall be referred to the Commission for its advice and comment.

b. The Town Board may designate a group of properties as a historic district if it:

(i) contains properties which meet one or more of the criteria for designation of a landmark; and

(ii) by reason of possessing such qualities, it constitutes a distinct section of the Town.

The boundaries of each historic district or separate landmark designated henceforth shall be specified in detail and shall be filed, in writing, in the Town Clerk's office for public inspection and may be described on the Zoning Map or other official map of the Town.

c. Notice of a proposed designation shall be sent by registered or certified mail to the owner of the property proposed for designation at least ten (10) days prior to the public hearing required herein, describing the property proposed and announcing a public hearing by the Town Board to consider the designation. Once the Town Board has issued notice of a proposed designation, no building permits for the subject premises shall be issued by the building inspector until the Town Board has made its decision and, if applicable, the Commission has granted a Certificate of Appropriateness.

d. The Town Board shall hold a public hearing prior to designation of any landmark or historic district. The Commission, owners

and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments or other evidence offered outside of the hearing provided the owner is provided with all such materials immediately upon receipt by the Town Board.

e. The Town Board shall forward notice of each property designated as a landmark and of the boundaries of each designated historic district to the office of the Orange County Clerk for recordation and, if the Town Board is unable to record such designation in the Office of the County Clerk, the Town Board shall cause such designation to be noted on the Zoning or other official Map of the Town of Montgomery so that prospective purchasers of lands designated herein shall have constructive notice of such designation.

SECTION IV - CERTIFICATE OF APPROPRIATENESS FOR ALTERATION, DEMOLITION  
OR NEW CONSTRUCTION AFFECTING LANDMARKS OR HISTORIC  
DISTRICTS

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a designated landmark or property within a historic district, nor shall any person make any material change in the appearance of such a property or other exterior elements which affect the appearance and cohesiveness of the historic district, without first obtaining a Certificate of Appropriateness from the Historic Preservation Commission.

SECTION V - CRITERIA FOR APPROVAL OF A CERTIFICATE OF APPROPRIATENESS

a. In passing upon an application for a Certificate of Appropriateness, the Historic Preservation Commission shall not consider changes to interior spaces, unless they are open to the public.

The Commission's decision shall be based upon the following principles:

(i) properties which contribute to the character of a historic district or otherwise have been designated as a landmark herein shall be retained, with their historic features altered as little as possible;

(ii) any alteration of existing properties shall be compatible with its historic character, as well as with the surrounding district, if any; and

(iii) new construction shall be compatible with the district in which it is located, if any, or with the existing structure, if a Certificate of Appropriateness is sought for a renovation, repair, demolition or addition to a designated landmark.

b. In applying the principle of compatibility, the Commission shall consider the following factors:

(i) the general design, character and appropriateness to the property of the proposed alteration or new construction;

(ii) the scale of proposed alteration or new construction in relation to the property itself, surrounding properties and the neighborhood;

(iii) texture, materials and color and their relation to similar features of other properties in the neighborhood;

(iv) visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape and the rhythm of spacing of properties on streets, including setback;

(v) the importance of historic, architectural or other features to the significance of the property.

SECTION VI - CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURE

a. Prior to the commencement of any work requiring a Certificate of Appropriateness an owner shall file an application for such a certificate with the Historic Preservation Commission. The application shall contain:

- (i) name, address and telephone number of applicant;
- (ii) location and photographs of property;
- (iii) elevation drawings of proposed changes, if available;
- (iv) perspective drawings, including relationship to adjacent properties, if available;
- (v) samples of color or materials to be used;
- (vi) where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the sign's location on the property;
- (vii) any other information which the Commission may deem necessary in order to visualize the proposed work;

b. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the Historic Preservation Commission. The Certificate of Appropriateness



required by this act shall be in addition to and not in lieu of any building permit that may be required by any other law, rule or regulation of the Town of Montgomery.

c. The Commission shall approve, deny or approve the permit application with modifications within forty-five (45) days from receipt of the completed application or within fifteen (15) days from the closure of any public hearing. The Commission may, but is not required to, hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Any public hearing held hereunder shall be convened within thirty (30) days of the receipt of a completed application for a Certificate of Appropriateness. Should the applicant request that a public hearing be held, the Commission must hold such public hearing.

d. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application.

SECTION VII - HARDSHIP CRITERIA FOR A DEMOLITION (FOR A DEMOLITION ONLY)

a. An applicant whose Certificate of Appropriateness for a demolition has been denied may apply to the Commission for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

(i) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

(ii) the property cannot be adapted for any other use,

whether by the current owner or by a purchaser, which would result in a reasonable return; and

(iii) efforts to find a purchaser interested in acquiring the property and preserving it have failed.

SECTION VIII - HARDSHIP APPLICATION PROCEDURE FOR DEMOLITION (FOR DEMOLITION ONLY)

a. After receiving written notification from the Commission of the denial of a Certificate of Appropriateness for a demolition, an applicant may commence the hardship process provided such process is commenced within ninety (90) days of the filing of the decision with the office of the Town Clerk. No demolition permit shall be issued for the subject property unless and until the Commission makes a finding that a hardship exists and has modified its previous decision.

b. The Commission may, but is not required to, hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views. The Commission shall hold such public hearing if requested by the applicant for a hardship. Any public hearing held hereunder shall be commenced within twenty (20) days of receipt of the hardship application together with the applicant's request for a hearing.

c. The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

d. All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered or certified mail and a copy

filed with the Town Clerk's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

e. The Commission shall rule on the hardship application forthwith and without delay and in no event more than twenty (20) days after application for same or within ten (10) days after the public hearing, whichever is later.

#### SECTION IX - ENFORCEMENT

All work performed pursuant to a Certificate of Appropriateness issued under this Local Law shall conform to any requirements included therein. It shall be the duty of the Building Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the Certificate of Appropriateness, or upon notification of such fact by the Historic Preservation Commission, the Building Code Enforcement Officer shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

#### SECTION X - MAINTENANCE AND REPAIR REQUIRED

Nothing in this Local Law shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in design, material, color or outward appearance.

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the

property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Preservation Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

Examples of such deterioration include:

- a. Deterioration of exterior walls or other vertical supports;
- b. Deterioration of roofs or other horizontal members;
- c. Deterioration of exterior chimneys;
- d. Deterioration or crumbling of exterior stucco or mortar.
- e. Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors;
- f. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

#### SECTION XI - VIOLATIONS

a. Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be subject to a penalty as set forth in Section 140-90 of the Zoning Law of the Town of Montgomery, as may be amended and, further, shall be subject to a claim by the Town of Montgomery for injunctive or declaratory relief in any court of competent jurisdiction.

b. Any person who demolishes, alters or causes new construction to a designated property or permits a designated property to fall into a serious state of disrepair in violation of this local law shall be required to restore the property and its site to its condition

and appearance prior to the violation. Any action to enforce this subsection shall be brought by the Town Board through its attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

SECTION XII - APPEALS TO THE TOWN BOARD

Any person aggrieved by any final decision of the Historic Preservation Commission relating to a Certificate of Appropriateness or to a hardship denial concerning a proposed demolition may, within thirty (30) days of the filing of the decision with the office of the Town Clerk, file a written application with the Town Board of the Town of Montgomery for review of the final decision of the Commission.


The Town Board must render a written decision within sixty (60) days of receipt of a fully complete application for an appeal and forward such decision to the appellant within five (5) days by registered or certified mail.

Any party with standing may seek judicial review of the Town Board's determination of the appeal provided such action or proceeding is commenced in the appropriate court of jurisdiction within thirty (30) days of the filing of the written decision on the appeal with the Office of the Town Clerk.

BE IT ENACTED THIS 4<sup>th</sup> DAY OF SEPTEMBER, 1997 BY THE TOWN BOARD OF THE TOWN OF MONTGOMERY, COUNTY OF ORANGE, STATE OF NEW YORK.

TOWN BOARD OF THE TOWN OF MONTGOMERY

CARL HELSTROM, SUPERVISOR  
EARL C. SNYDER, COUNCILMAN  
ALBERT C. VALK, COIUNCILMAN  
DANIEL S. DEMPSEY, JR., COUNCILMAN  
WILLIAM P. KIRNAN, COUNCILMAN

  
MARIE MARANO, TOWN CLERK  
TOWN OF MONTGOMERY

ATTEST

TOWN SEAL