



LAW DEPARTMENT

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ALLEN G. SCHWARTZ,
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July 21, 1981

OPINION No. 35-01

Hon. Kent Barwick
Chairman
Landmarks Preservation Commission

Dear Mr. Barwick:

This is in response to a request by Lenore Norman, Executive Director, for an opinion whether a designation by the Landmarks Preservation Commission ("Commission"), pursuant to Administrative Code, §207-2.0, subd. q, is in full force and effect upon the date of such designation by the Commission or whether such designation becomes effective upon the action of the Board of Estimate ("Board").

The effective date of a designation by the Commission is plainly stated in Administrative Code, §207-2.0, subd. c, which states as follows:

"Subject to the provisions of subdivisions g and h of this section, any designation or amendment of a designation made by the commission pursuant to the provisions of subdivisions a, b and c of this section shall be in full force and effect from and after the date of adoption thereof by the commission." (Emphasis added.)

Subdivisions g and h of §207-2.0 pertain to action taken by the Board with respect to a designation or a proposed rescission of a designation by the Commission.

Section 207-2.0, subd. d, para. 2, of the Administrative Code provides as follows:

"The board of estimate may modify or disapprove such designation or amendment thereof within ninety days after a copy thereof is filed with

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"[N]o application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings, and no application shall be approved and no special permit or amended special permit for such construction, reconstruction or alteration, where required by article seven of the zoning resolution, shall be granted by the city planning commission or the board of standards and appeals, until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work."

Thus, once the Commission has made a designation affecting a property, the law, by its terms, prohibits the Department of Buildings from approving any application and issuing any permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located thereon. Similarly, both the City Planning Commission and the Board of Standards and Appeals are prohibited from approving any application and from issuing any special permit or amended special permit prior to the issuance of the appropriate certificate or notice by the Commission.

This conclusion is supported by §207-20.0 of the Administrative Code, which states that the provisions of the Landmarks preservation law:

"shall be inapplicable to the construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an historic district ... where a permit for the performance of such work was issued by the department of buildings ... prior to the effective date of the designation"
(Emphasis added.)

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Accordingly, it is my opinion that the designation of a landmark by the Commission pursuant to §207-2.0, subd. e, of the Administrative Code is in full force and effect upon the date of such designation by the Commission and remains in full force and effect unless subsequently disapproved or modified by the Board of Estimate or rescinded in accordance with the provisions of the Administrative Code.

Sincerely,

[Handwritten signature]
Corporation Counsel

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