

FW: Historic District Regulations

Shawna Ebanks <sebanks@redbanknj.org>

Tue 2/8/2022 10:36 AM

To: Pam Borghi <pborghi@redbanknj.org>

 1 attachments (959 KB)

20211202135528.pdf;

[This is the document I believe dan is referring to.](#)

From: Nancy Weck <nancy@downtowninvestors.com>

Sent: Thursday, December 02, 2021 2:13 PM

To: kkennedy@kevinkennedylaw.net

Cc: sebanks@redbanknj.org; cdegenaro@redbanknj.org; Jay Herman <jay@downtowninvestors.com>;

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Subject: Historic District Regulations

Kevin,

In preparation for our telephone conference this afternoon, I wanted to share with you, in advance, some citations from three sources, namely,

- (1) The Red Bank Historic District regulations;
- (2) the state statute (NJSA 40:55 D); and
- (3) N J Zoning & Land Use Regulations (Cox and Koenig).

For starters, the very section of the Historic District Regulations which Sean Burns has cited (claiming that all appeals of the HPC must go to the Zoning Board), namely, C (3)(c), only applies “where no application for development is required”. It goes on to say “and to the Superior Court where the certificate of appropriateness is issued by the Planning Board or Board of Adjustment.” This is consistent with how Shawna (and Glenn Carter before her) have always treated applications to the various boards and it is consistent with state law, as I will lay out below.

NJSA 40:55 D-109 and 110 make it clear that the HPC’s role, where an application to Zoning or to Planning is ADVISORY only. In fact, Section 4-1.4 of Cox not only reinforces the “Advisory Review” but on page 67 of the 2020 edition of Cox, it says “The Board’s retain their discretion to grant or deny an application despite the Commission’s recommendation and appeal from such Board action would follow the usual appeals procedure. See Chapters 41 & 42 for discussion of that procedure.” (you of course know that Chapter 42 is the normal board appeal process to the Superior Court). Also, in Cox (4-1.4) it states “If a regulatory ordinance is enacted, Commissions have the authority to review permits or matters NOT DETERMINED BY AN APPLICATION FOR DEVELOPMENT AS DISCUSSED INFRA.” So, it is clear that the appeal process which Sean is referring to only pertains to applications which do not have to go to either Zoning or Planning.

Lastly, in Cox 4-1.2 it states “Historic Preservation Commissions and historic districts may only be established in CONFORMITY WITH THE MLUL.” And the court actually set aside an ordinance which

allowed a "historic preservation commission" to restrict uses because the ordinance did not comply with the MLUL.

I have enclosed copies of the citations referred to above but I think it should be very clear that the HPC (1) only has an advisory role in this matter, (2) MUST comply with the MLUL and (3) Any appeal from a decision of the Zoning Board or Planning Board must be to the Superior Court. I look forward to our discussion this afternoon but wanted you to have these materials beforehand.

Jay