

ARTICLE IV Development Review Procedures and Plat Details

§40-22. Historic Preservation Commission and Historic District Regulations.* (See also §40-77G)

A. Historic Preservation Commission. There is hereby created a Historic Preservation Commission which shall consist of five (5) regular members and two (2) alternate members each of whom shall be appointed by the Mayor. Alternate members may participate in discussions during proceedings but may not vote except in the absence or disqualification of a regular member. The Historic Preservation Commission appointed under Chapter III, Section 3-38 is continued with all its powers and duties being transferred without need to reappoint members, as if the appointments had been made pursuant to this Land Use Ordinance.

B. Composition of Historic Preservation Commission. The Historic Preservation Commission shall be composed of members from the following classes:

(1) Class A. One (1) person who is knowledgeable in building design and construction or architectural history and who may reside outside the Borough.

(2) Class B. One (1) person who is knowledgeable with or a demonstrated interest in local history and who may reside outside the Borough.

(3) Class C. Three (3) citizens of the Borough who shall hold no other municipal office, position, or employment except for members on the Planning Board or Zoning Board of Adjustment. Alternate members shall meet the qualifications of Class C membership.

B. Terms of Office.

(1) General. The regular members of the Historic Preservation Commission shall serve for a term of four (4) consecutive years and the alternate members shall serve for a term of two (2) consecutive years.

(2) Terms of Office of Initial Members. The initial members first appointed to the Historic Preservation Commission shall serve for the following initial terms and thereafter as provided in paragraph C(1) above.

(a) Class A member: One (1) year.

(b) Class B member: Two (2) years.

(c) Class C member: One (1) member for two (2) years; and two (2) members for four (4) years.

(d) Alternate number 1: One (1) year.

(e) Alternate number 2: Two (2) years.

- (3) Vacancy. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term.
- (4) Exception. Notwithstanding any other provision herein to the contrary, the term of any member common to the Historic Preservation Commission and the Planning Board shall be for the term of the membership on the Planning Board and the term of any member common to the Historic Preservation Commission and the Zoning Board of Adjustment shall be for the term of membership on the Zoning Board of Adjustment, but in no event shall exceed the term for each member created hereby.

C. Organization; Officers; Rule; Meetings.

- (1) For purposes of administration, staffing and budgeting, other than legal counsel, the Commission is hereby placed within the Department of Administration, Division of Planning and Zoning.
- (2) Legal counsel to the Commission shall be appointed by the Director, Department of Law, and for purposes of budgeting control shall be within the Department of Law.
- (3) At their first meeting, the appointed members shall elect from among its members a Chairman and Vice-Chairman and shall select a Secretary of the Commission who need not be a member of the Commission, and who may or may not be a Borough employee.
- (4) The Commission may establish any rules necessary for the orderly conduct of its business. Any matter not covered by its adopted rules shall be governed by Robert's Rules of Order.
- (5) There shall be maintained, by the Division of Planning and Zoning, a record, which shall be open to the public, of the Commission's resolutions, proceedings and actions.

D. Powers and Duties. The Commission shall:

- (1) Prepare a survey of historic sites, places and resources of historical and architectural significance, based on the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Standards and Guidelines for Identification).
- (2) Make recommendations to the Planning Board on the historic preservation plan element of the Master Plan and on the implications for preservation of historic sites of any other Master Plan elements.
- (3) Advise the Planning Board on the inclusion of historic sites in the recommended capital improvement program.

- (3) Advise the Planning Board and Board of Adjustment on applications for development pursuant to Subsection F below.
- (4) Provide written reports to the Zoning Officer, who shall be the administrative officer for the purposes of this section, on applications for permits pertaining to historic sites or property in historic districts for any changes which were not determined by approval of an application for development by a municipal agency pursuant to Subsection F below.

E. Referral of Applications for Development.

- (1) All applications for development within the Historic District as defined in §40-77G or on historic sites designated on the Zoning or Official Map or identified in any component element of the Master Plan shall be referred to the Commission for advice concerning historic preservation as to any aspect of any such application for development.
- (2) The Commission shall submit its report to the Planning Board or Zoning Board of Adjustment, whichever shall be the Approving Authority.
- (2) The referral to the Commission shall be made when the application for development is deemed complete or is scheduled for a hearing, which ever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding.
- (3) The Commission shall provide its advice, which shall be conveyed through its delegation of one (1) of its members or staff to testify orally at the hearing of the application and to explain any written report which may have been submitted.
- (5) Recommendations from the Commission may be incorporated into a resolution of approval of the Planning Board or Zoning Board of Adjustment.
- (6) Failure of the Commission to report in writing to the Planning Board or Zoning Board of Adjustment shall be deemed to constitute a report in favor of the application and without recommendation or conditions.

F. Referral of Permits.

- (1) Required. A permit shall be required from the Zoning Officer for any of the following before any work can commence on any site, property, building or landmark within any historic district;
 - (a) Demolition of any building, landmark, place, improvement or structure;
 - (b) Relocation of any building, landmark, place, improvement or structure;
 - (c) Changing the exterior appearance of any building, landmark, place, improvement or structure by addition, alteration, maintenance, reconstruction, rehabilitation, repair, replacement or restoration;
 - (d) Any new construction of a principal or accessory structure.

(e) Construction of or changes in existing walls, fences, porches, railings, steps or signs.

(2) Permit Not Required. A permit shall not be required for the following:

(a) Changes to the interior of structures.

(b) Repair or exact replacement of any existing improvement provided the work does not alter the exterior appearance of the structure. In the event, however, the previous noncontributing or disharmonious repair is being replaced, such repair or replacement is permitted only if the repair or replacement returns the structure to its original condition. The following are some of the activities which are permitted as repairs:

[1] Identical replacement of existing windows and doors;

[2] Repairs of existing windows and doors and the installation of storm windows and doors that do not change their design, scale, or appearance;

[3] Maintenance and repair of existing roofing materials involving no change in the design, scale, or appearance of the structure;

[4] Structural repairs that do not alter the exterior appearance of the structure;

[5] Replacement of existing clapboards, shingles, or other siding with identical materials;

[6] Maintenance and repair of existing clapboards, shingles, or other siding (including masonry) involving no change in the design, scale, or appearance of the structure;

[7] Exterior or interior painting of existing structures.

(3) Permit Defined. A permit as used herein is required for exterior work to any structure or property in an Historic District, which exterior work will be subject to public view, including, but not limited to a building permit, a demolition permit, a permit to move, convert, relocate or remodel or to change the use or occupancy of any structure or property in an Historic District. Permits shall also be required for all exterior work subject to public view on fences, signs, porches, railings, and steps for any structure or property in an Historic District.

(4) The applicant shall submit plans to the Zoning Officer detailing the scope of the proposed project. The plans shall contain sufficient data on the existing and proposed exterior treatment of the structure to demonstrate compliance with all requirements of the design guidelines. If the permit requested was not previously approved by an application for development, and if the scope of the work includes construction or modification of streets, curbs, sidewalks, driveways, parking areas, or drainage or sewerage disposal facilities, the plans shall include these features. In addition, if not previously approved on an application for development, the plan shall be sufficiently detailed to show the location, size and type of any buffers, wooded areas or landscaping features. Plans which do not contain sufficient data for the Historic Preservation Commission to make appropriate determinations under this section shall be returned to the applicant as an incomplete submission.

(5) Review of Applications. The Zoning Official shall refer all applications for permits pertaining to regulated activities of an historic site or within an Historic District to the Commission for a written report on the application of the ordinance provisions concerning historic preservation to any of those aspects of the change proposed which were not

determined by the approval of an application for development by either the Planning Board or the Zoning Board of Adjustment. The permit review shall include all relevant aspects of the design criteria and guidelines as they apply to the proposal which aspects were not determined by the Planning Board or Zoning Board of Adjustment in the development application.

- (6) The Commission shall submit its written report to the Zoning Official as soon as possible but not later than forty-five (45) days of the referral of the application to the Commission. Failure of the Commission to respond to the Zoning Official within forty-five (45) days shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant for the permit and the Commission.
- (7) Appeals. The granting or denial of a permit may be appealed to the Zoning Board of Adjustment in the same manner as an appeal is taken pursuant to N.J.S.A. 40:55D-70(a).
- (8) In the event of an appeal of a permit to the Zoning Board of Adjustment, if the Zoning Board of Adjustment determines there is error in the decision of the Zoning Officer pursuant to the report of the Commission, the Board of Adjustment shall include the reasons for its determination in the findings of its decision.

G. Enforcement of Historic District Regulations. Notwithstanding the provisions of §40-21, the following provisions shall apply for the enforcement of historic preservation matters.

- (1) Any person violating any of the provisions of this section shall upon conviction therefor be liable to the penalties herein.
- (2) A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- (3) Any person who shall undertake any activity without approval required by this section, shall be deemed to be in violation of this section.
- (4) Upon learning of the violation, the Zoning Officer shall personally serve upon the owner of the property whereon the violation is occurring, a notice describing the violation in detail and giving the owner ten (10) days to abate the violation by restoring the site or improvement to the condition which existed prior to the violation. If the owner cannot be personally served within the Borough with such notice, copies shall be posted on the site and a copy sent to the owner at his or her last known address.
- (5) In the event that the violation is not abated within ten (10) days of service or posting on the site as provided herein, the Zoning Officer shall cause to be instituted any appropriate action or proceeding to prevent such unlawful activity, to restrain, correct or abate such violation, to prevent the occupancy of any such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
- (6) If any person shall undertake any activity requiring a permit and report of the Commission without first having obtained Commission approval, such person shall be required to immediately stop the activity, apply for approval, and take any necessary measures to preserve the affected historic site or improvement pending a decision. If the work is denied, any such person shall immediately restore the affected historic site, or improvement, to its pre-activity

status. The Zoning Officer is hereby authorized to seek injunctive relief regarding a stop action or restoration in the Superior Court of New Jersey, Chancery Division, not less than ten (10) days after the delivery of notice pursuant to paragraph (4) hereof.

(7) In addition to the remedies provided above, anyone convicted of a violation of this Article before a court of competent jurisdiction shall be liable to a penalty as follows:

(a) For each day up to ten (10) days, not more than twenty-five dollars (\$25.00) per day.

(b) For each day between eleven (11) and twenty-five (25) days, not more than fifty dollars (\$50.00) per day.

(c) For each day beyond twenty-five (25) days not more than seventy-five dollars (\$75.00) per day.

(d) For each day beyond twenty-five (25) days a jail term not to exceed ninety (90) days may be imposed.