Dispelling Common Myths:
An Organizing Tool for Historic Preservation Advocates

New Jersey Historic Trust
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If it's designated, it can't be torn down!

Designating a property as historic doesn't always protect it from demolition. There are three levels of designation possible for historic properties: National, State, and local. Contrary to popular belief, National designation offers the least amount of protection from demolition and alteration while local designation typically offers the most. Here's a breakdown of the levels of designation:

National: Listing a property in the National Register of Historic Places is first and foremost an honorific designation. It highlights the historical and cultural significance of the resource at the National level but, in most cases, does not save it from demolition. The exception is when a resource listed in the National Register could be impacted by a project that is federally funded, licensed, or permitted. In this case, the National Historic Preservation Act of 1966 stipulates that the proposed project must undergo a Section 106 review. This review process seeks to identify any adverse effects the project may have on nearby historic resources listed in or considered eligible for listing in the National Register. When possible, efforts are made to mitigate any adverse effects. In some instances, however, there may be no possible mitigation of the adverse effect and the consulting parties may agree that the project should still proceed in the name of public interest. Privately funded projects that do not involve federal money, including demolition or alteration of the resource, are not subject to additional review even if the property is listed in the National Register.

Asbury Park's former Palace Amusements, built in 1888 and considered to be a Victorian pioneer in the amusement industry, was listed in the National Register of Historic Places in 2000 but was ultimately demolished in 2004 after restoration efforts failed. ["Palace Amusements," Vintage Asbury Park, 2004, https://www.side-o-lamb.com/palace.

State: Listing a property in the New Jersey Register of Historic Places is also an honorary designation with a limited review process. Any projects carried out by state, county, or local governments that may impact resources listed in the New Jersey Register of Historic Places are subject to review by the New Jersey State Historic Preservation Office and the New Jersey Historic Sites Council. Unlike the federal law, however, the New Jersey state law is an actual authorization process, enabling the State Historic Preservation Office to make recommendations for a project to proceed. Properties listed in the state

register may be successfully saved from demolition at this stage if under threat by a government-funded project.

*Please note that the implications of state designation vary from state to state. For more specific information about your state's Register of Historic Places, please contact your State Historic Preservation Office.

Local: New Jersey's Municipal Land Use Law (MLUL) allows local governments to create a historic preservation ordinance which enables the creation of local historic districts and a historic preservation commission. These commissions are often endowed with the power to regulate the alteration or demolition of any resource within its designated boundaries. The historic preservation ordinance of each municipality varies, however, most require any requests for demolition or major alteration to go through a review process in order to obtain a municipal permit to proceed.

New Jersey's Municipal Land Use Law also contains a delay of demolition order which provides that certain public areas—including "scenic and historic sites"—may be reserved from development for a period of one year.[1] Owners may be subject to certain requirements as indicated by the municipality, though they are also entitled to compensation during this period.

[1] "Municipal Land Use Law," 40:55D-44, NJSA, Dept. of Community Affairs, Division of Local Government Services, 1976.

Historic designation will infringe on my private property rights. Aren't historic preservation regulations a 'taking'?

Historic preservation ordinances are zoning ordinances enabled by the Municipal Land Use Law in New Jersey. In the same way that zoning ordinances can prevent a toxic plastics manufacturer from operating within your residential neighborhood, they can also be implemented to protect historic properties that are considered architecturally or historically significant. These ordinances often require that any work done to the building's exterior comply with the Secretary of the Interior's Standards for Rehabilitation. The Standards are designed to guide property owners in how best to maintain the integrity and character of their historic property while still allowing for minor alterations and compatible additions.

Historic preservation ordinances that stay within the confines of the enabling legislation have repeatedly been upheld by courts. The federal legal precedent against the claim of "takings" was set in 1978 with the landmark Supreme Court decision in Penn Central Transportation Company v. the City of New York. Penn Central's proposal to construct a large office tower atop the historic Grand Central Terminal was denied by the New York Landmarks Preservation Committee who found that the addition would detract from the historic character of the existing terminal. Penn Central argued that this denial violated their fourteenth amendment rights and should be considered a taking. Ultimately, the Supreme Court ruled that because Penn Central could continue to operate and make a return on its investment in the terminal in its historic formation, the Landmarks Preservation Committee's permit denial did not amount to a taking of property without just compensation.[2]

The Grand Central Terminal building in New York City, New York. [Grand Central Terminal, "Grand by Design: a History of Grand Central Terminal," 2017, https://www.grandcentralterminal.com/history

More specific to New Jersey is the 1996 case of Nadelson v. the Township of Millburn which set a state precedent by upholding the validity and authority of local preservation ordinances. The case was brought by Jay and Deborah Nadelson who argued that the Township of Millburn's historic preservation ordinance failed to provide sufficient guidelines for homeowners to reasonably understand the limitations for altering their property.[4] Deciding in favor of the local ordinance, the Superior Court of New Jersey determined that the design criteria enforced by the historic preservation commission were both sufficiently intelligible and lawfully implemented. Further, the regulatory role of Historic Preservation Commissions was upheld in the 1987 case against the Township of Middletown by the Estate of Neuberger. In essence, the verdict of this case found that preservation is considered to be a valid "exercise of the planning and zoning powers" of a municipality.[4]

[2] Duerksen, Christopher and Richard Roddewig. *Takings Law in Plain English.* Clarion Associates, 1994. As stated in the decision, "owners may *not* establish a taking 'simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development'" (Duerksen and Roddewig 1994).
[3] Eagle, Steven J. *Regulatory Takings*. New Providence, NJ: LexisNexis Matthew Bender, 2009.
[4] Estate of Neuberger vs. Township of Middletown, 215 N.J. Super. 375, 383-84 (App. Div. 1987).

Historic Societies (501c3) and Historic Preservation Commissions are the same thing.

Historic Preservation Commissions and Historical Societies are very different entities with similar goals. While both strive to preserve local history, only Historic Preservation Commissions have regulatory power. Historic Preservation Commissions are units of local government that are established to oversee proposed changes in local historic districts. The regulatory power of each commission varies by municipality and is contingent upon how the municipality's historic preservation ordinance is written. Strong ordinances create commissions with the power to make binding decisions by issuing or denying permits for exterior changes, alterations, or additions to a historic property.[5] Weaker ordinances establish a commission whose role is merely advisory to the Planning or Zoning Board, which then carries out the final permitting decision. In both cases, the final decision is legally binding.

Historical Societies, on the other hand, are independent non-profits most often staffed by volunteers. These societies typically maintain a local history archive, produce a newsletter or publication, or host events celebrating local history and cultural heritage. Historical Societies have no regulatory power and are distinctly separate from the local government.

When asking these questions, you'll want to contact your local HPC:

- Is my property in a local historic district?
- Are there design guidelines for my historic property?
- What kind of work does my local HPC regulate?
- I am planning to make exterior alterations or additions to my property that is within a local historic district. Are there any approvals or permits beyond standard building permits that I need to obtain before work can start?

When asking these questions, you'll want to start by contacting your local historical society:

- I want to learn more about a historic property. Do you have any historic photos or documents that might help me piece together a history?
- I want to be more involved in maintaining local history. How can I help?
- Are there any upcoming events that celebrate local history and cultural heritage?

[5] Preservation New Jersey. "What is a historic preservation commission?" *Preservation ToolKit*, Brief A-4. 2001.

We don't need a commission; we already have a Planning & Zoning Board.

While the needs and interests of Planning or Zoning Boards may often overlap with those of Historic Preservation Commissions, the two boards have significantly different purview. A Planning or Zoning Board is concerned with *use* and a site's compatibility with surrounding sites, whereas a Historic Preservation Commission is interested in protecting the *character* of culturally or architecturally significant places.

New Jersey's Municipal Land Use Law enables municipalities to identify, evaluate, designate, and regulate historic resources—individual sites and historic districts alike—with a historic preservation ordinance and Historic Preservation Commission. The Municipal Land Use Law sets requirements for both the size and make-up of these commissions to ensure that decisions are made by those with demonstrated expertise in history or architecture. Commissions must be composed of 5, 7 or 9 members, with at least one Class A and one Class B member. Class A members will have a demonstrated knowledge in building design, construction, or architectural history, while Class B members will have a demonstrated knowledge in local history. At least one less than the majority of the Commission must be either Class A or Class B members. Additional members who do not fall into Class A or Class B are considered Class C and must reside within the municipality and have no other municipal position, appointed or otherwise.[6] Planning Boards, by contrast, do not require that their members have certain expertise. The Planning Board must approve of the historic preservation ordinance and can recommend alterations to it at any time, though formal adoption or denial of changes must be passed by the governing body.

Responsibilities of the Historic Preservation Commission can also include producing a survey of historic resources within the municipality, in addition to making recommendations to the Planning Board for historic inclusions on the local master plan. Depending upon how a local preservation ordinance is written, the Commission may be granted powers to approve or deny certain project permits or to advise the planning board on the issuing of such permits. Some commissions develop design guidelines to aid in their review process. Additionally, Historic Preservation Commissions should seek to educate the public on the values of local history and advocate for historic preservation in their own and in other communities.

[6] "Municipal Land Use Law," 40:55D- 107-112, NJSA, Dept. of Community Affairs, Division of Local Government Services, 1976.

If my neighborhood becomes a historic district, my property values will go down and my taxes will go up.

As Donovan Rypkema notes, not a single study has linked historic district designation with a decrease in property values. On the contrary, studies have repeatedly demonstrated that historic district designation has a *positive* impact upon property values and the local economy. Reasons for this vary greatly by economic context, though homebuyers generally prove more eager to invest in places whose aesthetic character and economic value are afforded stability by the protections and regulations that designation establishes. While it may impose some restrictions on exterior changes, all properties within the district are subject to the same restrictions. Thus, homeowners are given a sense of "investor confidence" that their neighborhood will remain largely unchanged and safe from over-large or out-of-scale developments. In this way, historic district designations afford homeowners a sense of security when investing in their homes. [8]

Inevitably, as property values increase so do taxes. However, the more that these economic effects are researched and debated, the more we find that the preservation of historic neighborhoods helps stabilize and support communities through the reduction of crime and stimulation of economic investment.

There are larger benefits for local economies engaged in historic preservation as well. Not only does rehabbing existing houses reduce environmental impact, but it also fuels the local economy. Construction budgets are used more to hire local skilled laborers and craftsmen rather than to buy new materials that are likely brought in from other areas. In fact, historic designation and preservation activities are proven to create more jobs and produce more wealth per dollar invested. Preservation jobs require skilled labor and craftspeople, directing both private and public investments into higher paid jobs rather than mere sheetrock.[9] Furthermore, the designation of an area's historic resources on local, state, or national registers can open new markets and tertiary industries through coordinated heritage tourism programs and wider notoriety.[10]

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[8] Rypkema, Donovan D. *The Economics of Historic Preservation* (Washington D.C.: National Trust for Historic Preservation, 2008): 42-43.
[9] New Jersey Historic Trust, "Partners in Prosperity: The Economic Benefits of Historic Preservation in New Jersey", 1998.
[10] Mabry, Jonathan. "Benefits of Residential Historic District Designation for Property Owners," 2007.

If my neighborhood becomes a historic district, there will be money to fix and restore my house.

Unfortunately this is most often not the case. Funding for individual homeowners of historic properties is very limited. There are, however, several funding opportunities and incentives for income-producing and public preservation projects. Grant and loan programs are generally open to nonprofit organizations and government entities, while tax credit programs are available for income-producing properties. Eligibility requirements for all programs can differ widely, and organizations must apply for support in accordance with unique program criteria.

In New Jersey, most preservation grants are awarded through the New Jersey Historic Trust, a body that administers state funds garnered through a voter approved dedication of the statewide Corporate Business Tax. Other grant sources include the National Trust for Historic Preservation and also Open Space funds distributed through county agencies. Further, Certified Local Governments (CLGs) are eligible for grant funding through the State Historic Preservation Office. In order to become a CLG, a municipality must have a historic preservation ordinance in place, a commission established for review, and appropriate outlets for public participation in the process--all according to specific standards outlined by the 1980 amendments to the National Historic Preservation Act.

Some states offer tax credit programs which are available to residential property owners. At least 34 states currently offer their own historic tax credit program.[11] The New Jersey Historic Tax Incentive was passed by the NJ legislature in 2011 but was subsequently vetoed by former Governor Chris Christie. Eligible projects would have included those listed individually or contributing to listed districts on state or national registers, and would have funded up to 25% of qualified costs for work performed.[12] The bill was reintroduced in 2018 and will hopefully be signed into law in the near future.

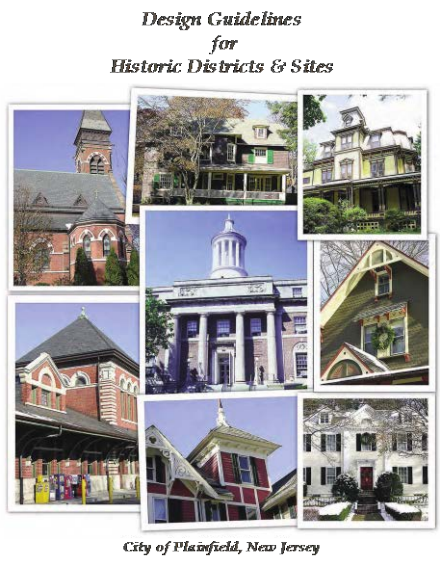
While New Jersey does not currently have a state-administered tax credit program for historic preservation, projects may still be eligible for Federal Historic Tax Incentives—a 20% Rehabilitation Tax Credit for properties listed in the National Register. Properties must be income-producing to apply.

Residential or nonprofit property owners alike may opt to protect their sites from future alterations by selling or donating certain development rights to qualified state or nonprofits through an easement program. In certain instances, the value of an easement may be deducted from federal taxes, though owners should be aware of other associated fees.[13]

[11] Kuhlman, Renee. "The State of State Historic Tax Credits." Preservation Leadership Forum, National Trust for Historic Preservation. 2017.
[12] Corbalis, Jay. "Historic Preservation Tax Credit Awaits Governor's Signature." New Jersey Future. 2011.
[13] "Preservation Easements." New Jersey Historic Trust. http://www.njht.org/dca/njht/

It is going to be so much more expensive to maintain my house if I have to follow strict historic guidelines.

These "strict" historic guidelines are actually designed to *help* you best maintain the architectural and historic character of your home, rather than to impose egregious or costly restrictions. If your house falls within a locally designated historic district you may be required to have projects approved by a local Historic Preservation Commissions —or HPC—before commencing. It is also important to keep in mind that Historic Preservation Commissions can only regulate changes to the *exterior* of properties within the district boundaries. That means any interior work is not subject to their review. The primary concern of HPCs is that you repair rather than replace historic elements of your home whenever possible. Not all HPCs in New Jersey have regulatory power, but those that do decide the appropriateness of proposed exterior changes using the Federal *Secretary of the Interior's Standards for Rehabilitation*. These *Standards* guide the appropriate ways to clean, maintain, alter, or add to historic properties.



An example of local design guidelines. [Hunton, Gail L, *Design Guidelines for Historic Districts and Sites,* Plainfield Historic Preservation Commission, City of Plainfield, NJ, 2007, http://plainfieldnj.gov /docs/Plainfield%20Design%20Guidelines%20 rev%202-09.pdf]

Beyond making decisions on how to best retain historic character, Historic Preservation Commissions also focus on how to best maintain and care for historic building materials. Historic building materials often require a specialized and careful approach. Rather than restricting what you can do with your home, these Commissions can actually help you save time and money by avoiding treatment approaches that can cause costly and often irreversible damage. Commissions in New Jersey are comprised of individuals with expertise in building, construction, architectural history, and local history. They are an excellent resource to consult when considering a project for your historic building.

Municipalities may also develop design guidelines to guide redevelopment in their neighborhoods. Local design guidelines differ from the *Standards* insofar as they are tailored to a specific locality's history, cataloguing and prioritizing certain aesthetic or environmental features to ensure the longevity of that place's historic qualities. While a local HPC review process may require a bit more time than you might otherwise invest in a project, commissioners are interested in helping to keep these structures standing, not to require unreasonable or infeasible expenditures for your budget. Repair and rehabilitation of existing buildings is often less expensive than replacement through new construction. By upholding historic guidelines, property owners protect a neighborhood's identity while also supporting the local economy.

Further Resources:

+ Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, National Park Service

If my neighborhood becomes a historic district, you'll tell me what color to paint my house.

A community can decide whether or not they want to regulate paint colors. In New Jersey, most do not. If a district is part of an active tourist destination, consistency in historic paint schemes may be economically advantageous. Historic districts develop design guidelines in order to standardize design review decisions by local historic preservation commissions. Guidelines vary by municipality and are interpreted locally by a review board of preservation professionals, who then issue a "certificate of appropriateness" to projects conforming to these parameters. Most regulations are intended to protect against unnecessary destruction of original or character-defining building features, dramatic changes to the structure's basic volumes, or its relationship to surrounding sites. Developed out of a locality's unique historic character, guidelines are intended to provide reliable and replicable standards for review so as to avoid biased decision making based on personal design preference. Paint colors, like other aesthetic choices, are most often still up to you.

An example of historic paint colors that can be matched by modern paint companies. Although most HPCs don't regulate color choices, they can be available to advise you on the most historically appropriate colors for your specific home. ["Bob Villa Radio: Historic Paint Colors," https://www.bobvila.com/articles/bob-vila-radio-historic-paint-color/]

Further Resources:

+ Creating + Using Design Guidelines, National Park Service
+ Design Guidelines: A Handbook for the Preservation and Improvement of New Jersey's Historic Commercial Architecture, Main Street New Jersey
+ Developing Design Guidelines: An Introduction, NJ HPO

Old windows are drafty and leaky. You won't allow my house to be energy efficient.

Most homeowners who are striving to improve their energy efficiency are seeking to lower utility bills and reduce their carbon footprint. While it may be tempting to blame your home's energy loss on its historic windows, in actuality roughly only 10% of energy lost is through windows. The bulk of energy loss comes from attics, doors, and floors. Windows manufacturers and installation companies widely promote that the new windows are "greener" than historic windows. In fact, repairing or restoring an original set of windows can not only meet the efficiency standards of new, but will far surpass them at price point, structural compatibility, and overall sustainability.

Workshop attendees learn how to relgaze historic wood windows. ["Historic Window Repair," City of Oregon, 2019, https://www.orcity.org/planning/historic-window-repair]

In some cases, historic windows that have not been properly maintained may be drafty. Repair and regular maintenance will help to maintain comfortable temperatures inside and reduce overall energy loss. For example, a weight and rope system that has not been maintained may sag, creating a small gap between the sash and the window casing. In other cases, windows that have not been addressed in several years may need to be resealed or have their glass reglazed. In essence, restoration or repair of historic windows, coupled with regular maintenance, provides historic homes with an air-tight and energy efficient exterior envelope. In fact, recent tests have proven that there is no significant difference in air infiltration between new windows and 200 year-old windows that have been properly restored.[14] After windows have been repaired and are being regularly maintained, homeowners can take additional steps to improve temperature differentials, like installing storm windows, weather stripping, or insulating shades. Storm windows, for instance, actually provide more insulation than modern double pained window glass.

In terms of environmental impact, manufacturing new windows with inherently limited lifespans will ultimately add to a building's overall carbon footprint rather than reducing it. Restoration work produces ⅛ of the waste of the replacement process.[15] Furthermore, the high cost of new windows amounts to a near impossible return on money invested for the fractional improvement in efficiency.[16] New windows are often created as one unit and are thus difficult to repair. Often modern windows must be completely replaced, incurring further cost and producing even more waste.

In addition to the energy and cost savings, there are several advantages to retaining your historic windows. Windows created before 1940 are more than likely made with old growth wood. Old growth wood is *far* denser than any new wood purchasable today—it tends to hold paint and stain better than new growth wood and is naturally rot and insect resistant. In many instances, old growth wood used to create windows was locally sourced and is therefore ideally suited for your local climate.

[14] Alter, Lloyd. "New study shows that restored 200 year old windows are as airtight as brand new replacements." TreeHugger. July 19, 2017.
[15] Window Preservation Alliance. "Top Ten Reasons to Restore or Repair Windows." windowpreservationalliance.org
[16] Preservation Green Lab. "Saving Windows, Saving Money: Evaluating the Energy Performance of Window Retrofit and Replacement." National Trust for Historic Preservation, 2012.

Historic preservation is elitist.

Some are of the opinion that preservation is an elitist exercise used to preserve only high-style architecture and the history of "dead white men." However, historic preservation as we know it actually began as a grassroots movement in the mid-1960s as a reaction to urban renewal projects that threatened ethnically diverse and historically significant neighborhoods. Historic Preservation was used as a tool to save entire communities from the wrecking ball.

Jane Jacobs, author of the 1961 classic The Death and Life of Great American Cities, is credited with jumpstarting the grassroots historic preservation movement in response to rapid demolition of urban building stock in the 1950s and 60s. ["Who was Jane Jacobs?" Center for the Living City, 2019, http://www.janejacobswalk.org/about-jane-jacobs-walk/meet-jane-jacobs.
Image Source: https://commons.wikimedia.org/wiki/File:Jane_Jacobs.jpg

Today, historic preservation continues to benefit all members of society by preserving buildings that serve as tangible connections to our rich and often complicated past. Preservation is not focused solely on the sites of rich, white men. Rather, great strides have been made to highlight the histories of marginalized populations and preserve historic resources connected with this history. Preservationists give sites associated with the Underground Railroad or the Civil Rights Movement the same consideration as sites connected to the American Revolution or the Founding Fathers. Likewise, preservationists value seemingly ordinary, vernacular architecture in the same way that they value high-style or elaborate architecture.

In New Jersey, historic preservation funds have had a large impact in densely populated urban areas that have a large number of low-income residents. Historic preservation projects in these areas have the potential to transform abandoned or underutilized buildings into spaces that provide critical services to the community. For example, in 2005 a former silk manufacturing space in Paterson was transformed into a multi-functional community center. In 2018, the Latin American Legal Defense and Education Fund

(LALDEF) established their headquarters in one of Trenton's late nineteenth century brick buildings. LALDEF provides critical legal and educational services to the large Hispanic immigrant community in Mercer County while maintaining the beautiful façade of their 1892 building. Projects that are able to protect the historic value of a community's built resources, while also providing much needed services, are increasingly pointed to as realizing preservation's most important goals.

Historic preservation can also be used as a tool for economic development and revitalization of urban areas that lack adequate affordable housing. New Jersey's 2005 Historic Preservation Awards recognized Salem's Hedge Carpenter Thompson Historic District for rehabilitating 76 historic units with an additional 28 ADA accessible residential units, providing a total of 104 rental apartments to an area with great historic integrity and high need for affordable housing.[17]

Nationally, preservation projects that make use of the Federal Historic Tax Credit have contributed substantial investment in communities of high need. Statistics gathered by the National Park Service indicate that between 2002 and 2010, "two-thirds of all Federal Historic Tax Credit projects [were] located in Qualified Low-Income Census Tracts."[18] In the current context of widespread housing shortages and growing concern for urban sustainability solutions, the preservation and reuse of existing, older housing stock offers an economically and ecologically sensitive avenue towards improved social equity.

[17] "2005 Historic Preservation Awards." New Jersey Historic Preservation Office. NJ.gov. http://www.nj.gov/dep/hpo/4sustain/awds2005.htm
[18] The Historic Tax Credit Coalition. *First Annual Report on the Economic Impact of the Federal Historic Tax Credit*. Rutgers University. 2010.