



The City of Orange Township Historic Commission

Commissioners

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MEMO

To: Laquana Best, Director of Economic Development, City of Orange Township
Paul Arthur, Construction Official, City of Orange Township
Khalfani Alleyne, Zoning Officer, City of Orange Township

From: Janine G. Bauer, Esq., Historic Preservation Commission, City of Orange Township

Copy: Joyce Lanier, City Clerk
Troy Simmons, Chair, Historic Preservation Commission

Re: Protocol for Ordinary Maintenance and for Minor Work to be Performed on Buildings in Historic Districts Where Work Consists of Replacement of Original Materials With Same or Like Kind Materials and Without Any Changes to Design or Architectural Features (Exterior Only)

Date: September 12, 2022

On March 5, 2018, the N.J. Department of Community Affairs (DCA) issued new rules for "ordinary maintenance" under N.J.A.C. 5:23-2.7 and "minor work" under N.J.A.C. 5:23-2.17A.

Under the former DCA rules, when owners or contractors requested construction permits, the Building Department could check to see if the property address was listed as being within any one of the four historic districts (Montrose-Seven Oaks Park, Orange Valley, Main Street, and St. John's). If it was a covered property within an historic district, the Building Department would then refer the owner or contractor to the Historic Preservation Commission to file an Application for a Certificate of Appropriateness before the work could be performed, pursuant to the City's historic preservation ordinance, Chapter 210-77 through 116. (Covered properties within historic districts are listed here <https://orangetwpnjcc.org/wp-content/uploads/2020/10/Historic-District-map-and-blocks.pdf> and on the City website, as are the forms for filing an application for certificate of appropriateness.)

The new DCA rules caused some coordination problems for the Historic Preservation Commission in the City of Orange Township (and other historic preservation commissions in the State of New Jersey). This was because owners and contractors performing what they perceived to be ordinary maintenance and/or minor work were no longer required to obtain construction permits from the City's Building Department (standard or over the counter permits) before the work was performed. Work on historic properties was proceeding before a Certificate of Appropriateness Application was filed with the Clerk and before the work was reviewed and approved (or denied) by the Historic Preservation Commission. In some cases, beautiful historic architectural features were lost, and some demolition occurred.

In the Spring of 2019 Construction Code Communicator, DCA issued a clarifying announcement which resolved the confusion that arose. DCA noted that several types of work, and particularly roof and siding replacement work, which no longer required a municipal building permit under the new DCA rules, still required review and approval of the Municipal Historic Preservation Commission before the work could be done (and then only if it was approved).

The DCA stated: "The recent changes to the [Uniform Construction Code] UCC do not eliminate the review authority of the local Historic Preservation Commission (HPC). If the local historic preservation ordinance states that this type of work requires HPC review, it must still be reviewed by the HPC, regardless of the requirement for other permits. Building code officials in municipalities that have historic preservation ordinances should advise contractors and home owners that all exterior project[s] must be submitted to the HPC for review prior to commencing work. Additionally, municipal staff should advise homeowners in historic districts that the HPC review process remains intact and unaltered by the recent change to building permit requirements." (Spring 2019 DCA Construction Code Communicator, page 2, attached hereto (underlining added to original language).)

Once this confusion was resolved in favor of Historic Preservation Commission review and approval authority, the City of Orange Building Department fairly consistently referred exterior projects to the HPC. We appreciate the cooperation and coordination.

The current process is that the HPC reviews the projects and issues Certificates of Appropriateness (approval), with or without conditions. Occasionally approval is denied where there is a clear violation of the Historic Preservation Design Guidelines, such as where vinyl siding is proposed. Vinyl fences, and any type of vinyl or aluminum siding is not allowed in the historic districts. Once an exterior project is approved by the HPC, I write a letter (through Joyce Lanier, City Clerk) summarizing the details of the approved work to the exterior of the building, which letter is provided to the Building Department by the Clerk so that the owner or contractor may advance to construction and the Building Department has a record of the HPC approval on file. Following that advance letter, the HPC passes a Resolution memorializing the HPC action.

The question that has arisen, which is addressed in this memo, for covered properties in Historic Districts, as to what type of approval is needed for work, particularly roof replacements, window replacements, and exterior wall cladding/siding replacement where the owner/contractor proposes to use the same type of material and design as the original, or like-kind materials, which ordinarily would not require a Certificate of Appropriateness review from the HPC, and how approval (or conditions or denial) should be communicated by the HPC back to the Building Department.

In other words, where a building owner is literally only performing ordinance maintenance, replacing a roof, windows or exterior wall cladding with the same type of materials as originally used or like-kind materials (wood clapboard, roofing, wood shakes, stucco for stucco, brick for brick (real brick, not veneer), asphalt shingle to asphalt shingle, slate to slate, paint for paint, etc.), or other items defined as minor work, does that owner or contractor have to come before the HPC for a Certificate of Appropriateness? The answer is no, because the work does not fall within the definition of the type of alterations covered by the City's historic preservation ordinance, Chapter 210-77 through 116.

Normally, a replacement with the same materials or like-kind materials, without changing any exterior design or architectural features of the building (size, type and dimensions of windows, divided lights (panes), sills, casings, muntins, doors, other features of entryways, recessed entryways, bulkheads, cornices, corbels,

basically, any type of façade design or decoration including texture and color of brickwork, etc.) will not require a Certificate of Appropriateness.

Therefore, pursuant to the DCA ordinary maintenance and minor work rules, cited above, when such an exterior project is referred to the Historic Preservation Commission by the Building Department, the HPC will verify through an in-person, on site, or telephone interview with the owner or contractor, that the work will truly be a replacement or repair with the same materials or like-kind materials, without changing any of the exterior features or design.

Once the HPC is satisfied, I will write a letter (just as I do now for Certificate of Appropriateness approvals), through the City Clerk, Joyce Lanier, for the Building Department, so that the Building Department will know that the exterior project has been reviewed and approved by the HPC administratively, and that the work on the project may proceed on those terms, i.e., with the same materials as the original or like-kind materials, without any change in the exterior design or architectural features, corbels, cornices, windows, doors, etc. In this way, the owner or contractor will get an expeditious review, and be assured that he or she is proceeding lawfully, while the HPC is assured that the exterior features which make these building so distinctive and historic, will not be removed, destroyed, altered or changed, and the Building Department will know these ordinary maintenance and/or minor work jobs were reviewed and approved, sometimes with conditions, or they were denied, in which case the owner or contractor will have to go through the Certificate of Appropriateness process.

In all events, the Building Department should continue to refer these ordinary maintenance and minor work projects to the HPC for its review.

A list of what constitutes ordinance exterior maintenance and minor exterior work for this HPC review and scope purpose, follows, and is attached, for everyone's convenience.

If you have any questions about the foregoing protocol HPC intends to follow upon referral of ordinary maintenance and minor work projects by the Building Department, please do not hesitate to contact me (917-916-8972) or Chair Simmons (862-438-1230).

ORDINARY MAINTENANCE AND MINOR WORK

§ 5:23-2.17A Minor work

(a) The issuance of a permit shall not be required before minor work may proceed. The owner, or an architect or contractor acting on behalf of the owner, shall, however, provide notice of the work to the enforcing agency before work begins.

(b) Notice of work; application:

1. Notice of minor work shall be a personal or telephoned oral notice before work commences. This oral notice shall be provided to the enforcing agency between 9:00 A.M. and 5:00 P.M., Monday through Friday, except holidays. In those cases where the local enforcing agency is not open and available to receive notice at those times then notice shall be provided to the municipal clerk;

2. In addition to oral notice, the owner or his agent shall be required to file an application. The completed application with the fee shall be delivered in person or by mail to the enforcing agency, within five business days from the date of the oral notice.

(c) Minor work:

1. Minor work shall mean and include:

i. The construction or total replacement of any porch or stoop which does not provide structural support for any roof or portion of a building;

ii. Renovation or alteration work in an existing one or two-family dwelling, provided that no primary structural members are altered in any way, and further provided that the work does not constitute reconstruction; and

iii. The removal and replacement of more than 25 percent of the exterior siding of a one or two-family dwelling;

2. Minor work shall also mean and include the replacement of any existing plumbing piping work with new and approved material of like capacity; the installation of drinking fountains and condensate drains in existing structures; the replacement of existing low pressure water heaters with new ones of like capacity; and the new installation of lavatories, water closets, bathtubs, showers, clothes washers or dishwashers, and garbage disposers in existing space of one and two-family dwellings where the new installation of additional fixtures can be accommodated with no increase in the size of the water distribution system, water service or house drain;

3. Minor work shall also mean and shall include the replacement of existing low pressure boilers, warm air furnaces, air conditioning units and air conditioning condensing units with new appliances of like capacity;

4. Minor work shall also mean and include new electrical work incidental to the installation of air conditioning, equipment, clothes dryers, and ranges or ovens in one and two-family dwellings; the installation of five or fewer 125 or 250 volt receptacles or fixtures where existing circuits and/or available space circuits and service are adequate to support the load; the replacement of existing wiring with new wiring of the same capacity provided that the new wiring shall be of a type approved for the use by the code;

5. Minor work shall also mean and include the following:

- i. The installation of any fire detection or suppression device in any one-or two-family dwelling;
- ii. The installation of a radon mitigation system in an existing one-or two-family dwelling;
- iii. The installation of a burglar alarm or security system in any structure;
- iv. The installation of communications wiring in any Class 1 or Class 2 structure or any Class 3 structure involving the penetration of a fire-resistance rated assembly.

(1) For the purposes of applying this provision, communications wiring shall mean any wiring covered by Chapter 8 of the electrical subcode. Communications wiring shall also include data circuits between computers/information technology equipment, which may be classified as "communications circuits," in accordance with Article 725 of the electrical subcode; and

v. Any change of an existing transmission means from a digital alarm communicator transmitter to a fire alarm supervising station.

(1) For the purposes of applying this provision, transmission means shall mean the existing phone line(s) that transmit fire alarm signals from a digital alarm communicator transmitter to the supervising station. A certified fire alarm service company, licensed fire alarm company or licensed electrical contractor shall submit Form F-391 signed by the contractor to provide a verification statement in writing to the fire subcode official within 24 hours that all required signals remain operational after the new transmission means is installed.

6. Minor work shall not include lead abatement.

7. Minor work on elevator devices shall also mean and include work as outlined in N.J.A.C. 5:23-12.8(b) and not involving any structural modification to a building.

8. Minor work shall mean and include repair and/or renovation work in a Group B, Group F, Group M, or Group S occupancy performed in accordance with N.J.A.C. 5:23-6, but shall not include work categorized as ordinary maintenance pursuant to N.J.A.C. 5:23-2.7.

(d) Inspection of minor work