

LOCAL GOVERNMENT PRESERVATION PROGRAMS: THE BASICS



Amber E. Kidd, Local Government Coordinator

HPC: Historical or Hysterical?

Posted by PatteeGorilla on Dec 1, 2011 in December2011/January2012, Features | 0 comments



Jury Still Out on the “Rehabilitation” of Controversial City Commission

By G.M. Corrigan

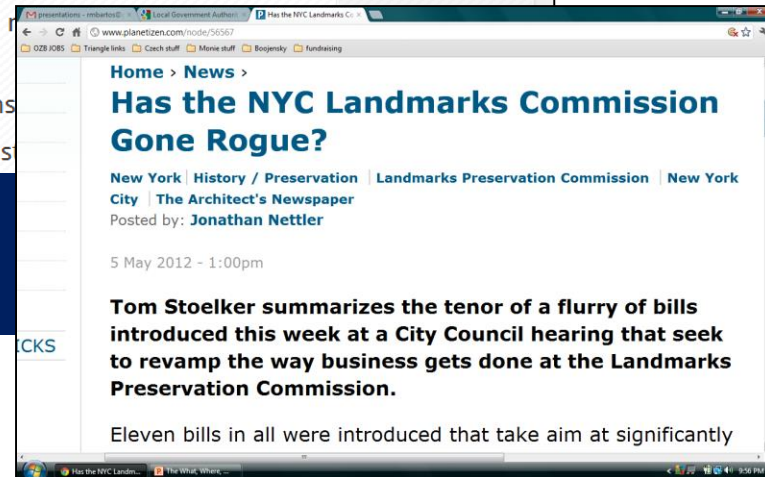
Photos by Bill Millios

It is the second-oldest city commission of its kind in Maryland and the 13th oldest in the nation—and it’s credited with preserving 266-year-old Frederick City’s storied architectural stock and standing as a tourist, resident and destination.

But despite this hoary heritage, recent streamlining efforts and its many contributions to the city’s historical charm, Frederick’s eight-member (including one alternate), all-volunteer Historic Preservation Commission (HPC) is facing a uncertain future.



The Pretty Police



The What...

NHPA 1966

FEDERAL

**National Historic
Preservation Act**

- Section 106
- National Register

NC General Statute 160A-400.7

State of North Carolina



Local government



National Historic Landmark – Feds only

**National Register of Historic Places
State nominates / Feds lists**

**Local Landmarks / Districts
Locals designate & decide / State comments**

National Register of Historic Places

- the **official list of properties** that have been determined by the State Historic Preservation Officer and the National Park Service to be **significant to the history of the United States at a local, state, or national level.**
- **State nominates (NRAC / SHPO) > Feds list (Keeper of the National Register / NPS)**
- **individual vs. district (contributing vs. non-contributing) listings / 50 years + old (usually)**
- **Section 106 protection / rehabilitation tax credits**
- **NHLs are automatically on the NR, but not vice versa**

NC's 2800 + National Register properties include:



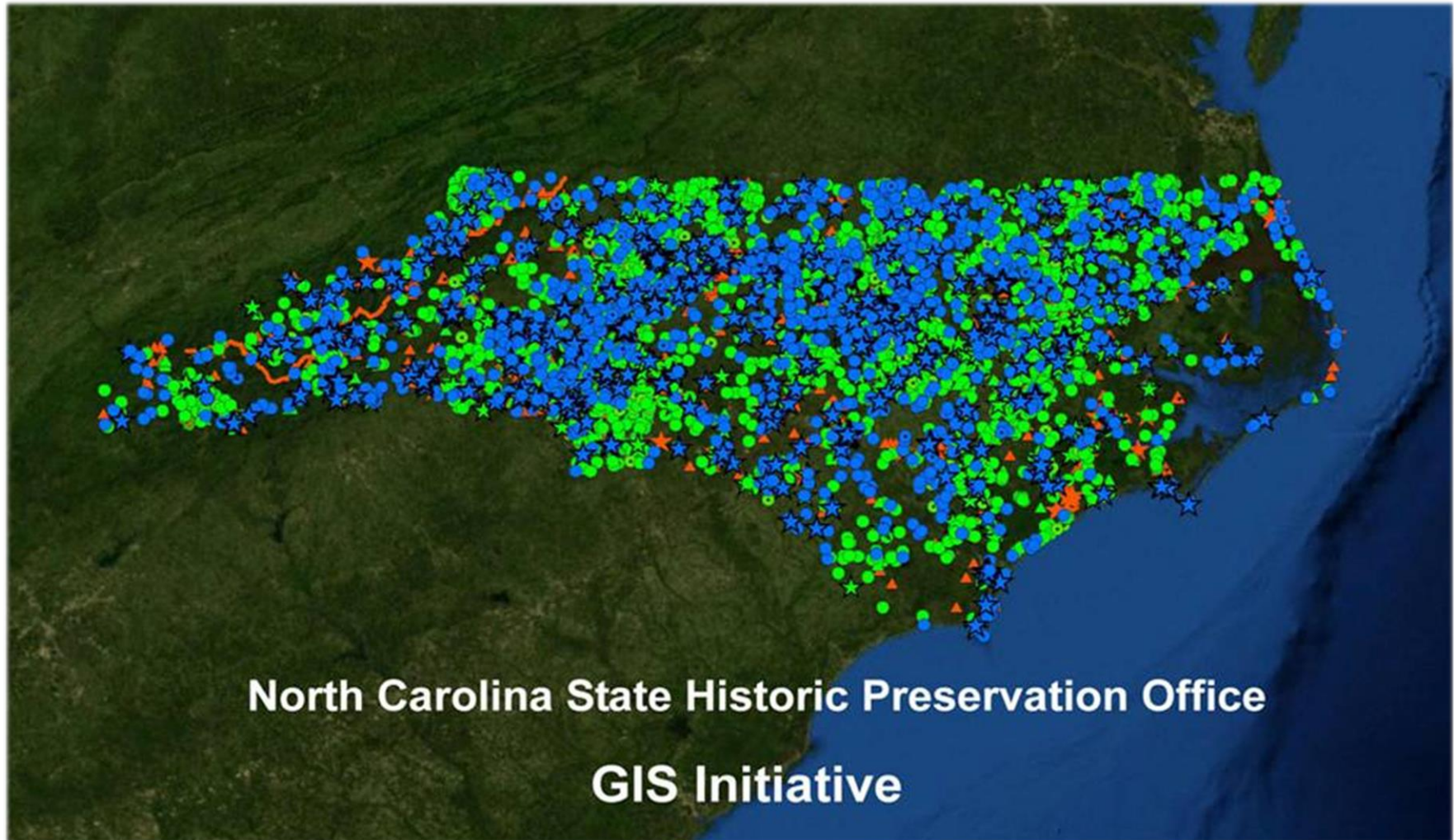
- **Buildings**
- **Structures**
- **Sites**
(archaeological)
- **Districts**
- **Objects**

Local Landmarks and Districts



- Designated by local governments
- Preservation commission nominates > **local governing board designates by ordinance**
- Report required / must ask for SHPO comment (non-binding)
- **Local regulatory oversight / 50%** property tax deferral (only for landmarks)

The National Register of Historic Places in North Carolina



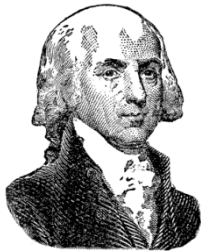


Current Inventory of Southern Shores



The What...again

FEDERAL



10th
Amendment

What Feds aren't doing or can't do

State of North Carolina

Via
delegation
through
"enabling
legislation"

Local government

The POLICE POWER



10th Amendment allows
the states to exercise
POLICE POWER, or the
power

to *attend to, protect,*
regulate, promote
public health, safety, &
welfare

Examples of exercise of the police power

- **Public health** regulations
- **Building codes**
- **Zoning** ordinances
- **Subdivision** regulations
- **Pollution** controls
- **Environmental** regulations
- **Sign** regulations

Historic preservation ordinances

Historic Preservation Commissions

(NC GS 160A-400.7)

- **At least 3 members**
- With terms no greater than **4 years**
- **Majority** must have “**demonstrated special interest, experience or education in history, architecture, archaeology, or related fields**”
- **must reside w/n territorial jurisdiction**
- **Advisory bodies/ cmtes OK**
- **TYPES of COMMISSIONS**
 - **Historic Preservation Commission**
 - **Historic Landmarks Commission**
 - **Historic Districts Commission**
 - **Planning Board**
 - **Community Appearance Commission**
- **NOTE:** pre-1989 “Historic Properties” Commission still valid even though statute governing them repealed.

Why do we have local commissions?

(NC GS 160A-400.1)

LEGISLATIVE FINDINGS (1989)

WHY?



- “Historic heritage of our State” = “one of our most valued and important assets”**
- “The conservation and preservation of historic districts and landmarks stabilize and increase property values and strengthen the overall economy of the State.**

HOW?

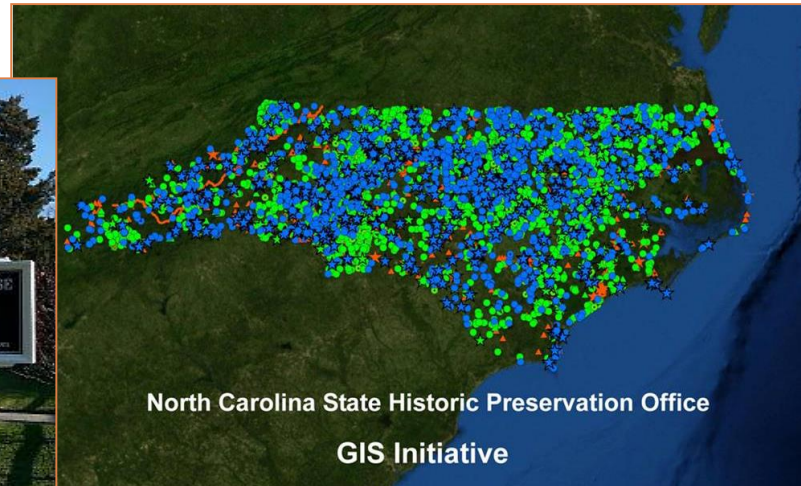
***LIST
REGULATE
ACQUIRE***

ZONING

- Safeguard heritage...by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory;**
- Promote the use and conservation** of such district or landmark **for the education, pleasure, and enrichment of the residents of the city or county and the State as a whole.**

Survey & inventory – what do you have?

(NC GS 160A-400.6, -400.8(1))



- Inventory required by NC GS 160A-400.6 before designation of landmarks



- a power under 400.8

- CLG \$\$ available

- Do you need an update?

Character ...defined

(NC GS 160A-400.3) / LANDMARKS (NC GS 160A-400.5)

What are we to preserve / protect?

INDIVIDUAL HISTORIC PROPERTIES = LANDMARKS

SPECIAL SIGNIFICANCE

HISTORY
PREHISTORY
ARCHITECTURE, AND/OR
CULTURE

POSSESS INTEGRITY OF

DESIGN
SETTING
MATERIALS
FEELING, AND/OR
ASSOCIATION

Designations of historic districts and landmarks.

LANDMARKS (NC GS 160A-400.6)

- 1. REMEMBER – YOU MUST HAVE RULES OF PROCEDURES + REVIEW CRITERIA *BEFORE* DESIGNATIONS**
- 2. HOW? By Ordinance approved by governing body**
- 3. Individual property; can be outside or inside of a local district**
- 4. Investigation / designation report required
Why designate? Significance? What's still there? Describe it. Include boundaries.**
- 5. Submit to HPO for review and comment**
- 6. Public hearing required**
- 7. 50% property tax deferral / must file ordinance w/ deed register**

Recapture penalties may apply if the owner destroys the property or damages its historic value.

Local Commission Powers

(NC GS 160A-400.8)

REGULATE	IDENTIFY / DESIGNATE	ADVOCATE / EDUCATE
issue COAs	<ul style="list-style-type: none">• Inventory properties of historical, prehistorical, architectural, and/or cultural significance• Recommend designation to governing board (or revocation / removal of designation)	<ul style="list-style-type: none">• Acquire property (or interests in land), including options to purchase• Hold, manage, preserve, restore and improve property / exchange, dispose of by sale or lease (including subject to restrictions that promote preservation)• Restore, preserve, and operate historic properties• Conduct an educational program Re: properties and districts• Cooperate with state, federal, local gov't, and contract with them and/or other organizations• Prepare and recommend the official adoption of a preservation element of the local comprehensive plan• Negotiate at any time with owners of bldg, structure, site, area, or object for acquisition or preservation, when reasonable necessary or appropriate

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Certificate of appropriateness required.

(NC GS 160A-400.9)

What is regulated? (within district or landmark)			How regulated?
<ul style="list-style-type: none">• ERECT• ALTER• RESTORE• MOVE• DEMOLISH	<ul style="list-style-type: none">• EXTERIOR any building or other structure• masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features• above-ground utility structure• Outdoor advertising sign• INTERIOR? Only in public landmarks OR private landmarks (with private owner consent)• Discretionary: historic signs, color, significant landscape, archaeological, and natural features	<p>EXTERIOR =</p> <ul style="list-style-type: none">• building materials• Size / scale• Type / style of windows, doors, light fixtures, signs, other appurtenant features	<ul style="list-style-type: none">• <i>Certificate of Appropriateness required</i>• COA before building permit issued• COA required even if NO building permit required

Standard for Review of COAs

“...the commission shall...take no action...except to **prevent** [that] which would be **incongruous** with the **special character** of the landmark or district.”

NC GS 160A-
400.9(a)

Certificate of appropriateness required, continued, (NC GS 160A-400.9)

- ❑ **BEFORE ANY COA enforcement**, must have
 - ❑ (1) rules of procedure PLUS
 - ❑ (2) “principles and guidelines”

- ❑ **“minor works”** administrative approval OK

- ❑ **DENIALS only by commission**

Certificate of appropriateness required, continued, (NC GS 160A-400.9).

□ **Due Process required**

- **Inform owners** “likely to be materially affected” by application **PLUS give “opportunity to be heard”**
 - “May” hold public hearing
 - FOLLOW NC Open Meetings Law NC GS 143-318.10
 - Review & Act on COA application – **no more than 180 days from filing**
 - **HPO and expert “advice”** – commission can ask at this point / NOT BINDING
- ## □ **Appeals?** To Board of Adjustment > Superior Court*
- **But* for state-owned buildings – State appeals to NC Historical Commission

Certain changes not prohibited,

(NC GS 160A-400.13).

- **Ordinary maintenance or repair** ≠ change in design, material or appearance
- **IF because of unsafe or dangerous condition, if public safety** requires construction, reconstruction, alteration, restoration, moving or demolition
- **“USE” of property** – owner not prevented from making any use of property not prohibited by other law

SOI Standards v. Design Guidelines

Introduction



Secretary of the Interior's Standards

In addition to adopting its own design guidelines, the Historic Preservation Commission has adopted the United States Secretary of the Interior's Standards for Rehabilitation for use in determining the appropriateness of proposed work in the historic district. These ten national standards for rehabilitation were first developed in 1976 by the National Park Service. The 1992 revised version follows:

- 1 A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
- 2 The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
- 3 Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
- 4 Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
- 5 Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
- 6 Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
- 7 Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
- 8 Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9 New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
- 10 New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Underlying the philosophy of DG should be the SOI's *Standards for Rehab*. However, DGs should be more prescriptive and specific.

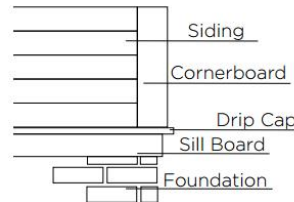
- 5 Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

Design Guidelines-What?

Illustrations:
Clear
Attractive
User-friendly
Generic



Detailing on Metal Pier



Typical Elements of Exterior Walls and Trim

Rehabilitation Guidelines

Guidelines

- 3.2.1 Retain and preserve original walls and foundations, including their materials, form, pattern, color, texture, and details.
- 3.2.2 Retain and preserve all wall and foundation features that are character defining features including:
 - Exterior wall bays, cornices, storefronts, arches, quoins, corner boards, and brackets.
 - Foundation vents and grilles, access doors, lattice panels, water tables, and steps.
- 3.2.3 If replacement of a wall, foundation element or detail is necessary, replace only the deteriorated element to match the original in size, scale, proportion, material, and detail.
- 3.2.4 Use care when removing deteriorated clapboards as not to damage adjacent boards and details. Treat the surfaces of new clapboards with wood preservative or primer before installation. Use a wood stain preservative rather than paint for new wooden shingles.
- 3.2.5 Follow the guidelines for historic materials for the proper application of paint, paint removal, and substitute materials.
- 3.2.6 Locate new vents and mechanical connections through historic walls and foundations on non-character-defining areas or inconspicuously on side or rear areas where they will not be visible from the street.
- 3.2.7 It is not appropriate to introduce new wall or foundation features, such as vents, bays, doors, access doors, or window openings, if they would diminish the original design or damage historic materials
- 3.2.8 If spans between masonry piers are to be filled in, recess and detail the panels so that the original piers are still prominent.

Design Guidelines & Contextual Standards

“Incongruity”

is a
contextual
standard

*Tout
ensemble*



DESIGN GUIDELINES

Using Design Guidelines in a COA decision is a **quasi-judicial activity.**



Design Guidelines: Exercise

STEP ONE: What are your findings of fact?

They seek to change roof from flat roof to pitched roof with eaves overhanging.

STEP TWO: What DG standards apply to your findings of fact?

LOOK AT ROOFING SECTION

Design Guidelines-How?

WHAT'S THE CONTEXT?

WHAT'S THE SPECIAL

CHARACTER?

(designation ordinance)

+

WHAT'S INCONGRUOUS WITHIN

THE CONTEXT?

(design guidelines & standards)

Motion Exercise # 1



Present condition

(www.flickr.com)

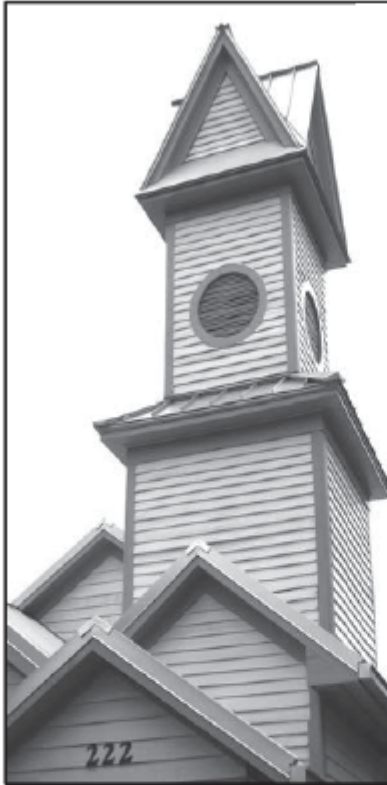
Proposed changes



YOUR TURN... WHAT ARE YOUR MOTIONS?



3.5 Roofs: GUIDELINES



Apply these guidelines to roofs and roof features, materials, surfaces, and details that are significant in defining the overall historic character of a landmark building, structure or district.

- 3.5.1.** Retain and preserve roofs that are significant in defining the overall historic character of a landmark building or structure, including their shape, pitch, line, overhang, and distinctive architectural elements.
- 3.5.2.** Retain and preserve historic roofing materials as well as their size, shape, patterns, textures, and color.
- 3.5.3.** Maintain and protect roof surfaces, features, and details by appropriate methods.
- 3.5.4.** Repaint previously painted metal roof features and surfaces in colors that are appropriate to the historic landmark.
- 3.5.5.** Repair deteriorated or damaged roofs and their distinctive surfaces and features through traditional methods of repair including resetting or reinforcing. It is not appropriate to remove a significant roof feature, such as a dormer, chimney, or concealed gutter, rather than repair and maintain it. It is not appropriate to patch slate and metal roofs with asphalt products rather than repair or replace in kind.
- 3.5.6.** Replace in kind a deteriorated or damaged roofing material or feature to match the original in size, shape, material, dimension, pattern, texture, color, and detail. Replace only the deteriorated portion or detail of a feature rather than the entire feature where possible. Consider compatible substitute materials only if use of the original material is not technically feasible.
- 3.5.7.** Replace a missing roof feature with a new feature based upon accurate documentation of the original or a new design compatible with the scale, size, material, and color of the historic landmark. It is not appropriate to introduce roof features or details in an effort to create a false historic appearance.

Motion Exercise # 2





**Proposed
changes**

Design Guidelines: Exercise

STEP ONE: What are your findings of fact?

They wish to add a rear addition (describe details).

STEP TWO: What DG standards apply to your findings of fact?

LOOK AT ADDITIONS



4.2 Additions to Historic Buildings

Over the life of a building, its form may evolve as additional space is needed or new functions are accommodated. Many buildings in Raleigh Historic Districts reflect their history through the series of previous alterations and additions that they exhibit. Consequently, such changes are significant to the history of the building and the district. New additions within the historic districts are appropriate as long as they do not destroy historic features, materials, and spatial relationships that are significant to the original building and site. Further, new additions should be differentiated from the original building and constructed so that they can be removed in the future without damage to the building.

Things to Consider As You Plan

New additions should never compromise the integrity of the original structure or site either directly through destruction of historic features and materials or indirectly through their location, size, height, or scale. The impact of an addition on the original building can be significantly diminished by locating it on the least-character-defining elevation and by keeping it deferential in volume. It should never overpower the original building through height or size. The form, design, relationship of openings, scale, and selection of materials, details, colors, and features of proposed new additions should be reviewed in terms of compatibility with the original building.

Although designed to be compatible with the original building, an addition should be discernible from it. For example, it can be differentiated from the original building through a break in roofline, cornice height, wall plane, materials, siding profile, or window type.

The impact of an addition on the building site must be considered as well. The addition should be designed and located so that significant site features, including mature trees, are not lost. The size of the addition should not overpower the site or dramatically alter its historic character.



A sensitively designed second-story addition to the front side elevation of this residence projects slightly beyond the screened porch over which it sits.



This contemporary rear addition with deck has been successfully differentiated from its principal structure, yet is compatible with the structure in design, materials, and details.



This upper floor attic addition echoes the design details of the original bungalow while respecting and retaining the original roof ridge line and eaves.

4.2 Additions to Historic Buildings: Guidelines

- .1 Construct new additions so that there is the least possible loss of historic fabric and so that the character-defining features of the historic building are not destroyed, damaged, or obscured.
- .2 Design new additions so that the overall character of the site, site topography, character-defining site features, trees, and significant district vistas and views are retained.
- .3 Survey in advance and limit any disturbance to the site's terrain during construction to minimize the possibility of destroying unknown archaeological resources.
- .4 Protect large trees and other significant site features from immediate damage during construction and from delayed damage due to construction activities, such as loss of root area or compaction of the soil by equipment. It is especially critical to avoid compaction of the soil within the drip line of trees.
- .5 Locate a new addition on an inconspicuous elevation of the historic building, usually the rear one.
- .6 Limit the size and the scale of an addition in relationship to the historic building so that it does not diminish or visually overpower the building.
- .7 Design an addition to be compatible with the historic building in mass, materials, color, and relationship of solids to voids in the exterior walls, yet make the addition discernible from the original.
- .8 It is not appropriate to construct an addition if it will detract from the overall historic character of the principal building and the site, or if it will require the removal of a significant building element or site feature.
- .9 It is not appropriate to construct an addition that significantly changes the proportion of built mass to open space on the individual site.



Site features should be considered an integral part of a project when planning additions to buildings.

YOUR TURN... WHAT ARE YOUR MOTIONS?



Delay in demolition of landmarks and buildings within historic district, (NC GS 160A 400.14).

Up to 365 days delay allowed

- **Can REDUCE time WHERE *commission* finds**
 - ▣ **Owner suffers extreme hardship OR**
 - ▣ **Owner is permanently deprived or all beneficial use or return by virtue of delay**
- **Can WAIVE** all or part of time if **NO** special significance or value towards maintaining character of district
- **Designation recommended but not finally approved – 180 days delay.**
- **Statewide Significance = SHPO determines; tool for commission to DENY demolition / destruction**
 - ▣ ***Babies' Hospital*** (Wilmington case) – start statewide significance procedure BEFORE COA application started
- **Demolition by neglect ordinance allowed; “undue economic hardship”**

Conflict with other laws; Remedies. (NC GS 160A

400.10,.11).

□ Conflict with other laws:

- IF preservation ordinance requires longer waiting period / higher standards than other ordinances, regs, charter provisions, 160A-400 et seq TRUMPS
- Otherwise, OTHER laws govern.

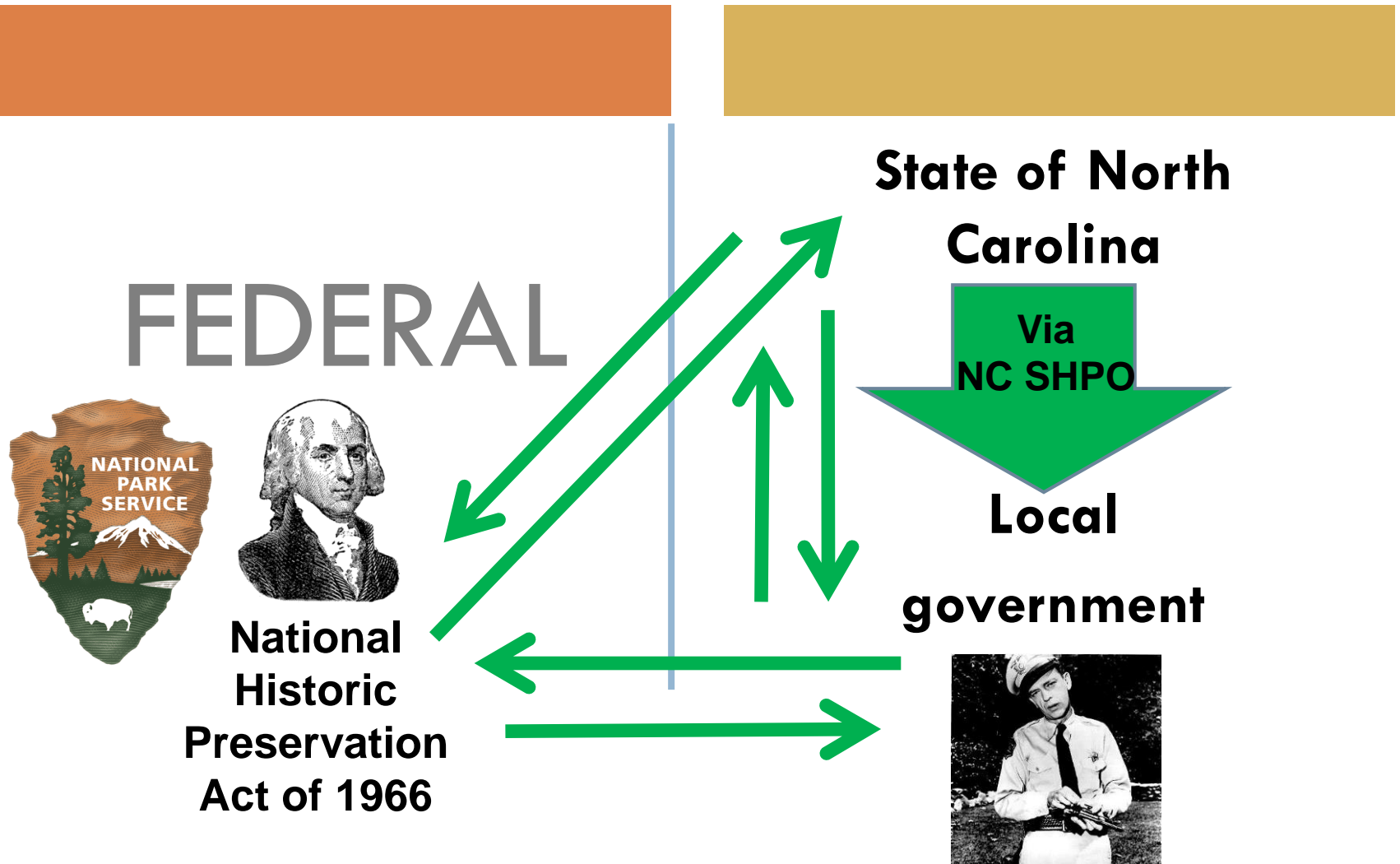
□ Remedies:

- **Commission OR “other party aggrieved by such action”** may sue to **prevent** demo, etc.; **restrain, correct, or abate violation, or prevent** any illegal act or conduct RE: designated property
- Can also use other remedies for violation of ordinance

Appropriations. (NC GS 160A 400.12).

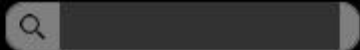
- Governing board can **appropriate \$\$ for**
 - **Expenses of commission**
 - **PLUS additional \$\$ for designated properties' (or where buildings are moved to):**
 - **Acquisition**
 - **Restoration**
 - **Preservation**
 - **Operation**
 - **Management**
 - **Education and Outreach**

Preservation through partnership



Certified local government (CLG) program

- **1980 amendments to National Historic Preservation Act**
- Creates a “**decentralized**” partnership between feds / states, inviting locals to participate
- Gives locals governments a **formal role in national program**
- **FUNDING (10% of state HPF \$\$\$ > CLG subgrants)**
- **CLG status = official commitment to historic preservation at local level**
- **Certain operating standards (CLG guidelines)**



State, Tribal, and Local Plans & Grants

State Preservation Program

Tribal Preservation Programs

Local Preservation

Preservation Planning

Historic Preservation Fund Grants

ASAP Information

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Certified Local Government Program & Local Preservation Tools

Preservation through Partnership: this is the goal of the Certified Local Government (CLG) Program. Local, State, and Federal governments work together in the Federal Preservation Program to help communities save the irreplaceable historic character of places. Through the certification process, communities make a local commitment to historic preservation. This commitment is key to America's ability to preserve, protect, and increase awareness of our unique cultural heritage found in the built environment across the country.

[How to Become a CLG](#)

[Find a CLG: \(CLG Database\)](#)

[For State Coordinators](#)

[CLG Annual Reporting Forms](#)

[Underrepresented](#)

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Local Preservation Tools

[Preservation Planning](#)

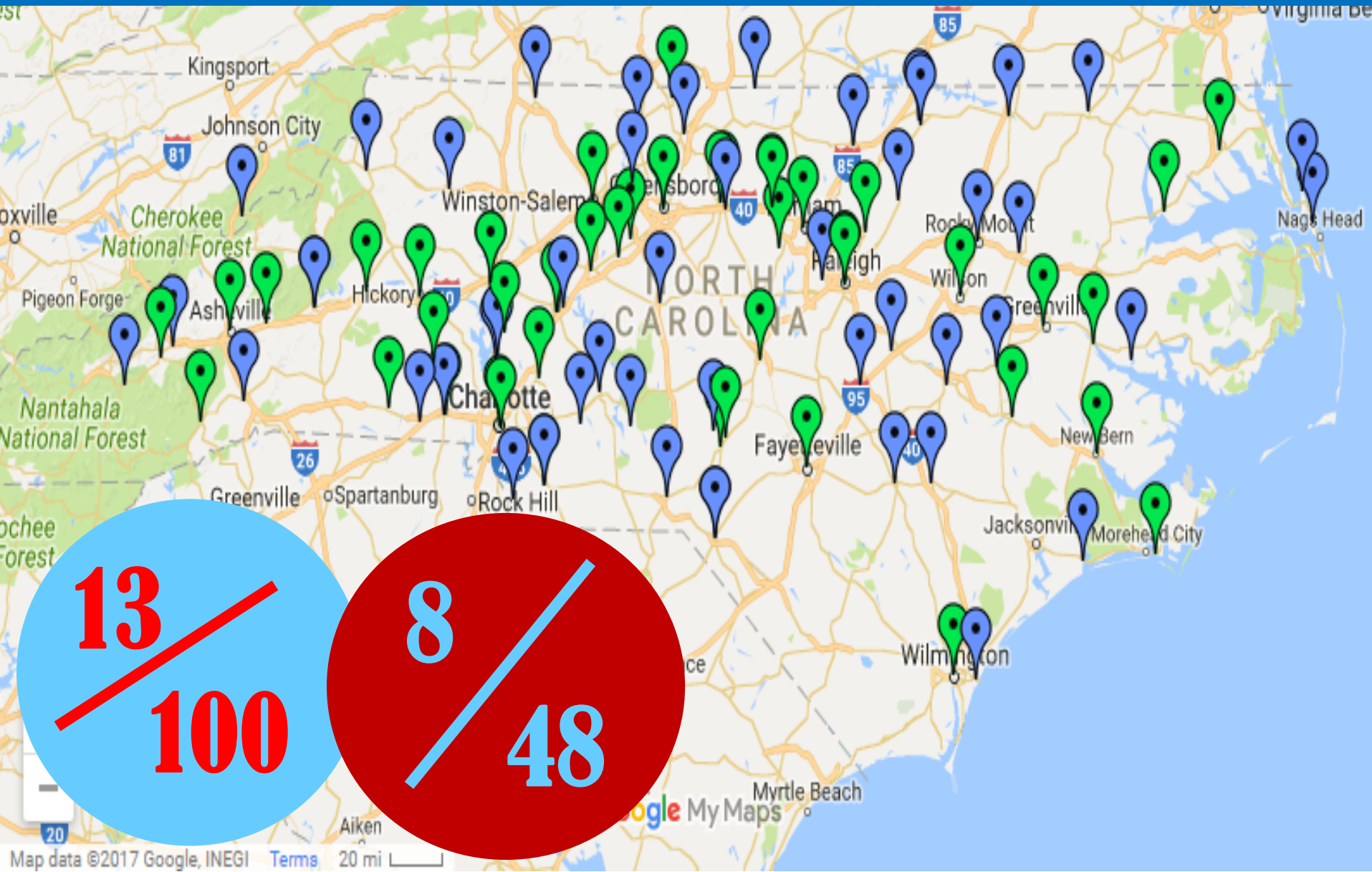
[Local Preservation & NPS](#)

[Preservation Partners](#)

CLG responsibilities

1. **Enforce legislation** for the designation and protection of historic properties (aka ordinance)
2. Establish an **adequate & qualified** local preservation commission
3. Maintain a system for the **survey and inventory of historic properties** compatible with the statewide survey
4. Provide for **adequate public participation** in the local program, including National Register nomination process
5. Satisfactorily perform responsibilities delegated to local government under National Historic Preservation Act 1966
6. Report CLG activities annually to the HPO
7. Further the 2013-2022 State Historic Preservation Plan

LPC's & CLGs Eastern North Carolina



The State of North Carolina

2013-2022 State Historic Preservation Plan:
Legacy – A Gift from the Past for a Better Tomorrow



http://www.hpo.ncdcr.gov/NorthCarolina_2013-2022_HistoricPreservationPlan.pdf



**Thank you for your attention and the
opportunity to be of service.**

Amber E. Kidd

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