

approval shall neither cause nor prevent the filing of any collateral application or other proceeding required by any other Borough ordinance to be made prior to undertaking the action requested concerning the historic site or structure in the Historic District. A certificate of appropriateness shall be valid for two years; within such time, the applicant shall have procured a construction permit, or in the event that subdivision or site plan approval is required, filed a complete application with the Planning Board or Board of Adjustment, as the case may be, or within such time as the HPC may deem it in the public interest to grant, but in no circumstance shall such extension be for a period greater than two years from the date of the expiration of the original approval.

- (b) Denial of a certificate of appropriateness shall be deemed to preclude the applicant from undertaking the activity applied for concerning an historic site or structure in an historic district.

- (c) Appeal from a denial of the certificate of appropriateness shall be to the Board of Adjustment under N.J.S.A. 40:55D-70a where no application for development is required, and to the Superior Court where the certificate of appropriateness is issued by the Planning Board or Board of Adjustment.

- (4) Emergency repairs. When emergency repairs are required, the administrative officer shall notify the Chairman of the Historic Preservation Commission or his designee, and a recommendation concerning the emergency repairs shall be made within 48 hours. The administrative officer may allow temporary repairs to a structure prior to the Historic Preservation Commission's review when these repairs are necessary for the building's occupancy or to ensure public safety contingent upon the application for a certificate of appropriateness within 10 days of the onset of such emergency repairs. Such emergency repairs shall have concluded within 90 days unless written extensions are granted.

D. Design guidelines.

- (1) Design objectives. All proposed development within any historic district in the Borough of Red Bank should be designed to accomplish the following objectives:

on or employment except for adjustment.

tions of Class C members. The chairman of the planning board shall designate at the time of the meeting and the alternate members as members of the members first appointed to the greatest practicable extent, the case of regular members, evenly divided, and in the case of alternate members, by appointment; provided that the term of the initial term shall be four years and that the initial term shall be four years. Thereafter, the term of a regular member in alternate member shall be two years. If the term of a regular member expires or term shall be filled for the term of the regular member, the term of the alternate member shall be the term of the regular member; and the term of the alternate member shall be the term of the regular member; and the term of the alternate member shall be the term of the regular member.

elect a chairman and vice-chairman and may or may not be a member of the staff or an employee.

proceedings of the proceedings but may not be a regular member. A vote of a regular member may vote instead of an alternate member as to which alternate

commission shall be permitted to act directly or indirectly, any personal or property may, after public hearing if he or she is for cause.

governing body shall make provision for the expenses of the historic preservation

may employ, contract for, and fix the compensation for the services as it shall deem necessary. The chairman of the governing body, unless the governing body has legal counsel for the commission, shall not exceed, exclusive of gifts or other compensation, the compensation of the governing body for the commission's use. Adopted. L. 1985, c. 516, §7, effective July 9, 1991.

preservation commission shall have the authority to

the municipality pursuant to criteria established by the

planning board on the historic preservation commission applications for preservation of historic

ONLINE AT www.gannlaw.com

c. Advise the planning board on the inclusion of historic sites in the recommended capital improvement program;

d. Advise the planning board and board of adjustment on applications for development pursuant to section 24 [40:55D-110] of this amendatory and supplementary act;

e. Provide written reports pursuant to section 25 [40:55D-111] of this amendatory and supplementary act on the application of the zoning ordinance provisions concerning historic preservation; and

f. Carry out such other advisory, educational and informational functions as will promote historic preservation in the municipality.

Adopted. L. 1985, c. 516, §23.

40:55D-110. Advice on certain applications. The planning board and board of adjustment shall refer to the historic preservation commission every application for development submitted to either board for development in historic zoning districts or on historic sites designated on the zoning or official map or identified in any component element of the master plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The historic preservation commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

Adopted. L. 1985, c. 516, §24. Amended. L. 1991, c. 199, §8, effective July 9, 1991.

40:55D-111. Reports on certain applications. If the zoning ordinance designates and regulates historic sites or districts pursuant to subsection i. of section 52 of P.L.1975, c.291 (C.40:55D-65), the governing body shall by ordinance provide for referral 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 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 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.

In the case of a referral by the administrative officer of a minor application for the issuance of a permit pertaining to historic sites or property in historic districts, as defined in the zoning ordinance, the chairman of the historic preservation commission may act in the place of the full commission for purposes of this section; and, if the ordinance specifies the submission to the planning board of a commission report on a minor application, the ordinance may authorize the chairman or a subcommittee of the planning board to act in place of the full board.

The historic preservation commission or the planning board, as the case may be, shall report to the administrative officer within 45 days of his referral of the application to the historic preservation commission. If within the 45-day period the historic preservation commission or the planning board, as the case may be, recommends to the administrative officer against the issuance of a permit or recommends conditions to the permit to be issued, the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be. Failure to report within the 45-day period shall be deemed to constitute a report

4-1.3 MUNICIPAL REGULATION: AGENCIES AND OFFICIALS

4-1.3. Commission role in planning; designation of historic sites.

Pursuant to N.J.S. 40:55D-109a through d, the Historic Preservation Commission is given the power to make surveys of historic sites, make recommendations to the planning board on the historic preservation element of the master plan. The Commission, pursuant to N.J.S. 40:55D-109f, also has a general advisory, informational and educational role in the municipality.

Historic sites are defined in the MLUL as "any real property, manmade structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance." N.J.S. 40:55D-4. The Historic Preservation Commission prepares a survey of historic sites and recommends inclusion of such sites to the planning board to be shown on the historic preservation plan element of the Master Plan.

The Historic Preservation Commission also recommends to the planning board the creation of any historic districts which likewise must be shown on the historic preservation plan element of the Master Plan. A "historic district" is defined to mean "one or more historic sites and intervening or surrounding properties significantly affecting or affected by the quality and character of the historic site or sites." N.J.S. 40:55D-4. Thus definitively a historic district cannot exist separate and apart from historic sites. Designation of historic sites and districts are required to be made based on identifications in the historic preservation plan element of the Master Plan. N.J.S. 40:55D-65.1.

4-1.4. Commission role in applications before boards. Pursuant to N.J.S. 40:55D-110, the Commission performs advisory reviews of application for development for historic sites or districts listed in the Historic Preservation element of the Master Plan. This advisory function exists if the municipality has adopted an Historic Preservation element and applies regardless of whether an historic preservation ordinance regulating historic sites and districts is enacted. If a regulatory ordinance is enacted, Commissions have the authority to review permits for matters not determined by an application for development as discussed infra.

The Commission participates in decisions of planning boards and zoning boards of adjustment with regard to applications for development in historic areas. In fact one court has suggested that consideration of the historic character of a property by a Planning Board on site plan review is ultra vires without an enabling ordinance. *Stochel v. Planning Bd. of Edison*, 348 N.J. Super. 636, 653 (Law Div. 2000), suggesting, by its citation of this statute that even if the site plan ordinance allowed consideration of the historic character of a property that might not be sufficient without having designated the particular site as historic or part of an historic district on the zoning plan or the master plan and without having provided for an Historic Preservation Commission. On the other hand there is no reason that a Zoning Board of Adjustment could not

SPECIAL COMMISSIONS AND

consider the historic character of that board's consideration of subsection j, is not limited. See, consideration of these matters, 23 On the other hand, once there is seem that denial of an application properly designated historical Commission's recommendations. advisory function to a nullity.

Pursuant to N.J.S. 40:55D-110 a referral of every application for site or historic zoning district. application is deemed complete or sooner. The commission has the recommendations as to such application delegate about the report.

The boards retain their discretion the Commission's recommendations would follow the usual appeals discussion of that procedure.

On receiving Commission having jurisdiction of an application care it affords all expert information grant an application despite Commission every effort to take account of the example, is for a use variance to and is also out of keeping with district, but the application is for school or hospital, and the board applicant entitled to the variance conditions or otherwise assist in basic procedure to be followed recommendations is not different receives expert testimony or request whether the applicant's proposed criteria. See Chapters 31, 32 and these criteria in use application applicable to inherently beneficial all other cases, adopt a resolute conclusions of law. See 19-7.

For an example of a case in found to have properly relied denying a use variance to expand *Bozarth Post v. Burlington Planning* certif. den. 178 N.J. 34 (2000).

AGENCIES AND OFFICIALS

designation of historic sites. And, the Historic Preservation surveys of historic sites, make d on the historic preservation sion, pursuant to N.J.S. 40:55D- tional and educational role in the

as "any real property, manmade or any portion or group of the cultural, scenic or architectural storic Preservation Commission ommands inclusion of such sites historic preservation plan element

ssion also recommends to the ic districts which likewise must be n element of the Master Plan. A "one or more historic sites and gnificantly affecting or affected by c site or sites." N.J.S. 40:55D-4. not exist separate and apart from tes and districts are required to be storic preservation plan element of

itions before boards. Pursuant to i performs advisory reviews of oric sites or districts listed in the faster Plan. This advisory function n Historic Preservation element and ic preservation ordinance regulating f a regulatory ordinance is enacted, review permits for matters not lopment as discussed infra.

decisions of planning boards and ard to applications for development s suggested that consideration of the lanning Board on site plan review is inance. *Stochel v. Planning Bd. of Law Div. 2000*), suggesting, by its f the site plan ordinance allowed ter of a property that might not be the particular site as historic or part plan or the master plan and without servation Commission. On the other ing Board of Adjustment could not

3BLE ONLINE AT www.gannlaw.com

SPECIAL COMMISSIONS AND BOARDS

4-1.4

consider the historic character of a property in a variance review inasmuch that board's consideration of factors listed in N.J.S. 40:55D-2, here subsection j, is not limited. See, discussing limitation of Planning Board consideration of these matters, 23-10 (site plans) and 24-2 (subdivisions). On the other hand, once there is a properly created Commission it would seem that denial of an application for a site plan or subdivision on a properly designated historical site could be predicated on the Commission's recommendations. If not it would reduce the Commission's advisory function to a nullity.

Pursuant to N.J.S. 40:55D-110, the Commission has the right to receive a referral of every application filed with the boards affecting an historic site or historic zoning district. This referral shall be made when the application is deemed complete or is scheduled for a hearing, whichever is sooner. The commission has the right to file a written report containing recommendations as to such applications. It may also testify through a delegate about the report.

The boards 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 and 42 for discussion of that procedure.

On receiving Commission recommendations, however, the board having jurisdiction of an application should consider them with the same care it affords all expert information. Even where the board decides to grant an application despite Commission objection, the board should make every effort to take account of those objections. Where the application, for example, is for a use variance to permit a structure which is not permitted and is also out of keeping with the scale and architectural style of the district, but the application is for an inherently beneficial use, such as a school or hospital, and the board in the exercise of its discretion finds the applicant entitled to the variance, it should make every attempt to impose conditions or otherwise assist in harmonizing the use with the district. The basic procedure to be followed by the board in utilizing Commission recommendations is not different than in other cases where the board receives expert testimony or reports which it must weigh in determining whether the applicant's proposal meets both the positive and negative criteria. See Chapters 31, 32 and 36 dealing with board consideration of these criteria in use application cases, and note the different standards applicable to inherently beneficial uses and others. The board must, as in all other cases, adopt a resolution setting forth its findings of fact and conclusions of law. See 19-7.

For an example of a case in which a zoning board of adjustment was found to have properly relied on Commission recommendations in denying a use variance to expand a prior non-conforming use see *Scully-Bozarth Post v. Burlington Planning Bd.*, 362 N.J. Super. 296 (App. Div.), certif. den. 178 N.J. 34 (2003) (a tank sited on the lawn of a non-

NCIES AND OFFICIALS

7 as a person knowledgeable
ctural history and who may
ember is there defined as a
nonstrated interest in local
ipality. See also section 3-9.
1g Bd., 406 N.J. Super. 384,
assed the role of a unified
sion in reviewing proposed

55D-4. This development in
lief that those sections of a
print of the past should be
gs in historic areas should be
new buildings in such areas
facades compatible with the

ic" is not entirely accurate
nt associations with events,
Historic preservation in the
s an aspect of aesthetics in
tions, Third Edition, 1986,
nited Kingdom by the Prince
rchitecture in settings now
we have tended to tear down
a regular basis, so that often
The MLUL now provides a
he past in specified districts.
on listed the "corner of Main
ost endangered historic places
ng New Jersey has been the
tlying shopping centers to
the developers have replaced
g back to the last century or
modern buildings with large
storic preservation puts New
deal with this problem.

n was adopted by the DEP,
e improvement, restoration,
roperties owned by the State,
nd by tax-exempt nonprofit
l.
aling a DEP decision to allow
ct, see Beattystown v. Dept. of
998).

SPECIAL COMMISSIONS AND BOARDS

4-1.2

See also In re Register of Hist. Places Act, 408 N.J. Super. 540 (App. Div. 2009), certif. den. 201 N.J. 154 (2010) (affirming DEP decision granting redevelopment agency's application to acquire and demolish a historical building that it did not own or control).

4-1.2. Legal basis for exercise of control. Historic Preservation
Commissions and historic districts may only be established in conformity with the MLUL. In Estate of Neuberger v. Middletown Tp., 215 N.J. Super. 375 (App. Div. 1987), the court set aside an ordinance which allowed a "historic preservation commission" to restrict uses because the ordinance did not comply with the MLUL. The court noted that compliance was necessary to ensure coordinated municipal planning, to avoid the potential for local conflict which would exist if, for example, one local body were delegated historic preservation powers by ordinance, a second, independent environmental preservation powers, while the zoning ordinance and comprehensive plan had marked for development the same sites or districts designated for preservation by the special bodies.

The court in Neuberger also held that aesthetic considerations such as those made by an historic commission (properly constituted) were proper subjects in the exercise of zoning and planning power.

In Nadelson v. Township of Millburn, 297 N.J. Super. 549 (Law Div. 1996), Judge Alvin Weiss sustained the validity of an ordinance creating a Historic Preservation District as not void for vagueness. The plaintiffs' home was in a Historic Preservation District, and the Millburn ordinance required them to get an advisory opinion from the Historic Preservation Commission before any additions to their home would be permitted. The ordinance required the Commission to base its opinion upon consideration of the addition's compatibility with the existing structure, compatibility with other structures in the District, and features "which avoid exterior effects obviously incongruous with the purposes" of the ordinance. Judge Weiss observed that the Commission had the benefit of a comprehensive survey of Millburn's historic architecture, and that the standards in the ordinance were supplemented by other criteria, including the township's Historic Preservation Design Guidelines. The court also noted that the members of the Commission were required to be "knowledgeable in building design and construction or architectural history" and to be knowledgeable and interested in local history. The Commission's discretion was further checked and limited by the appeals process under the statute, and the Millburn ordinance contained further provisions for an informal, preliminary review process by the Commission to facilitate appropriate modification of an applicant's proposal.

See also Beattystown v. Dept. of Env. Prot., 313 N.J. Super. 236, 240-241 (App. Div. 1998), noting the basis for establishment of a particular historic district.