

Local Law No. \_\_\_\_ of the year 2007  
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**TOWN OF CLARENCE  
HISTORIC PRESERVATION LOCAL LAW**

Be It Enacted by the Clarence Town Board as follows:

**SECTION 1. TITLE**

This local law relating to the establishment of landmarks or historic districts in the Town of Clarence shall be known as the Historic Preservation Law of the Town of Clarence.

**SECTION 2. 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 Clarence has many 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 Clarence's historic, architectural, social, economic, and cultural heritage;
- (b) Foster civic pride in the accomplishments of the past;
- (c) Protect and enhance the Town's attractiveness to visitors and the support and stimulus to the economy thereby provided, and promote the use of historic districts and landmark sites for the education, pleasure and welfare of the Town.
- (d) Insure the harmonious, orderly, and efficient growth and development of the Town, while safeguarding the Town's historic, aesthetic and cultural heritage as embodied and reflected in such landmarks and districts.

**SECTION 3. DEFINITIONS**

Unless the context clearly indicates a different meaning, for the purposes of this local law, the following words and terms shall be defined as follows:

**ALTER** – To change one (1) or more exterior architectural and/or historic feature(s) of a landmark, and improvement on a landmark site or a structure within an historic district.

**BUILDING** – Any structure or part thereof having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment goods or materials of any kind

**CERTIFICATE OF APPROPRIATENESS** – A certificate issued by the Clarence Town Board after recommendation or from the Historic Preservation Commission approving plans for alteration construction, removal or demolition of a landmark, an improvement to a landmark site or a structure within an historic district.

**CONSTRUCTION** – Building an addition, making an alteration to an existing structure, or building a new principal or accessory structure.

**DEMOLITION** – Destruction of a building, structure, or improvement.

**DEVELOPMENT RIGHTS** – The right to develop property.

**EXTERIOR** – Architectural style, design, general arrangement, and components of the outer surfaces of an improvement, building or structure as distinguished from the interior surfaces, including but not limited to the kind and texture of building material and the type and style of windows, doors, signs, and other such exterior fixtures.

**FACADE** – The exterior portions of a building or structure that are exposed to view by persons not within the building or structure.

**FACADE EASEMENT** – An easement that prohibits or restricts any changes in the facade of a building that would alter or damage its historic integrity or architectural character.

**HISTORIC DISTRICT:** A geographically definable area so designated pursuant to this local law

**HISTORIC PRESERVATION COMMISSION OR COMMISSION** – The Town of Clarence Preservation Commission.

**IMPROVEMENT** – Any building, structure, place, parking facility, fence, gate, wall, work of art, or other object constituting a physical betterment, or any part thereof.

**INTERIOR** – That portion of a building or structure not defined as exterior.

**LANDMARK** – Any building, property, object, structure, or natural feature or any part thereof so designated pursuant to this local law.

**LANDMARK SITE** – A significant historical or cultural sites(s) where building or structures no longer exist so designated pursuant to this code.

**OWNER** – A person, firm, corporation or other legal entity which owns the fee of property or a lessor state therein, a mortgagee or vendee in possession, a receiver, an administrator, an executor, a trustee, or any other person, firm, corporation or entity in control of property.

**PRESERVATION** – Retention of essential character of an improvement, object, building, natural feature, or structure as embodied in its existing form, integrity, and material. This term includes the retention of trees, landscaping, and vegetative cover of a site. This term may include temporary stabilization work as well as on-going maintenance of historic building materials.

**PROPERTY** – A lot, parcel or tract of land together with the building(s) and/or improvements thereon.

**RECONSTRUCTION** – Restoration to and/or reproduction of, the exact form and detail of a vanished building, structure, improvement or part thereof as it appeared at a specific time.

**REHABILITATION** - Repair or alteration that enables building, structures or improvements to be efficiently utilized while preserving those features of buildings, structures or improvements that are significant to their historic, architectural or cultural values.

**RESTORATION** –The replication, reconstruction or recovery of the form and details of a building, structure or improvement and its site to its original architectural and or historical features.

**SITE** – A plot or parcel of land.

**STRUCTURE** – Anything constructed or erected which requires permanent or temporary location on the ground. This term shall include but not be limited to buildings, walls, fences, signs, billboards, lighting fixtures, screen enclosures, and works of art.

**TOWN** – The Town of Clarence, County of Erie, State of New York.

**TOWN BOARD** – The Town Board of the Town of Clarence, County of Erie, State of New York.

**TOWN CLERK** – Town of Clarence Town Clerk.

**TOWN ATTORNEY** – Town of Clarence Town Attorney.

**ZONING ENFORCEMENT OFFICER** – For the purpose of this law, the Zoning Enforcement Officer may be the Director of Community Development, Assistant Director of Community Development, Zoning Code Enforcement Officer, any Building Inspector or any person or persons designated by the Town Board to act in such capacity.

#### **SECTION 4. HISTORIC PRESERVATION COMMISSION**

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

(a) The Commission shall consist of nine (9) members to be appointed, to the extent available in the community, by the Town Board as follows:

- at least one shall be an architect experienced in working with historic buildings;
- at least one shall be a historian;
- at least one shall be an attorney;
- at least two 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 and/or architectural preservation and historic Development within the Town of Clarence.

(b) Commission members shall serve for a term of four (4) years, with the exception of the initial term of the nine (9) members. In the initial term, one member shall serve one year, two shall serve two years, three (3) shall serve three years, and three (3) shall serve four years.

(c) The Chairman and Vice Chairman of the Commission shall be appointed by the Town Board.

(d) The powers of the Commission shall include:

- (i) Employment of staff and professional consultants as necessary to carry out the duties of the Commission with budget approval from the Town Board;
- (ii) Promulgation of rules and regulations as necessary to carry out the duties of the Commission;
- (iii) Adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
- (iv) Conduct of surveys of significant historic, architectural, and cultural landmarks and historic districts within the Town with budget from the Clarence Town Board as necessary.
- (v) Recommend to the Town Board that identified structures or resources be identified as landmarks and historic districts, respectively;
- (vi) To make recommendations to the Town Board on the donation of facade easements and development rights and the making of recommendations to the Town government concerning the acquisition of facade 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 structure and properties by the Town government where its preservation is essential to the purposes of this act and where private preservation is not feasible; and

(x) Approval or disapproval of applications for certificates of appropriateness pursuant to this act.

(xi) Commenting and recommending on nominations and approvals of state and national landmarks.

(e) The Commission shall meet at least monthly if any business is pending, but no less than quarterly. Meetings may be held at any time on the written request of any two of the Commission members or on the call of the Chairman or the Town Board.

(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 or deny a Certificate of Appropriateness.

#### **SECTION 5. DESIGNATION OF LANDMARKS OR HISTORIC DISTRICTS**

(a) The Commission may recommend to the Town Board an individual property for designation 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 method of construction; and/or

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

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

(b) The Commission may recommend to the Town Board 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 actually designated by the Town Board henceforth shall be specified in detail and shall be filed, in writing, in the Town Clerk's Office for public inspection and where directed by the Town Board, shall also be filed in the office of the Erie County Clerk under Deeds.

(c) Before issuing a Notice of Proposed Designation pursuant to subparagraph (d) below, the Town Board shall notify affected property owners, and refer to appropriate interested agencies for comment, the designation proposal.

(d) Notice of a proposed designation shall be pursuant to the Town Board notification policy. Once the Commission has issued notice of a proposed designation, no building permits shall be issued by the Building Department until the Commission has made its decision.

(e) Within fifteen (15) days after closing the public hearing, the Commission shall recommend to the Town Board who shall adopt a resolution rendering its decision with respect to the Commission's recommendation. The Town Board may approve the recommendation, reject the recommendation, or remand the matter to the Commission with instructions for further review and consideration. (f) Following the adoption of a resolution approving the designation of a landmark or historic district, the affected site or area shall be so indicated on the Official Map of the Town of Clarence and the resolution or other appropriate certificate of the designation shall be filed for recording in the office of the Erie County Clerk.

#### **SECTION 6. 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 landmark or property within a historic district, nor shall any person make any material change in the appearance of such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which affect the appearance and cohesiveness of the landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Preservation Commission. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in any preservation district or landmark site that does not involve a change of design, and material, or the appearance thereof.

#### **SECTION 7. 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 publicly owned property.

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

- (i) Landmarks and Properties which contribute to the character of an historic district shall be retained, with their historic features altered as little as possible;
  - (ii) Any alteration of existing properties shall be compatible with their historic character, as well as with the surrounding area; and
  - (iii) New construction shall be compatible with the individual landmark of the historic district in which it is located.
- (b) In applying the principle of compatibility, the Commission shall consider the following factors:
- (i) The general design, character and appropriateness 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 their relation to similar features of the property itself with other properties in the neighborhood;
- (iv) Visual compatibility with the property itself and with surrounding properties, including proportion of a building's front facade, proportion and arrangement of windows and other openings within the facade and roof shape, and the rhythm of spacing of properties on streets, including setback and the features such as drives, walks, walls, fences and vegetation; and
- (v) The importance of historic or cultural features to the significance of the property.

**SECTION 8. CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURE**

(a) Prior to the commencement of any work requiring a certificate of appropriateness, the 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) 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; and
- (vi) 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 ordinance of the Town of Clarence.

(c) The Commission shall approve or deny the permit with modifications within 30 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for interested parties of the application to present their views.

(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.

(e) Certificates of appropriateness shall be valid for 24 months, after which the owner must reapply if he still wishes to undertake work on the property.

(f) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in any preservation district or landmark site that does not involve a change of design, material, color or the appearance thereof.

#### **SECTION 9. HARDSHIP CRITERIA FOR DEMOLITION**

An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply 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; or
- (iv) The building has been deemed an unsafe structure by the Zoning Code Enforcement Officer.

#### **SECTION 10. HARDSHIP CRITERIA FOR ALTERATION**

An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply 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; or
- (iv) The building has been deemed an unsafe structure by the Zoning Code Enforcement Officer; and/or
- (v) The cost of compliance is cost prohibitive to the Owner.

#### **SECTION 11. HARDSHIP APPLICATION PROCEDURE**

(a) After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists.

(b) The Commission shall hold a public hearing on the hardship application at which an opportunity will be provided for interested parties of the application to present their views.

(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 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. If the application is granted, the Commission shall approve only such work as is necessary to alleviate the hardship.

## **SECTION 12. ENFORCEMENT**

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the Building Inspector 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 Inspector 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 13. MAINTENANCE AND REPAIR REQUIRED**

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district that does not involve a change in design, material, and 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 of buildings or structures or site retaining walls and/or stairs.

(b) Deterioration of roofs or other horizontal members of buildings or structures.

(c) Deterioration of exterior chimneys architectural features such as towers, chimneys or parapets or site features such as stairs or terraces.

(d) Deterioration or crumbling of exterior stucco or mortar.

(e) Determination of weather protective materials and measures for buildings, structures and general site conditions.

(f) Deterioration of any feature so as to create a hazardous condition, which could lead to the claim that demolition of all or a portion of a property is necessary for the public safety.

**SECTION 14. VIOLATIONS**

(a) A violation of any provision of this chapter shall be punishable by a fine of no less than twenty dollars (\$20.00) up to a maximum of two-hundred and fifty dollars (\$250.00) for each day the violation continues and/or imprisonment not to exceed fifteen (15) days.

(b) Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this ordinance shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Town Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

**SECTION 15. APPEALS**

Any person aggrieved by a decision of the Historic Preservation Commission relating to hardship or a certificate of appropriateness may, within twenty (20) days of the decision, file a written application with the Town Board for review of the decision. Reviews shall be conducted based on the same record that was before the Commission and using the same criteria. Notice of such appeal shall be in writing and shall include a copy of the decision appealed from. The Town Board, upon receipt of such appeal, shall schedule a hearing within thirty (30) days. Such hearing shall be upon written notice to the appellant and the Historic Preservation Commission. Upon such hearing the Town Board shall have the power to affirm, modify, reverse or remand to the Commission for further consideration on the decision appealed from.

**SECTION 16: REAL PROPERTY TAX EXEMPTION**

(A) Legislative intent.

This article is intended to create a real property tax exemption that preserves or increases the historic character of real property located within the Town of Clarence. In particular, this tax exemption for designated landmarks is being enacted for the following goals:

- (i) To increase incentives for property owners in historic districts and owners of historic properties to invest in the upkeep and rehabilitation of historically significant properties.
- (ii) To provide incentive for the restoration and rehabilitation of commercial structures designated as landmarks in order to help attract and retain businesses in the Town of Clarence.
- (iii) To assist homeowners interested in restoring their own properties but facing potential increases in taxation resulting from alterations qualifying for this exemption.
- (iv) To provide a concrete benefit for restoring or improving historically or architecturally significant properties.

(B) Application

This real property tax exemption applies to any alteration or rehabilitation of historic property designated by the Town to be a designated landmark under section 5 of this chapter and as authorized pursuant to 96-a or 119-dd of the General Municipal Law and 444-a of the Real

Property Tax Law.

(C) Historic property exemption.

Designated landmarks, as defined in section 3 of this chapter, shall be exempt from taxation to the extent of any increase in value attributable to such alteration or rehabilitation pursuant to the following schedule:

Year of Exemption	Percentage of Exemption
1	100%
2	100%
3	100%
4	100%
5	100%
6	80%
7	60%
8	40%
9	20%
10	0%

(D) Exemption requirements.

No real property tax exemption shall be granted under this section for such alteration or rehabilitation unless:

- (i) Such property has been designated by the Historic Preservation Commission as a historic district or as a designated landmark under section 5 of this chapter;
- (ii) Any alteration or rehabilitation of the exterior and/or any publicly owned interior of a designated landmark meets the guidelines and review standards established in this chapter;
- (iii) Any alteration or rehabilitation of the exterior and/or publicly owned interior of a designated landmark is approved by the Historic Preservation Commission prior to commencement of work;
- (iv) Such alteration or rehabilitation is carried out for the purpose of historic preservation. For purposes of qualifying for the real property tax exemption pursuant to this section, alterations and rehabilitations shall be deemed to be for the purpose of historic preservation if:
  - (a) Only exterior work is involved; or
  - (b) Interior work involves the portion of the building designated as a publicly owned interior under this section; or

- (c) At least 20% of the total cost of the project is directly attributable to exterior work and/or work that enhances the structural stability or structural integrity of the property; or
- (d) The project returns use to a building which has not previously been used for a permissible purpose under applicable zoning ordinances for a continuous period of at least two (2) years; and
- e) Such alterations or rehabilitation is commenced subsequent to the effective date of this section

(E) Exemption application.

This exemption shall be granted only by application of the owner(s) of such designated landmark, on a form prescribed by the State Equalization and Assessment Board. The application shall be filed with the Town Assessor on or before the applicable taxable status date covering such landmark.

Such exemptions shall be granted where the Assessor is satisfied that the applicant is entitled to an exemption pursuant to this section. The Assessor shall approve such application and such property shall thereafter be exempt from taxation and special ad valorem levies for Clarence real property taxation as herein provided commencing with the assessment roll prepared on the basis of the taxable status date referred to in this section. The Assessor shall enter the assessed value of any exemption granted pursuant to this article on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

## **SECTION 17: TOWN TAX RELIEF**

A. After a building, structure, site or district of such has been duly designated by the Commission as historically significant, the owner or owners of said building, structure, site or district of such shall be exempt from the General Town and Highway Taxes.