



Changes to minor work and ordinary maintenance — impact on historic districts

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The Issue

On March 5, 2018, the New Jersey Register of Historic Places adopted several changes to the New Jersey Uniform Construction Code (UCC), developed by the New Jersey Department of Community Affairs (DCA) — Division of Codes and Standards. The New Jersey Historic Preservation Office received numerous inquiries about these code changes and how they affect local historic preservation and resource protection. To guide local officials and historic preservation commissions (HPCs) through these issues, we met with Division of Codes and Standards staff to discuss the revisions and prepare this document.

Roofing and siding projects

Local preservationists and members of municipal historic preservation commissions raised concerns about specific language. The changes included the following two categories of work on a one- or two-family detached dwelling:

Roofing The repair or replacement (including total replacement) of any amount of existing roof covering on detached one- or two-family dwellings.

Siding The repair or replacement of any amount of existing siding.
Exception: The repair or replacement of polypropylene siding is not ordinary maintenance.

The 2018 language changes reclassified these as **ordinary maintenance** that, therefore, does not require a property owner to obtain a construction permit.

Preservationists are primarily concerned that changes to roofing and siding on a historic landmark building or within a historic district will now be able to proceed without any review or guidance by a local historic preservation commission. There is now no requirement to obtain a construction/building permit for work on a historic resource, thereby potentially losing historic fabric and/or introducing inappropriate materials on the resource(s).

However, despite these concerns, the recent changes to the UCC should not impact whether these types of projects trigger a review by the local HPC. If the local historic preservation ordinance states this type of work requires HPC review, the project must still undergo HPC review regardless of other permitting requirements.

Municipal Land Use Law

Municipalities in New Jersey obtain their authority to identify, evaluate, designate and regulate historic resources (individual sites and districts) from the **Municipal Land Use Law (MLUL)**. This is the enabling legislation for municipal land use and development planning, zoning and — since 1986 — historic preservation zoning.

“Section C.40:55D-111 Designation and Regulation of Historic Sites or Districts by Ordinance, Reference of Applications for Issuance of Permits to Commission; Report for Grant, Conditional Grant, or Denial” of the MLUL says,

If the zoning ordinance designates and regulates historic sites or districts pursuant to subsection i of section 52 of the act (C.40:55D-65), the governing body shall by ordinance provide for the reference of applications for issuance of permits pertaining to historic sites or property in historic districts to the historic preservation commission for a written report on the application of the zoning ordinance provisions concerning historic preservation to any of those aspects of the change proposed, which aspects were not determined by approval of an application for development by a municipal agency pursuant to the act (C.40:55D-et seq.) The historic preservation commission shall submit its report either to the administrative officer or the planning board, as specified by ordinance. IF the ordinance specifies the submission of the historic preservation commission’s report to the planning board, the planning board shall report to the administrative officer.

Types of permits

The permit referenced in this section is *not* a construction/building permit — it is a separate permit, usually referred to as a ***Certificate of Appropriateness (COA)***, specific to the zoning ordinance provisions concerning historic preservation. As previously stated, the municipality’s historic preservation ordinance specifies whether types of projects requiring review still require a COA, regardless of whether they require a construction/building permit. If the ordinance does not require a development application or building permit, the application is typically made to the administrative officer or directly to the HPC (depending on how the ordinance is written). Enforcement of the COA would also be carried out pursuant to the language in the local preservation ordinance.

We believe the vague use of the word ***permit*** in the MLUL and the absence of the term ***Certificate of Appropriateness*** are partly the cause of the confusion and concern resulting from these UCC changes. The language changes do not clearly state that the ***permit*** required for the historic preservation provisions of the zoning ordinance is separate from a ***construction/building permit***. Any communities that *solely* rely on a building/construction permit as an HPC review trigger should consider revising their local historic preservation ordinance.

Recommendations

Certificate of Appropriateness and Permit

Communities should confirm their local historic preservation ordinance uses clear and correct definitions for *Certificate of Appropriateness* and *Permit*.

Examples

OCEAN CITY

(Does not use the term Certificate of Appropriateness.)

§1800.2.16

PERMIT

Any required City approval 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. Permit shall include but is not necessarily 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. Permit shall also include all exterior work subject to public view on fences, signs, porches, railing and steps for any structure or property in an historic district.

BORDENTOWN CITY

ARTICLE II § 2

CERTIFICATE OF APPROPRIATENESS

That permit issued by the historic preservation commission which is required before any work may be commenced on any historic landmark or any building, structure, site, object, or improvement, located within a historic district.

PERMIT

Any required approval, including but not limited to a certificate of appropriateness, construction permit, demolition permit, or zoning permit.

MILLBURN TOWNSHIP

§802 DEFINITIONS

CERTIFICATE OF APPROPRIATENESS

Shall mean that document issued by the Commission which is required before any work may be commenced on any historic landmark or any building, structure, site, object or improvement located within an historic district.

PERMIT

Shall mean any required approval issued by the construction official pursuant to applicable building or construction codes for exterior work to be performed on any historic landmark or on any building, structure, object, or site located within a historic district, which exterior work will be subject to public

view. Said permit shall include but not be limited to a building permit, a demolition permit or a permit to move, convert, relocate or remodel or to change the use or occupancy of any landmark or any building, structure, object, or site located within an historic district. “Permit” shall also include all exterior work to be performed on windows, doors, roofing, fences, signs, awnings, porches, railings, steps, lighting, and sidewalks, and any other work subject to public view which would alter the exterior appearance of historic landmarks or properties located within a historic district or their sites.

Historic Preservation Commission review

The local historic preservation ordinance should also clearly lay out the process and types of activities that trigger HPC review.

Examples

OCEAN CITY

§1800.5.1

A Permit issued by the Administrative Officer shall be required subject to the exceptions described in subsection (2) below, for any of the following, or in the event no building permit is required, before any work can commence on any of the following activities involving an historic site, property or within a historic district:

- (A) Demolition of any building, landmark, place, improvement, or structure;
- (B) Relocation of any building, landmark, place, improvement, or structure;
- (C) Change in the exterior appearance of any building, landmark, place improvement or structure by addition, alteration, maintenance, reconstruction, rehabilitation, repair, replacement or restoration, which change is visible to the public.
- (D) Any new construction of a principal or accessory structure.
- (E) Changes in existing walls, fences, porches, railings, steps or signs or construction of any walls, fences, porches, railings, steps or signs, if subject to public view.

§1800.7.1

The Administrative Officer shall refer all applications for permits pertaining to regulated activities on an historic site or within an historic district to the Commission for a written report on the application of the zoning ordinance provisions concerning historic preservation to any of those aspects of the change proposed which were not determined by approval of any application for development by a municipal agency pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

BORDENTOWN CITY

ARTICLE V §3 CERTIFICATE OF APPROPRIATENESS – APPLICATIONS 2

A Certificate of Appropriateness issued by the commission or by the Planning Board or Zoning Board of Adjustment based upon the recommendation of Historic Preservation Commission in accordance with the procedures of this article, is required prior to the commencement of any activities involving landmarks or properties within landmark districts which are governed by the provisions of this article.

MILLBURN TOWNSHIP

§805 CERTIFICATE OF APPROPRIATENESS

§805.1 WHEN REQUIRED

A Certificate of Appropriateness (or “CA”) issued by the Commission shall be required before any work is commenced on any historic landmark or within any historic district, whether or not a construction permit is required for such work, including but not limited to the following activities listed below. Work associated with a development application requiring ultimate approval by the Planning Board or Zoning Board of Adjustment is not exempt from this requirement.

- A. Changing the exterior appearance of any building, structure, site, object or improvement by addition, reconstruction, alteration or replacement, including, but not limited to, the addition or alteration of windows, doors, roofing, fences, signs, awnings, porches, railings, steps, materials, finishes, exterior lighting, solar panels, communication devices, sidewalks, paving, or streetscape work except for the activities described in subsection 805.2 below.
- B. Demolition of any building, structure, site, object or improvement,
- C. Relocation of a principal or accessory building, structure, site, object or improvement.
- D. Any addition to or new construction of a principal or accessory building, structure, site, object or improvement.

Further reading

Find a full description of the changes in DCA’s alert at

https://www.nj.gov/dca/divisions/codes/alerts/pdfs/OM_MW_03052018.pdf

For further updates, visit DCA’s Uniform Construction Code hub at

<https://www.nj.gov/dca/codes/codreg/ucc.shtml>

For more sections of the Municipal Land Use Law pertaining to historic preservation, visit our Community Assistance page at

<https://dep.nj.gov/hpo/programs/community/>



NJ Historic Preservation Office

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dep.nj.gov/hpo

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