



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMUNITY INVESTMENT AND ECONOMIC REVITALIZATION
HISTORIC PRESERVATION OFFICE

501 East State Street

P.O. Box 420, Mail Code 501-04B

Trenton, New Jersey 08625-0420

Tel. (609) 940-4312

www.nj.gov/dep

Mikie Sherrill
Governor

Ed Potosnak
Acting Commissioner

Dr. Dale G. Caldwell
Lt. Governor

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Eric Holtermann
holtermann@hmr-architects.com
Pennington Planning Board
planning@penningtonboro.org

Dear Eric,

Thank you for submitting your ordinance to the New Jersey Historic Preservation Office for review and comment. Please see our response below. Each comment is referenced by page and is listed as a critical issue, best practice, or kudos.

- **Critical issues** are barriers to Certified Local Government program certification that require action to enable the process to move forward.
- **Best practices** are improvements you can make to have a stronger, more effective ordinance. While changes are not required, best practice issues should be seriously considered as they present opportunities for significant improvement to an applicant's clear understanding of processes and standards. We have included example language that you can use for guidance.
- **Kudos** are parts of your ordinance that we feel are excellent and may serve as a model for other municipalities.

Page 1

Best Practice: Section 119-1, A and B. It is recommended not to include language referencing archaeology unless you have a professional archaeologist as an HPC member, on staff, or are committed to hiring a consultant to provide this expertise to the commission. Additionally, we notice that archaeology is not included in your criteria for designation, so it doesn't make sense to include it in your purpose and objectives. Other references to archaeology/archeology are found on pages 2, 3, and 12.

Page 2

Critical Issue: Per the Municipal Land Use Law, the Certificate of Appropriateness must be issued by the Administrative Officer. The Historic Preservation Commission can make the decision, but the Administrative Officer is the one who must issue the document. This same issue was noted when we commented on your ordinance in 2015. Additionally, a Certificate of Appropriateness does not just document a review, as review can result in approval *or* denial. A Certificate of Appropriateness is specifically an approval. Please change your definition of Certificate of Appropriateness to state, “A document issued by the Administrative Officer at the direction of the Historic Preservation Commission demonstrating its approval of any...”

Best Practice: Most historic preservation ordinances list “Contributing” under a definition for “Historic District Resources.” See this example definition:

HISTORIC DISTRICT RESOURCES - those resources that are located in the historic district and classified as either “key”, “contributing” or “noncontributing”, which are defined as follows:

- 1) KEY-** any buildings, structures, sites, objects or improvements which, due to their significance, would individually qualify for historic landmark status;
- 2) CONTRIBUTING-** any buildings, structures, sites, objects or improvements which are integral components either because they date from a time period which makes them historically significant or because they represent an architectural type, period or method which is historically significant; and
- 3) NON-CONTRIBUTING** - any buildings, structures, sites, objects or improvements which do not add to the historic architectural qualities, historic associations, or values for which a historic district is significant because:
 - (a).** it was not present during the period of significance;
 - (b).** due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period; or
 - (c)** it does not independently meet the National Register criteria.



Best Practice: Consider adding a definition for “Emergency Repairs.” See this example definition:

EMERGENCY REPAIRS - When a landmark or a building, structure, object or site located within a historic district requires immediate repair to preserve its continued habitability and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with Borough codes without first obtaining a certificate of appropriateness. Under such circumstances, the repairs performed shall be only such as are necessary to protect the health and safety of its occupants or others and/or to maintain habitability. A request for the Commission's review shall be made simultaneously with the onset of emergency work, and no work in addition to the emergency repairs shall be performed on the structure until an appropriate request for approval is made and approval is obtained in accordance with the procedures set forth in this article. All work done under this section shall conform to the standards for rehabilitation set forth in this ordinance.

Best Practice: For your definition of “Historic District,” consider adding reference to the zoning overlay. See this example definition:

HISTORIC DISTRICT - one or more historic resources and intervening or surrounding property significantly affecting or affected by the quality and character of the historic resources. [N.J.S.A. 40:55D-4] For the purposes of this ordinance “historic district” shall further mean such overlay zone district or districts as are identified on the zoning map of the municipality pursuant to N.J.S.A. 40:55D-65.1.

Best Practice: What is the distinction between Historic Resource, Historic Site, and Historic Structure? There seems to be some overlap, and it may be unclear to homeowners. A similar comment was made in 2015. There has been some improvement since then but not much. Does Historic Structure mean Landmark? If so, Landmark is the term that is used in the Municipal Land Use Law, so we recommend using that term instead.

Page 3

Best Practice: As mentioned on page 2, most historic preservation ordinances list “Key Contributing” and “Noncontributing” under a definition for “Historic District Resources.”



Page 5

Critical Issue: Membership/Class Structure. Your membership does not follow the class structure established by your ordinance/the Municipal Land Use Law. According to your website, your commission has five Class A/B members and only two Class C members. Your ordinance reads, “A total of at least one less than a majority shall be of Class A and B.” In a seven-member commission, there must be at least four Class C members. Members can be appointed as Class C members even if they meet the requirements of Class A/B. Additionally, a 5-member commission may be more feasible, as noted in our 2015 comments. New Jersey recently passed legislation requiring Historic Preservation Commissions to undergo more rigorous training. Some Commissions have interpreted this to mean that serving on a Historic Preservation Commission will be less of a volunteer activity. This may make it more difficult to recruit and retain members, so you may want to reconsider how many members you want your Commission to have.

Kudos: E, Council Liaison. Having a Council Liaison seems like it would be useful and beneficial to Commissions. This provision could serve as a model for other municipalities.

Critical Issue: C (4) Please state that all vacancies must be filled within 60 days.

Page 6

Best Practice: G (1) Consider referencing the Open Public Records Act just as you reference the Open Public Meetings Act in the following point. This same comment was made in 2015.

Kudos: We notice that you have an Office of the Commission. This is not something we see often, but we are impressed as it demonstrates the level of commitment that Pennington has to its historic preservation goals.

Best Practice: H. Your conflict-of-interest clause uses a boundary of 100 feet, but we recommend a boundary of 200 feet. While the Municipal Land Use Law's recusal clause does not specify a boundary, we have read legal advice prescribing that Historic Preservation Commissions institute a 200-foot boundary to align with Planning and Zoning Board policies. The legal advice states, "the most prudent way to protect HPC



decisions from legal challenge is to adopt a conservative approach—mirroring the conflict policies of the Planning and Zoning Boards—and to have HPC members recuse themselves if they own property within 200 feet of the subject property." The conflict policies of the Planning and Zoning Boards can be found in N.J.S.A. 40:55D-12b and are reinforced by case law—*McNamara v. Saddle River Borough*, 64 N.J. Super. 426, 430 (App. Div. 1960). This issue is discussed in Chapter 5 of the Gann Law “Cox” book, entitled *New Jersey Land Use & Administration*.

Critical Issue: J (1) Your ordinance states that meetings can be canceled for lack of applications. If there are no applications for an entire year, that allows for no meetings to occur. Commission must meet a minimum of four times per year. Please include the language, “The Commission shall hold regular meetings at least 4 times per year and there shall be an attendance rule for Commission members.”

Best Practice Question: J (3) In a 7-member commission, having four members is typically considered a quorum. Why do you require five members? Is it to avoid a tie vote?

Page 7

Best Practice: C (2) The procedures for designation require color and/or black-and-white photographs. The black-and-white reference seems antiquated and not useful. Besides black-and-white photographs being expensive to print, they no longer provide an archival advantage. The lack of color is actually a disadvantage, as there is less visual information in the photograph.

Page 8

Critical Issue: Section 119-5, A. As mentioned on page 2, the Certificate of Appropriateness must be issued by the Administrative Officer. Please change to state, “A Certificate of Appropriateness issued by the Administrative Officer at the direction of the Historic Preservation Commission...” The same issue must be changed on the bottom of page 10/top of page 11.



Best Practices/Questions: Section 119-5. B. Our 2015 comments are still applicable.

(4) (a) Design, scale, and appearance are mentioned, but material is not. Is it okay to change wood with vinyl?

(4) (b) Why is it allowed to replace historic roofs with any material?

(5) Why wouldn't the Historic Preservation Commission not require review over things such as signs, awnings, sidewalks, solar panels?

Page 9

Best Practice Question: C (1) What is the standard for the Chair finding the application appropriate?

Critical Issue: C (1) The Chair may not issue the Certificate for Minor Work. That must be issued by the Administrative Official.

Best Practice Question: C (2) (c-d) Why is vinyl not permitted as siding, but it is permitted as roofing?

Page 10

Best Practice: D (3) Since you mention demolition, we recommend noting that more information for demolition can be found in section 119-11.

Best Practice: Section 119-7. Optional informational meetings are usually a non-quorum subcommittee to prevent the Commission's ability to act on a full application without prejudice.

Best Practice: Section 119-8, A. Regarding the determination of non-necessity, when does it happen? Does someone complete a full application and then the decision is made? What is the basis for the decision? This section could be explained better.



Page 11

Best Practice: H. Consider changing “the Construction Official or his appointee” to “the Construction Official, or his or her appointee.”

Page 15

Critical Issue: Section 119-14. Historic Preservation Commissions do not have the judicial power to determine hardship. In 1997, a Deputy Attorney General in the New Jersey Department of Law and Public Safety reviewed another New Jersey municipality's historic preservation ordinance that allowed the Historic Preservation Commission to consider potential economic hardships on applicants. The resulting Memorandum by the Deputy Attorney General states that consideration of any hardship, economic or not, is outside the purview of local Historic Preservation Commissions and is not in conformance with the Municipal Land Use Law. Hardship can only be considered by the Zoning Board as the Zoning Board can issue variances. Historic Preservation Commissions may advise the Zoning Board only in the case of referrals.

We hope these comments are helpful to you and provide clarification of what the Historic Preservation Office looks for in historic preservation ordinances. If you have any questions, do not hesitate to reach out. We look forward to continuing to work with you.

Sincerely,
Cassidy Deegan
Cassidy Deegan
Program Specialist
New Jersey Historic Preservation Office
cassidy.deegan@dep.nj.gov
609-940-5812

