Maryland Historic Preservation Commission Training Program

Prepared by
Winter & Company with
Maryland Association of Historic District Commissions

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

Maryland Preservation Commission Training Program

Introduction

Chapter 1. Why Are We Here?

Chapter 2. Legal Foundations

Chapter 3 Designating Properties

Chapter 4. Treatment of Historic Properties

Chapter 5: Nuts and Bolts for Commissions

Chapter 6. Project Review

Chapter 7. Special Legal Issues

Chapter 8. Special Design Issues

Local Preservation Commissions throughout Maryland, including the one shown here in Frederick County, work to preserve historic resources, using a system of tools that represent best practices in the field.

Welcome!

- Preservation commissioners, serving as part of local governments across the state, play invaluable roles in promoting the active, respectful use of historic buildings and districts.
- This tutorial provides a foundation of basic principles, operating procedures and practical advice for commissioners and for others interested in how commissions operate.

The terms “Historic Preservation Commission” and “Historic District Commission” are used interchangeably- understanding the title for each body will vary depending on the local ordinances in each jurisdiction.

About the Tutorial

- This tutorial offers practical training and education that commissioners and staff require to be effective.
- It provides them with practical information: basic concepts, common terminology, and core principles of preservation practice.
- While the tutorial is targeted primarily towards commission members and staff, others such as code officers, elected officials, and Main Street managers may also benefit from the training.

Although this tutorial provides legal explanations and cites legal authorities, it should not be relied on as a source of legal advice. Members and staff of historic preservation commissions are advised to obtain legal opinions from their county or municipal attorneys should questions arise.

About MAHDC

- The Maryland Association of Historic District Commissions (MAHDC) was founded in 1980 to provide advocacy, training, and program support for Maryland's Historic Preservation Commissions (HPCs) and local governments.
- MAHDC works with commissions to develop and implement effective preservation programs – programs that protect historic resources within their jurisdictions and positively influence their communities and local governments.

In addition to this training tutorial, MAHDC provides a full range of materials to assist local commissions in doing their jobs. Refer to www.mahdc.org for a list of publications and video materials.

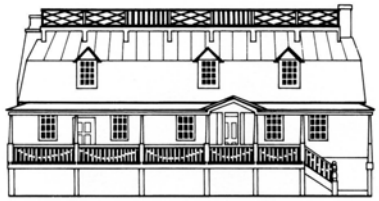
Why Training is Important

- Commissioners must be equipped to fulfill their statutory roles in a responsive and sensitive way.
- They also provide leadership for historic preservation at the local level.
- This requires a depth knowledge that covers a range of topics related to their responsibilities.

Acknowledgements

Many people provided invaluable assistance with this project:

- Winter & Company
  - Urban design & preservation consultants
  - www.winterandcompany.net
- Maryland Historical Trust
  - Cory Kegerise
  - Nicole Diehlman
- National Trust for Historic Preservation
  - Nell Ziehl
- Preservation Maryland
  - Elizabeth Beckley
  - Tyler Gearhart



Acknowledgements

Many people provided invaluable assistance with this project:

- Training initiative working group:
  - Chuck Ward, Town of Berlin
  - Kees de Mooy, Town of Chestertown
  - Dan Brandewie, Town of Cambridge
  - Tom Stevenson and Kay Crouch, Town of Salisbury
  - Gloria Smith, Wicomico County

- MAHDC board members and staff:
  - Roger Bollman, Easton
  - Bernie Callan, Frederick
  - Betty Carlson-Jameson, Calvert County
  - Brigitte Fessenden, Baltimore
  - Sharon Kennedy, Annapolis
  - Fred Stachura, Prince George's County
  - Karen Theimer Brown, staff

Funding Provided By:

- The Bartus Trew Providence Preservation Fund of the National Trust for Historic Preservation
- The Non-Capital Grant Program and Certified Local Government Program of the Maryland Historical Trust
- The Heritage Fund Program of Preservation Maryland, and The National Park Service

A Note About Funding:

- The activity that is the subject of this study has been financed in part with Federal funds from the National Park Service, U.S. Department of the Interior, made available through the Maryland Historical Trust, an entity within the Maryland Department of Planning. However, the contents and opinions do not necessarily reflect the views or policies of these agencies nor does the mention of trade names or commercial products constitute endorsement or recommendation by these agencies.

- This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as amended, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, disability or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to: Office of Equal Opportunity, National Park Service, 1849 C Street, N.W. Washington, D.C. 20240-0001.

Chapter 1:
Why Are We Here?

In this Chapter…

A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

Local Preservation Commissions throughout Maryland, including the one shown here in Frederick County, work to preserve historic resources, using a system of tools that represent best practices in the field.

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

Chapter 1.
Why are We Here?

In this chapter:

A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

A Starting Question:

- Let's say you've just been invited to apply for a seat on the Historic Preservation Commission in your community. You are certainly interested, but you need more information:
  - What is this all about?
  - What does "preservation" mean?
  - How did we get here?
  - And what is the role of a preservation commissioner?

This chapter provides some answers….

In this chapter:

A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

A. Introduction

With Heritage So Rich:

- *"What we want to conserve, therefore, is the evidence of individual talent and tradition, of liberty and union among successive generations of Americans. We want the signs of where we came from and how we got to where we are…"*

  - Introduction, by Sidney Hyman

In 1966, a Special Committee on Historic Preservation for the U.S. Conference of Mayors explored the issue of heritage conservation in America. Their report, titled *With Heritage So Rich*, sparked adoption of the National Historic Preservation Act that year.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

B. Why do we preserve historic resources?

There are many reasons, but these are key:

- Honor our diverse heritage
- Support sound community planning & development
- Maintain community character & support livability
- Support sustainability

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

C. What does preservation mean?

- Preservation means keeping properties and places of historic and cultural value in active use while accommodating appropriate improvements to sustain their viability and character.
- It also means keeping historic resources for the benefit of future generations.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

D. What is a Historic Property?

- A prehistoric or historic district, site, building, structure, or object, that has been determined to have historic significance, using adopted criteria.
- One that is associated with an activity of importance in the community's history, or that represents a noteworthy designer, or type of building construction that is important in the area's history.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

E. What are our goals for preservation?

1. To maintain a connection with the American experience.

2. To preserve resources that reflect our heritage.

3. To provide an orientation to our society and our heritage.

4. To preserve historic resources in the public interest.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

F. How did we get here?

Early Steps in preservation:

1. Private organizations
2. Early local ordinances
3. State level activity
4. Federal activity

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

Early preservation activities focused on individual properties:

- **1853: Mount Vernon Ladies Association**
  The Mount Vernon Ladies' Association of the Union was created by Ann Pamela Cunningham to save the home of George Washington.

- **1910: Society for Preservation of New England Antiquities**
  This Society was established to preserve individual properties of noteworthy significance, focusing on Boston and New England.

- **1912-1932 Fort Frederick, MD**
  Washington County moved to preserve a stone fort of the French and Indian Wars, built in 1756.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

Early local preservation ordinances:

1931: Charleston, SC

- First local preservation ordinance in America

1936: Vieux Carré, New Orleans< LA

- Established by the state legislature

1936: Boston, MA

- 15th local preservation ordinance

1953: Annapolis, MD

- Local ordinance adopted

1954: Frederick, MD

- Local ordinance adopted

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

State level activity:

1961: Maryland Historical Trust (MHT)

- In 1961, the Maryland Historical Trust was established as a state agency by the Maryland General Assembly.

State law enabling local ordinances

- Most governments are empowered by Article 66B of the Annotated Code of Maryland, and some others by Article 25A or Article 28.

1957: Article 66B of the Code of 1957

- Legal basis formalized in 1957 and amended in 1968 and 1995. This established rules for designating properties, design review, and for operation of preservation commissions.

1967: MHT designated as Maryland's State Historic Preservation Office

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

Early federal actions:

1935 - National Historic Sites Act

- Established the National Historic Landmarks (NHL) program and authorized the Secretary of the Interior to administer the program.

1949 - Housing Act of 1949

- Kick-started the "urban renewal" program that would reshape American cities. The Act provided federal funding to cities to cover the cost of acquiring areas of cities perceived to be "slums."

1956 - Federal Aid Highway Act (also known as the Interstate Highway Program)

- Empowered the acquisition of rights-of-way for highways throughout America, often impacting older neighborhoods.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

Early federal actions:

1966 - National Historic Preservation Act

- Created the National Register of Historic Places, established grant programs for restoration projects and survey activity, and required review of federally involved projects for impacts on historic properties.
- Established a system of state and tribal liaison officers

1969 - National Environmental Policy Act

- While focused on ecology and biological resources, it came to influence procedures used to identify, designate and protect historic resources as well.

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

How did we get here?

Later federal actions:

1976 - American Revolution Bicentennial

- Spurred new interest in history and historic properties
- Encouraged a surge in local governments establishing preservation commissions

1980 - Certified Local Government program

- Focused on promoting historic preservation at the grass roots level
- Established as an amendment to the National Historic Preservation Act
- Certified Local Governments are active partners in the Federal Historic Preservation Program

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

G. What is the commission's role?

1. Stewardship

- Promote proper use and care
- Review proposed improvements
- Encourage use of incentives

2. Identification

- Sponsor historic resource surveys

3. Evaluation

- Evaluate for significance, using adopted procedures and criteria

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

The commission's role…

4. Nomination

- Nominate properties for listing in a register
- Recommend designation as local landmarks

5. Education

- Promote awareness and appreciation
- Encourage appropriate treatment

6. Planning

- Integrate preservation in public policy
- Support planning for individual historic properties

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

H. What incentives are available?

Local Property Tax Credits

- Available for homes as well as income-producing designated historic buildings
- An offset of property taxes by a percentage of the rehabilitation, or an amount equal to the increase in property taxes resulting from the rehabilitation

Examples:

Bel Air, Maryland

- 10% property tax credit toward the cost of exterior renovations

Frederick County, Maryland

- Property tax incentive for a five year period
- The first year credit is 100% of increased value, then diminishes by twenty percent each year

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

Incentives & Benefits

State level benefits include:

Maryland Sustainable Communities Tax Credit Program

- Maryland income tax credits credit for "certified historic structures"
  - 20% credit for owner-occupied, single-family residences
  - 20% credit for commercial buildings
  - 25% credit for high-performance commercial buildings
  - 10% credit for non-historic, "qualified rehabilitated structures"

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

Incentives & Benefits

State level benefits also include:

State Grant Programs (Through MHT)

- Acquisition and rehabilitation of historic properties
- Historic property documentation
- Archeological investigations
- Documentation of folkways and cultural history through oral histories
- Heritage tourism development
- Museum activities

Loans for Historic Preservation and Heritage Tourism Projects

- Acquisition and rehabilitation of historic properties
- Development of heritage tourism-related businesses

Heritage Area Loans

- For nonprofit organizations, local jurisdictions, individuals, and business entities within Certified Heritage Area Target Investment Zones
- Loans to assist in the enhancement of heritage attractions and visitor services

Incentives & Benefits

Federal level:

Federal Income Tax Credit

- Available for any qualified project that the Secretary of the Interior designates as a certified rehabilitation
- 20 percent credit
- Must be income-producing property

In this chapter:

A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

See also:
http://mht.maryland.gov/taxcredits_commercial.html

State grants:
http://mht.maryland.gov/grants.html

State loans:

http://mht.maryland.gov/loans.html

In this chapter:
A. Introduction
B. Why do we preserve historic resources?
C. What does preservation mean?
D. What is a historic property?
E. What are our goals for preservation?
F. How did we get here?
G. Role of the commission
H. Preservation incentives & benefits

Incentives & Benefits

The community at large also benefits in these ways:

- Job creation and construction sales
- Stable and enhanced real estate values
- Heritage tourism
- Sustainable communities

Chapter 2:
Legal Foundations & Fundamentals

In this Chapter…

A. How do we find what is historically significant?
B. How do we officially recognize properties of historical significance?
C. How does local designation work?
D. What legal issues may be raised?

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Chapter 2: Legal Foundation & Fundamentals

A Starting Question:

- You are a member of your local preservation commission, which is considering the designation of the city's oldest house as a historic landmark. The owner, who objects to the designation, has asked if the city has a right to do so.
  - How do you answer?
  - What is the legal basis for regulations related to preservation?

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

A Quick Answer:

"Fundamentally, communities do have the right to protect historic properties. However, they must do so within the parameters of laws that affect regulation of property and they must employ accepted operating procedures."

Tom Mayes, Legal Counsel, National Trust for Historic Preservation

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

How do we find what is historically significant?

- Professionals in the fields of history, historic preservation and historical architecture work with staff, commission members and advocates to evaluate properties…

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

How do we find what is historically significant?

Surveyors:

- Use adopted standards that are recognized nationally.
- Employ a variety of research tools in making those determinations.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Tools used to identify historic properties

Identifying historic properties begins with a survey…

Surveys include:

- Field inspection
  - Description
  - Condition
- Historic information
  - Physical
  - Cultural
- Photographs, drawings and maps

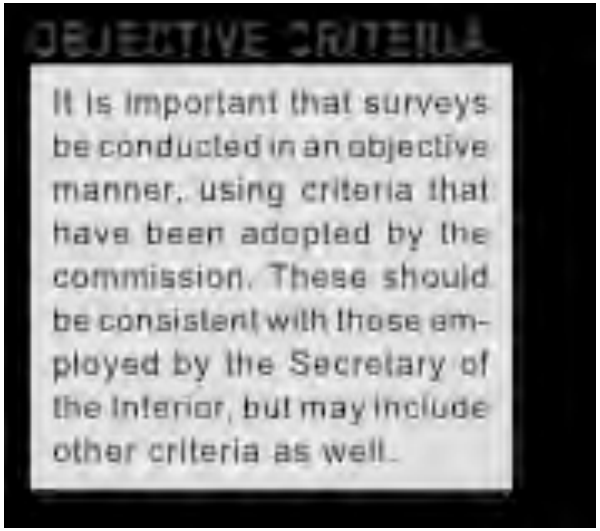
In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Tools used to identify historic properties

A survey is conducted…

- With guidance of the Maryland Historical Trust
- Meeting standards established by the Secretary of the Interior



In this Chapter:
A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Tools used to identify historic properties

Survey information is then entered into an inventory.

Inventory

- A catalogue of survey information
- Organized by individual property addresses
- It includes properties identified as:
  - Having significance
  - Lacking historic significance

Note that an INVENTORY is distinct from official designation as a historic resource in a historic REGISTER, in that being on the inventory usually does not involve regulation of property, whereas official designation as a landmark does.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Criteria for Evaluating Significance

Age

- Must be 50 years old or older

Integrity

- Must retain integrity of:
  - Location
  - Design
  - Setting
  - Materials
  - Workmanship
  - Feeling
  - Association

RETAINING INTEGRITY

A property must retain sufficient integrity in many of these aspects to convey its historical, cultural, or architectural significance

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Integrity

A property must retain integrity…

Copyright © 2011 by Winter & Company

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Criteria for Evaluating Significance

A property must have significance in one or more of these categories:

- Association with historic events or trends
- Association with individuals who made a demonstrable and lasting contribution
- Architectural merit
- Potential to yield information that will contribute to a better understanding of our past

LOCAL VARIATIONS IN CRITERIA

Note that each community may have criteria that vary somewhat from this list.

In this Chapter:
A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Criteria for Evaluating Significance

In order to determine significance, these tools are used:

Historic contexts

- These discuss the patterns and trends that produced individual properties in the community.

Historical themes

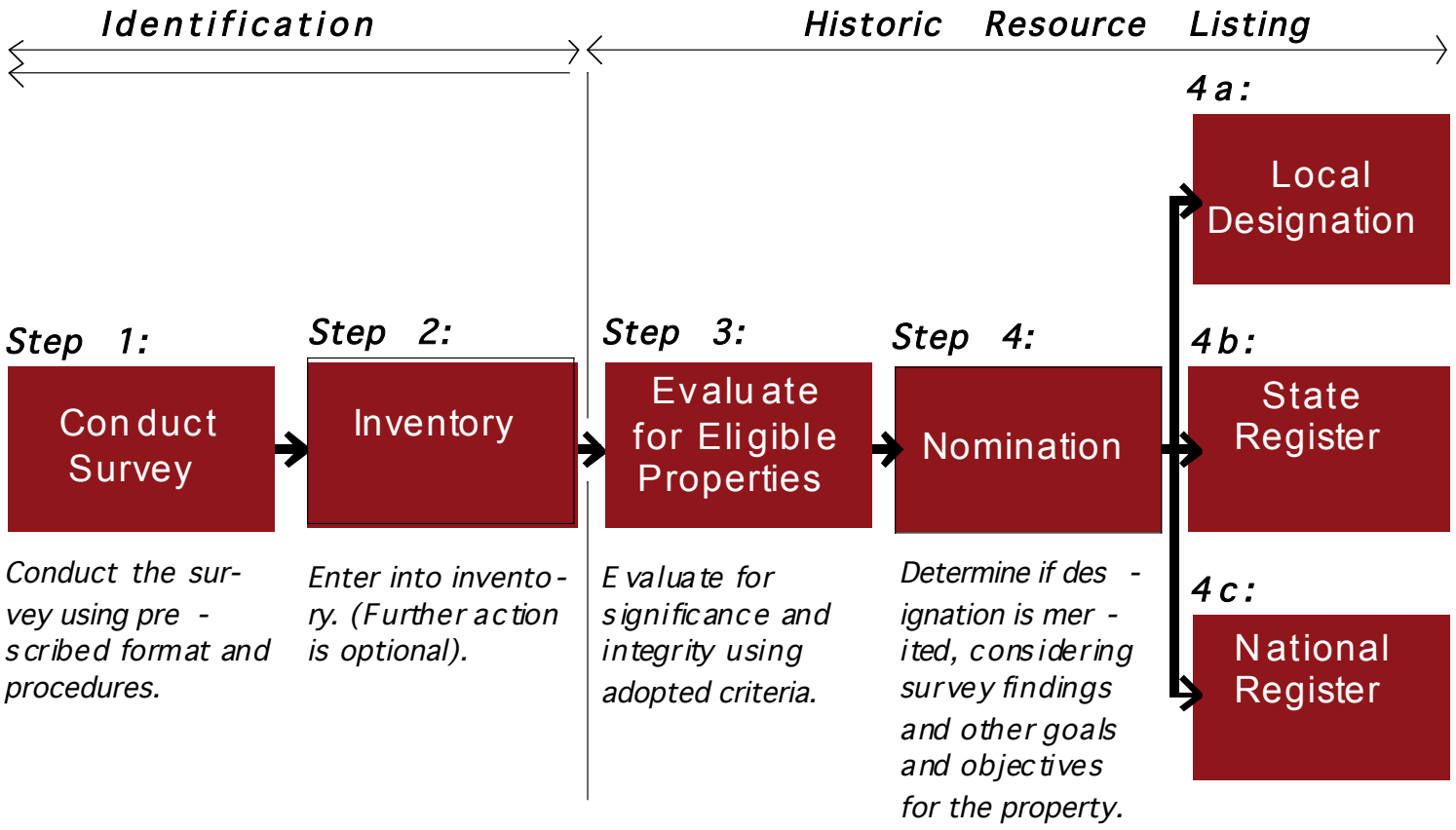
- Information based on a subject, specific time period or geographic area.

Inventory vs. Designation

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Surveys and inventories MAY lead to official designation, but not always.



In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

How do we officially recognize properties of historic significance?

- Properties may be designated as "landmarks" in a process that follows legal requirements.
- "Historic Register
  - A listing of properties that are officially designated as historic by the local, state or federal government.
- Properties on a historic register may be eligible for special benefits and subject to specific requirements.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Types of designation

Historic properties may be designated at one or more of these levels:

- Federal
  - National Register of Historic Places
- State
  - Maryland Register
- Local government level
  - Provides for local commission review

LEVELS OF DESIGNATION

Since properties may be designated at more than one level, this may be confusing to lay people, and it is important that you are clear in discussions about designation.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

The National Register of Historic Places

- Recognizes districts, buildings, structures, objects, and sites for their significance in American history, archeology, architecture, engineering, or culture, and identifies them as worthy of preservation.
- A program of the U. S. Department of the Interior, National Park Service
- Administered at the State level by the Maryland Historical Trust.

LEVELS OF SIGNIFICANCE

Note that, while it is named the "National Register," properties may only be significant at a state or even a local level. They must, however, meet the National Register criteria.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

National Register Listings in Maryland

- The National Register currently (as of 2011), comprises:
  - Over 1500 listings in Maryland, including some 200 historic districts.
- Listed properties span a wide variety of types and periods, ranging from prehistoric archeological sites to buildings of the recent past, and include rural landscapes, urban and suburban neighborhoods, bridges, sailing vessels, and more.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Effect of listing on property owners…

- Honors the property by recognizing its importance to the community, State, or to the Nation.
- Confers a measure of protection from harm by Federal or State activities.
- Does not place any restrictions on the actions of private property owners.
- Donations of preservation easements on Register-listed properties also may qualify for charitable tax deductions.
- A property listed only in the National Register may be altered or demolished following general building and demolition codes of local communities.

RETAINING INTEGRITY

Listing in the National Register also is the effective threshold for eligibility for a variety of programs designed to assist in the preservation of significant properties, including Federal and State tax credits for certain types of rehabilitation work. Other financial incentives for preservation include grants and loans.

In this Chapter:
A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

C. How does local designation work?

The Legal Basis for Local Designation

- Properties are designated under the community's "police power."
- Authorization is set forth in the Maryland Code, in different sections related to non-charter counties and municipalities and charter counties.
  - This is considered "enabling legislation."
  - Any local ordinance must be in agreement with the applicable state enabling legislation.

THE COMMISSION'S ROLE

Note that the commission's role is advisory in the designation process. The governing body makes the formal decision.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Article 66B of the Maryland Code

- Provides the legal foundation for Non-charter municipalities and counties.
  - (Article 66B, §8.01-8.17, Annotated Code of Maryland)
- Provides that those governments may regulate to preserve sites, structures and districts of historical, archaeological or architectural significance, as a public purpose in the state.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Article 66B provides:

Commissions may address these actions:

- Construction
- Alteration
- Reconstruction
- Moving
- Demolition

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Article 66B also provides for:

- Organization and membership of the historic preservation commission
- Qualification requirements for commissioners
- Acquisition of easements
- Requirement to file an application for alteration or improvements
- Provision to adopt design guidelines to use in commission reviews, including basic criteria to be included

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Articles 25A, 28 and 66B

- Charter Counties are enabled under Article 25A.
- Montgomery and Prince Georges counties receive their authorization under Article 28, §8-101(c).
- Article 66B, §2.12 grants Baltimore City its authority.

In this Chapter:
A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

D. What legal issues may be raised?

- These legal issues often arise during designation:
  - Takings
  - Procedural due process
  - Substantive due process

Let's look at them, briefly…

In this Chapter:
A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

The Takings Issue

- The term "taking" derives from a provision in the Fifth Amendment to the U.S. Constitution:
  - Private property shall not "be taken for public use, without just compensation."

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

The Takings Issue…

- In general, the courts have interpreted a "taking" to occur only when NO viable use of the property remains from the governmental action.
- Limiting use, or in some cases prohibiting certain alterations or even demolition, is not considered a taking.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

The Takings Issue…

- The courts have upheld local governments' ability to regulate for preservation.
- The courts do consider closely if a property owner's rights for due process have been followed.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Procedural Due Process

Procedural due process is essentially based on the concept of "fundamental fairness."

Procedural Due Process requires:

- Advance notice of the proceedings
- Final notice of the decision reached
- Opportunity for individuals directly affected by the proposed governmental action to be heard

FOLLOWING DUE PROCESS

Commissioners should take care in their actions to assure that procedural due process is provided.

In this Chapter:

A. How do we find what is historically significant?
B. How do we officially recognize properties of historic significance?
C. How does local designation work?
D. What legal issues may be raised?

Substantive Due Process

- Addresses the rationality of the substance of the decision
- Decision must be based on the evidence on the record using the criteria in the ordinance
- Protects individuals from bias, conflicts of interest, and other factors bearing on the impartiality of the decision-makers

MORE INFORMATION…

See also:

http:www.preservationnation.org/resources/legal-resources/understanding-preservation-law/federal-law/

Chapter 3:
Designating Historic Properties

In this Chapter…

A. Designating historic properties
B. Inventories
C. Type of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

Chapter 3. Designating Properties

In this chapter:

A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

A Starting Question:

- A property owner has indicated to you that they are interested in having their residence designated as a historic landmark under the community's preservation ordinance, and they want to know what the process will be. How will you answer them?

In this chapter:

A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

A. Designating historic properties

- Designation is a zoning action
- It is only made by a local governing body (i.e. Mayor/Council) through adoption of an ordinance
- The designation ordinance includes:
  - Description of the historic, architectural, or archeological significance of the property
  - Boundaries of the property
  - Reference to the local code that allows the government to make the designation

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Steps in the Designation Process:

1. Prepare the nomination
2. File the nomination with the HPC
3. Schedule a HPC hearing
4. Preservation commission decision
5. Council / county commissioners hearing
6. Appeal (if requested)

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

The Commission's Role:

1. Review the nomination
2. Hold informational meetings (highly recommended)
3. Make formal recommendation to the elected body

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

B. Local Inventories

Some key questions:

- What is an inventory?
- How is an inventory used?
- Why is it important to keep an inventory up to date?

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

What is an inventory?

- A collection of data about the potential historic significance of properties in the community
  - Includes any surveys of historic resources, as well as individual evaluations of properties that may be conducted for a variety of research purposes.
- Maintained as an informational source
- Does not itself bring with it any regulatory requirements

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

How is an inventory used at the local level?

- As a reference point in determining if any properties would merit consideration for designation
- As a means of developing educational materials
- When developing neighborhood plans
- When evaluating development proposals under other permitting regulations

C. Types of Historic Properties

The types commissions discuss most often are:

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Building

- A structure which is intended to shelter some sort of human activity. Examples: a house, barn, or church.

Historic District

- A geographically definable area, possessing a significant concentration of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development.

Object

- Constructions that are usually is artistic in nature, or small in scale when compared to structures and buildings, and is generally associated with a specific setting or environment. Examples: monuments, sculptures and fountains.

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Types of Historic Properties

Site

- A discrete area significant solely for activities in that location in the past, such as a battlefield or designed landscape (parks and gardens)

Structure

- A functional construction intended to be used for purposes other than sheltering human activity. Examples include, an aircraft, a ship, a grain elevator, and a bridge

- Other categories also are used. These include:
  - Cultural landscape
  - Traditional cultural property
  - Maritime sites
  - Archaeological resources

In this chapter:

A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

Landmarks & Districts

Contributing Property:

- Any building, structure, object or site within the boundaries of the district which reflects the significance of the district as a whole, because of historic associations, historic architectural qualities or archaeological features.
- Another key aspect of the contributing property is historic integrity.

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Landmarks & Districts

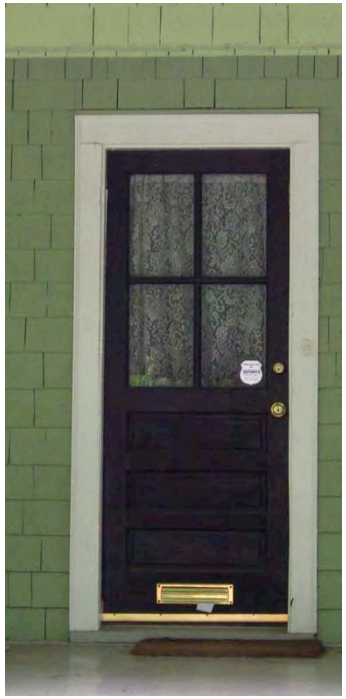
Non-contributing Property:

- In a historic district, those properties that do not have historic significance are termed "non-contributing."
- This does not indicate that the property is incompatible in its character with the district; that is a different consideration.

In this chapter:
A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

What makes a non-contributor?

- It is of more recent construction, and therefore does not have historic significance at this time
- It is an older property, but is substantially altered and therefore has lost its integrity
- There is insufficient information to determine that the property has historic significance



In this chapter:
A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

D. Significance & Integrity

Age of Historic Resources:

- In general, properties must be at least 50 years old
- Exceptions do exist when a more recent property clearly has historic value

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Significance Criteria

Most local governments apply criteria adapted from those of the Secretary of the Interior:

- Association with events or trends important in the history of the community
- Association with individuals who made a demonstrable and lasting contribution
- Architectural merit
- The potential to yield information that will contribute to a better understanding of our past

Local preservation commissioners often review survey documents to confirm evaluations of individual properties.

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Integrity

- In addition to demonstrating significance, a property must retain physical integrity to reflect that significance.
- It must not have been substantially altered since the period of historical association.

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

Aspects of Integrity

Integrity includes:

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

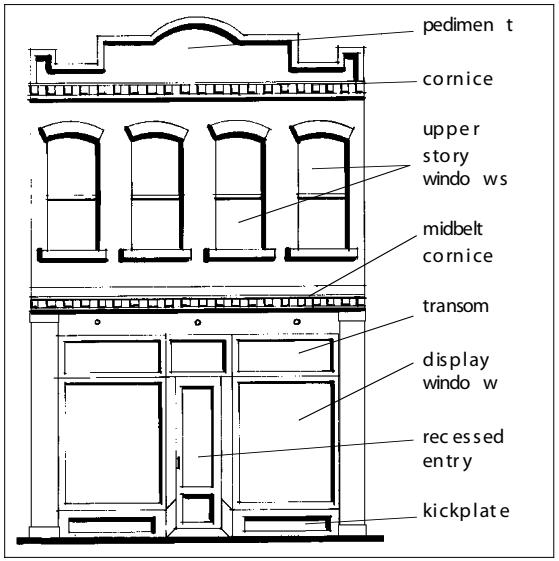
A majority of the resource's structural system and materials and its character defining features should remain intact for a property to possess integrity.

What are character-defining features?

- **Some basic character-defining feature categories:**
  - Shape of the building overall (simple rectangle, complex composition)
  - Roof shape (sloping, flat)
  - Roof details (eaves, rafters)
  - Openings (windows and doors)
  - Various aspects of the site and environment
  - Projections (porches, turrets, bay windows)
  - Craftsmanship - trim and other components (decorative elements, railings, shutters)
  - Materials

In this chapter:

A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries



Copyright © 2011 by Winter & Company

What are character-defining features?

Italianate/Second Empire
1855 - 1885

above: The John J. Collins house, built in 1885 is an example of the Second Empire style, which has many elements in common with the Italianate style, the difference being, primarily, the Mansard roof, inspired by buildings in Paris during the 19th century.
Another example of the style, the John R.P. Moore house bordered by East Market, Collins, and Bay Streets, was demolished and is currently the site of several new houses.

In this chapter:

A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

An example of an illustration of character-defining features from the Snow Hill Historic District Design Guidelines, Chestertown

Character-defining features in historic districts

Copyright © 2011 by Winter & Company

In this chapter:

A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

In many commercial districts, similarity of floor heights at the street level, and horizontal moldings combine to create a horizontal alignment that establishes a distinctive scale for a block. This can be a key character-defining feature.

In this chapter:
A.Designating historic properties
B.Inventories
C.Types of historic properties
D.Significance and integrity
E.Defining districts and using boundaries

E. Defining Districts & Using Boundaries

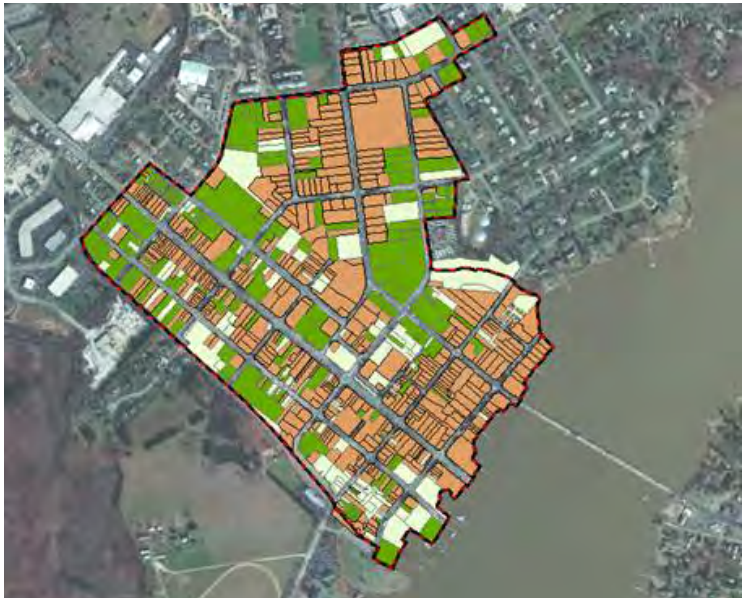
Factors to Consider in Establishing Boundaries:

Historical Factors

- Original settlement boundaries
- Early concentration of buildings

Visual Factors

- Views
- Gateways
- Topography



Chestertown Historic District

Defining Districts & Using Boundaries

In this chapter:

A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

A map of a potential historic district in Mackinac Island, Michigan, shows all buildings within the boundary. Contributors are identified in red; non-contributors in brown. Other structures, including two wharves, a stone retaining wall, and a breakwater, are also identified as contributing resources.

In this chapter:

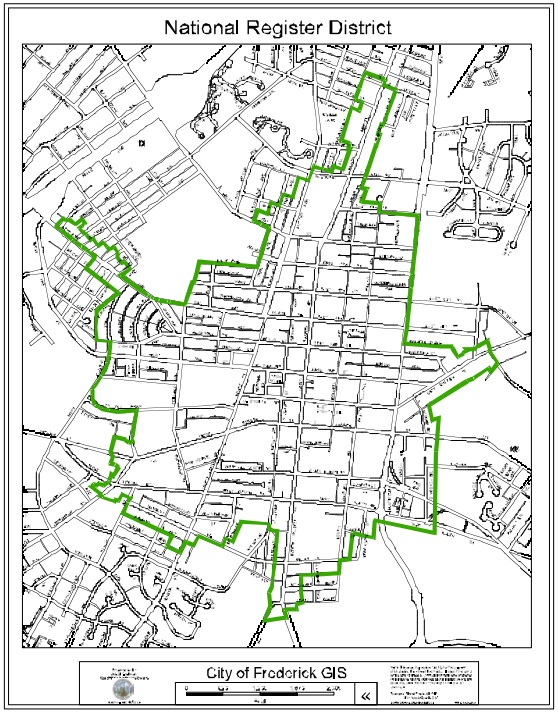
A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

Defining Districts & Using Boundaries

Factors to Consider in Establishing Boundaries:

Physical Factors

- Railroads, highways
- Major urban spaces
- Rivers, natural features
- Changes in land use
- Walls, fences
- Limits of settled areas



In this chapter:

A. Designating historic properties
B. Inventories
C. Types of historic properties
D. Significance and integrity
E. Defining districts and using boundaries

Defining Districts & Using Boundaries

Factors to Consider in Establishing Boundaries:

- Surveyed lines and lines of convenience
- Legal boundaries
- Streets and Rights of Way
- Property lines
- Uniform setbacks
- Political considerations
- Opinions of officials, institutions, property owners and private citizens

Chapter 4:
Treatment of Historic Properties

In this Chapter…

A. Determining what's important to preserve
B. Preservation principles
C. Alternative treatments for a historic property
D. Applying these principles

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

Treatment of historic properties

A Starting Question:

- As a commissioner, you are preparing to review a proposal to alter a historic commercial building. The project would include repairs to existing features, some alterations and an addition.
- How will you determine if this work is appropriate?

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

A. Determining what's important to preserve

- Before reviewing a proposal, it is important to identify the key features that contribute to the significance a historic resource.
- This may in part depend upon the type of resource, and whether it is individually listed, or is a contributor resource to the district.

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

Individual Landmarks

- For individually listed landmarks, great care should be taken to identify all the key features that should be preserved.
- For properties that are highly significant, this may include features on all sides of the building.
- This is especially true for buildings that are visible from multiple public ways.

In this chapter:
A. Determining what is important to preserve
B. Preservation principles
C. Alternative treatments for a historic property
D. Applying these principles

Significance and Integrity of a Contributing Resource

- Where contributing resources are perceived in a grouping, and sides and rear walls are less visible, features in remote locations may be less critical to the significance of the property.
- More flexibility in their treatment may be an option. This will depend, however, upon careful consideration of the context and the reasons for significance.

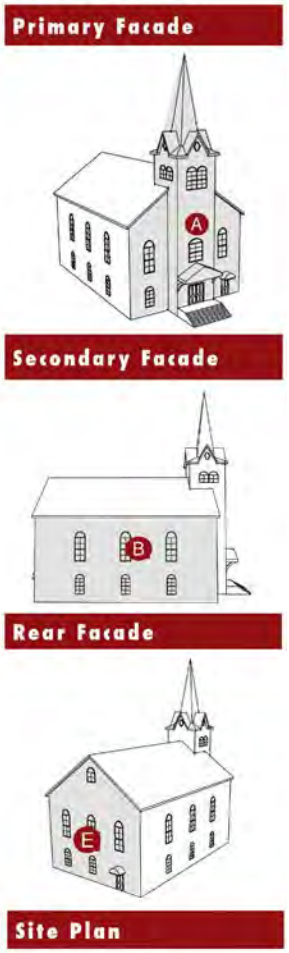
In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

Setting Priorities for Key Features

- Some features may be more important in conveying the historic significance of a property.
- For many buildings, facades seen from the public way often contain more character-defining features than other facades.

This series of sketches (to the right) illustrate a method of evaluating the priorities for preserving key features.

Primary facade: Highly valued character-defining features
Secondary wall: Moderately high value, with fewer character-defining features
Rear wall: Few character-defining features



Copyright © 2011 by Winter & Company

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

Basic preservation principles

The following principles apply to all historic properties:

Principle 1: Preserve key features

- Those elements that convey significance should be preserved.

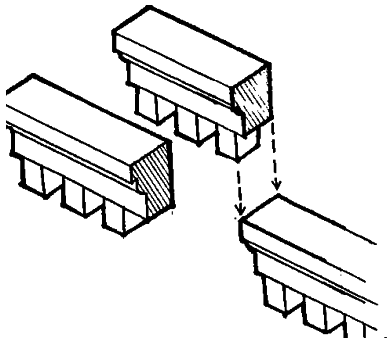
Principle 2. Retain integrity

- Retain historic fabric wherever possible.

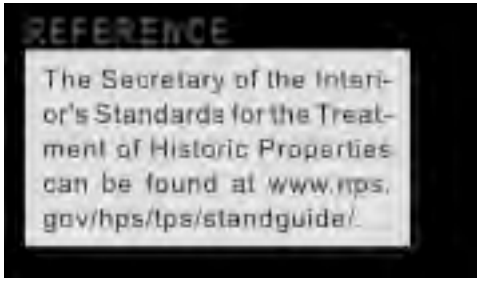
Principle 3. Respect the historic character of a resource.

- Do not try to change the style or make it look older than it is.

Principle 4. Seek uses that are compatible with the historic character.



Copyright © 2011 by Winter & Company



In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

C. Alternative Treatments

Four alternative "treatments" are used for historic resources:

1. Rehabilitation

- The process of returning a property to a state that makes a contemporary use possible while still preserving those portions or features of the property which are significant to its historical, architectural and cultural values.
- Rehabilitation may include a change in use of the building or additions. This term is the broadest of the appropriate treatments and is often used in local design review guidelines with the understanding that it may also involve other appropriate treatments.

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

C. Alternative Treatments

2. Preservation

- The act or process of applying measures to sustain the existing form, integrity and material of a building.
- Some work focuses on keeping a property in good working condition by repairing features as soon as deterioration becomes apparent, using procedures that retain the original character and finish of the features.

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

C. Alternative Treatments

3. Restoration

- The act or process of accurately depicting, the form, features and character of a property as it appeared in a particular time period.
- It may require the removal of features from outside the restoration period.

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

C. Alternative Treatments

4. Reconstruction

- The act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific time and in its historic location

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

The basics of the rehabilitation approach:

Step 1: Preserve

- Maintain all features in good condition, first.

Step 2: Repair

- If the feature is deteriorated, repair it.

Step 3: Reconstruct

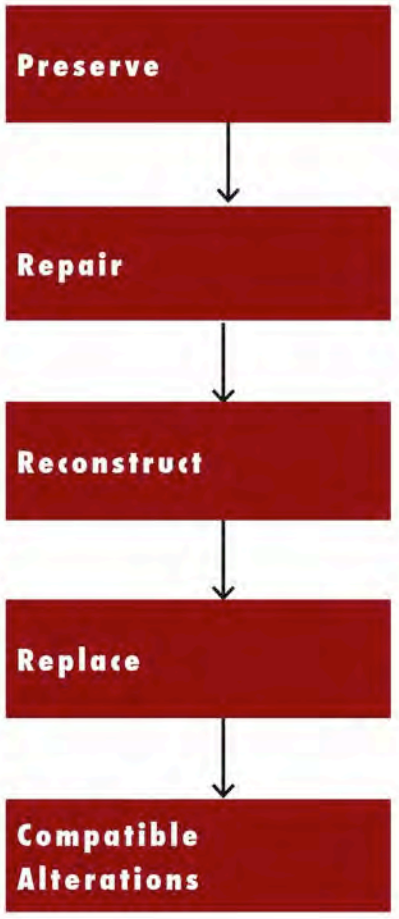
- If the feature is missing, reconstruct it.

Step 4: Replace

- If not feasible to repair, then replace.

Step 5: Install Compatible Alterations

- If an addition is needed, design it to minimize impacts.
- Also distinguish new changes from original historic elements.



Steps in developing an appropriate approach:

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

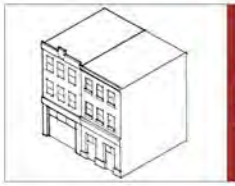
Steps for Planning a Preservation Project

Why is the Building Significant?

Step 1. Determine Building Significance
- How old is the building
- Where is the building/site located?
- I the building associated with a person/s?
- Is the building associated with an architectural style unique to he community?

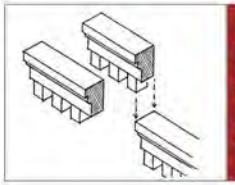
What Condition are the Building and its Key Features in?

Step 2. Determine Building Integrity
A building with historic integrity has a sufficient percentage of key character-defining features and characteristics from its period of significance which remain intact.



What is the Desired Project?

Step 3. Define Program Requirements
Are functional improvements needed? Or is the preservation of key features the objective?



Determine the Treatment Strategy

Step 4. Treatment Strategy
With the assessment of significance, building conditions and program requirements, now select the appropriate approach.

The Project Scope

The Project Scope
Steps 1-4 lead to a better understanding of what is important and appropriate to include in the scope of a preservation project.

The fundamental concept for rehabilitation is that improvements should take the "path of least interference" with key features of the property.

Note that guidelines for treatment of historic properties must be consistent with those generally recognized by the Maryland Historical Trust.

Copyright © 2011 by Winter & Company

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

D. Applying the Principles

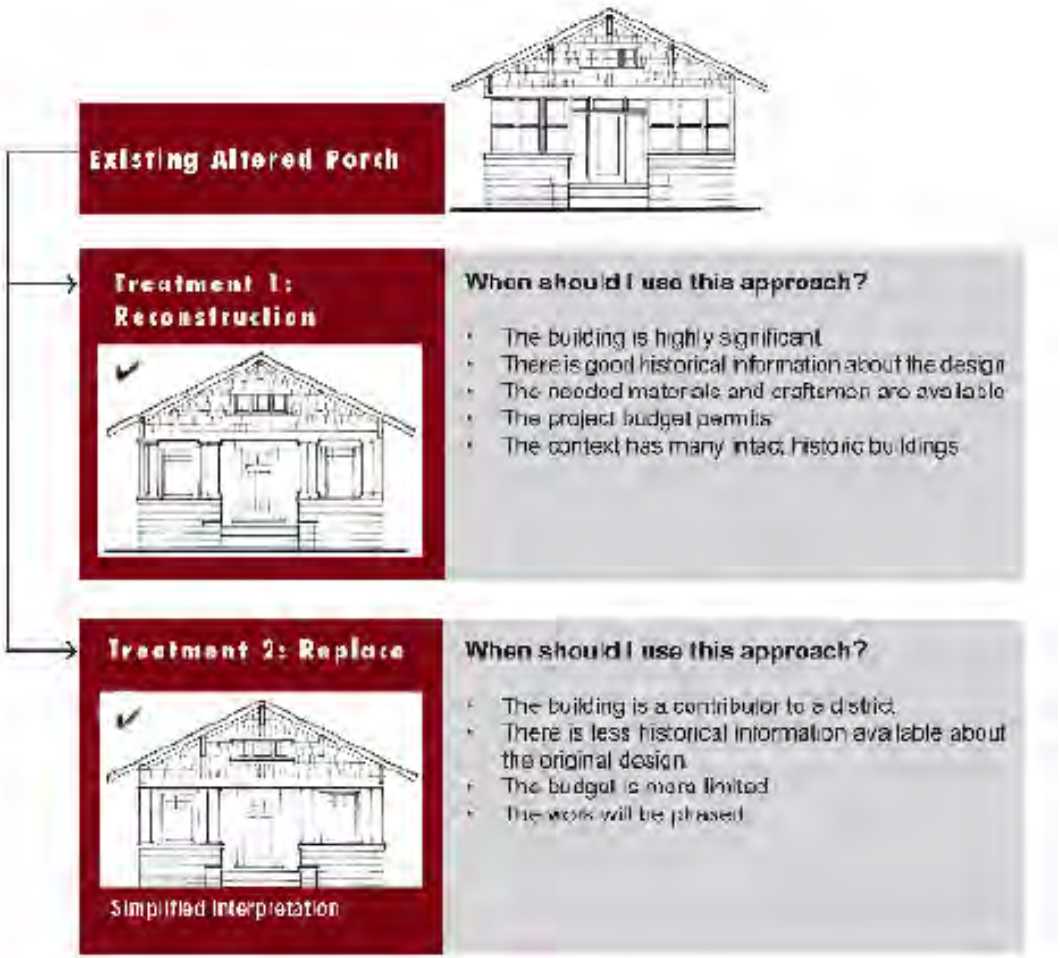
Original character:
- Offset tower
- Bracketed cornices
- Stone window sill and arches
- Double hung windows
- Fire door
- Storefront
- Brick facade

Interim condition:
- Tower missing
- Cornices missing
- Stone trim damaged
- Upper windows altered
- Fire door altered
- Storefront missing
- Brick damaged

After rehabilitation:
- Tower reconstructed
- Cornices reconstructed
- Stone trim repaired in place
- Upper windows replaced
- Fire door shape restored, with contemporary storefront
- Storefront reconstructed

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles

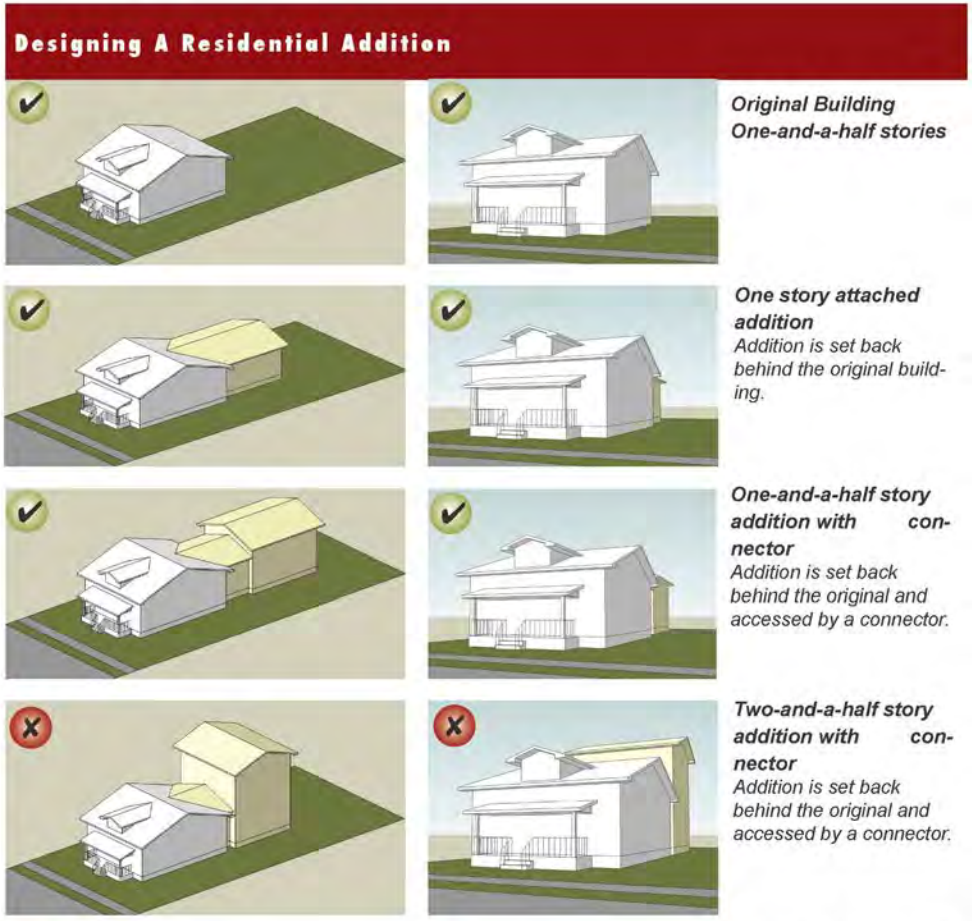
D. Applying the Principles



Copyright © 2011 by Winter & Company

D. Applying the principles to an addition

In this chapter:
A.Determining what is important to preserve
B.Preservation principles
C.Alternative treatments for a historic property
D.Applying these principles



Copyright © 2011 by Winter & Company

Chapter 5:
Nuts and Bolts of Preservation Commissions

In this Chapter…

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

A. The HPC and Its Staff

Starting Questions:

- You are a new member of your local preservation commission, and you will be participating in your first public hearing.
- A proposal to rehabilitate a historic building is on the agenda.
- How will you and your colleagues operate as a commission?
- And how will you make your decisions?

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

The Role of the HPC

- Citizens provide a public service to their communities by serving on preservation commissions.
- As such, they help to promote implementation of the community's adopted policies and regulations related to historic preservation.
- They should do so objectively, without introducing their personal biases.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Basic Roles of the HPC

Reviewing projects and advising

- Reviewing proposed changes to the exteriors of properties
- Assisting property owners in public meetings with devising appropriate strategies for maintenance and improvements

Decision-making

- Recommending designations to the local historic register

Planning

- Developing preservation plans and participating in broader community planning work

Note that the Maryland Historical Trust may be designated by the commission to make an analysis and recommendation concerning designations.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Basic Roles of the HPC

Administering incentives

- Approving applications for local incentives such as property tax credits

Monitoring and site visits

- Observing work in progress, and visiting sites prior to decision-making (note that site visits may be subject to open meeting laws)

Education

- Promoting general awareness programs as well as technical procedures and design

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Role of Staff

As technical advisors (professional staff)

- Technical assistance related to appropriate treatment of properties, design and planning considerations.
  - staff reports
  - informal guidance to property owners

As administrators

- General clerical roles
  - Publishing notices of hearings and agendas
  - Record keeping

As decision-makers

- If delegated by ordinance
  - Minor alterations approved through an administrative review process

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Appointment to the Commission

- Appointed by the city council or board of county commissioners
  - Some jurisdictions may provide for appointment by the mayor
  - Article 66B stipulates that members shall have three-year terms and may be reappointed

- Qualification of members
  - Those to be appointed should have a demonstrated special interest in the field
  - The ordinance may specify requirements related to certain professional fields associated with design, history and other relevant topics

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

B. Basic Legal Tools

Comprehensive Plan

- The primary policy document for a local government
- Historic preservation is addressed with other land use policies

Preservation element of the Comp Plan

- The Comp Plan should contain policies and actions related to historic preservation

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

B. Basic Legal Tools

Preservation plan

- Identifies key participants and sets forth specific action items
- Sets priorities for surveying, outreach, and incentives
- Describes how preservation partners can work with the commission

Preservation ordinance (Historic Area Zoning Ordinance)

- Key legal tool that establishes the commission, assigns powers and establishes basic processes for designating properties, conducting design review and other activities

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Key principles for a preservation ordinance

- Must promote a valid public purpose
  - In some way advance the public health, safety, morals or general welfare
- Must not be so restrictive as to deprive a property owner of all reasonable economic use of his property
- Must honor a citizen's constitutional right to "due process"
  - Fair hearings must be provided and rational procedures must be followed
- Must comply with relevant state laws

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Basic Elements of a Preservation Ordinance

1. Statement of Purpose
2. Preservation Commission Established
3. Commission Powers and Duties
4. Criteria for Designating Historic Properties
5. Procedures for Designating Landmarks & Districts
6. Reviewable Actions and Procedures
7. Standards for Review
8. Economic Hardship
9. Interim Protection Provisions
10. Minimum Maintenance (Demolition by Neglect)
11. Enforcement and Penalties
12. Appeals

Rules of Procedure Include:

Meetings

- Schedule for (e.g., once a month)
- Attendance requirements (maximum of excused absences)

Filing an application

- Schedule for filing
- Submittal requirements

Public notification of a hearing

- A sign posted at the site
- A published announcement

Process for public comment

- At a public hearing
- Prior to a public hearing

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Commissions should adopt rules of procedure. These describe in more detail the steps for conducting business. Commissions adopt rules of procedure by majority vote.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Rules of Procedure Include:

Public hearing process

- Receive applicant's presentation
- Receive staff comments
- Receive comments from the public
- Questions by the commission

Decision-making

- Requirement of a quorum
- Rules for discussion among the commission
- Make a motion
- Vote

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Rules of Procedure Include:

Disposition of the agenda item (by vote)

- Approval as submitted
- Approval with modifications indicated at the meeting
- Continuation to another meeting
- Denial

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Rules of Procedure Include:

Consent docket

- Several items may be approved in a single motion when there are no objections

Pre-application conference with staff

- Provides opportunity to advise applicants early in the process

Recording decisions

- Most hearings are tape or video recorded
- Written minutes, including decisions, are usually prepared.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Rules of Procedure Include:

Administrative approval

- Delegate staff to approve minor decisions

Ex parte communication

- Avoid communications about a pending application outside the public hearing (ex parte).
- If communication does occur, the rules usually require an announcement at the hearing, and the commissioner involved must recuse him or herself from participating in a discussion about the property.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

C. Design Guidelines

An adopted set of guidelines is essential

- Commissioners should refer to their design guidelines for all project review.

What are design guidelines?

- Criteria that guide commissions and property owners on historic resource treatment decisions.
- Usually a separate document from the ordinance, but may be included in the code itself.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

C. Design Guidelines

- Enable consistent and fair decisions
- Address rehabilitation and new construction
- May also address signage, site design, demolition, relocating structures and streetscapes
- Should be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

How are guidelines used?

1. As an educational tool

- To inform the general public and property owners of best practices in the treatment of historic resources

2. In advance planning for a project

- For use in the early stages of planning an improvement project

3. In commission decision-making

- To issue a certificate, the commission must find that the activity complies with all the relevant design guidelines

Basic guideline components:

Key Design Guidelines Components - Sample Guideline

These are recommended components of locally-crafted preservation design guidelines.

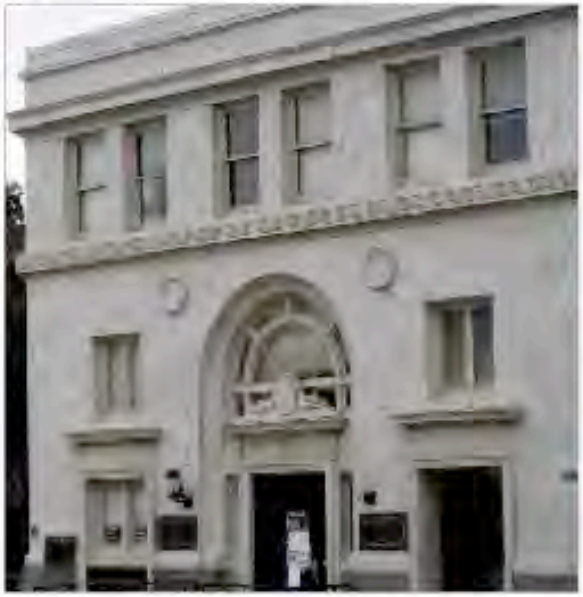
A → **Architectural Details**

B → Historic features, including original materials, architectural details and window and door openings, contribute to the character of a structure. They should be preserved when feasible.

C → **1.1 Preserve significant stylistic and architectural features.**

D → • Storefronts, cornices, porches, turned columns, brackets, exposed rafter tails and jigsaw ornaments should be preserved.

E →



Protect and maintain significant stylistic features, such as these window features, cornice details and ornaments.

Key

A Design Topic
Describes the design topic addressed by the design guidelines that follow.

B Policy Statement
Explains the desired outcome for the design topic and provides a basis for the design guidelines that follow. If a guideline does not address a specific design issue, the policy statement will be used to determine appropriateness.

C Design Guideline
Describes a desired performance-oriented design outcome.

D Additional Information
Provides a bulleted list of suggestions on how to meet the intent of the design guideline.

E Images
Clarify the intent of the design guideline by illustrating appropriate and inappropriate design solutions.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

More About Guidelines

Are "guidelines" enforceable?

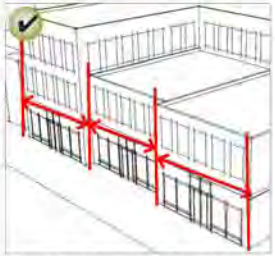
- Yes, especially when clearly linked to criteria in the ordinance.
- Some communities, in order to make this clear, use the term “standards”

What if we don't have guidelines?

- The National Park *Service’s Illustrated Guidelines for Rehabilitating Historic Building*s can serve very well, and many communities adopt them as interim guidelines

Some sample guidelines:

Facade heights of new buildings should fall within the established range of the block, and respect the traditional proportions of height to width.



New facade widths should reflect the established range of the building widths seen on the block.

Use architectural details that create visual interest and convey a three-dimensional facade to establish a sense of human scale.

B. Commercial Buildings

The following guidelines apply to the design of new commercial type buildings.

Mass and Scale

Traditionally commercial buildings had varied heights, articulated masses, visually interesting skylines and pedestrian-scaled street fronts. A new building should continue to provide a variety of pedestrian-friendly scales and visually appealing masses. Buildings should not be monolithic in scale or greatly contrast with the existing scale in the area.

A sense of human scale is achieved when one can reasonably interpret the size of a building by comparing features of its design to comparable elements in one's experience. Using building features and materials of a familiar dimension, such as traditional brick, storefronts and upper story windows, is an example.

4.13 Maintain the traditional size of buildings as perceived at the street level.

- The facade height of a new building should fall within the established range of the block, and respect the traditional proportions of height to width.
- Floor-to-floor heights should appear similar to those of traditional buildings in the area, especially the ground level.

4.14 Maintain traditional spacing patterns created by the repetition of uniform building widths along the street.

- A new facade width should reflect the established range of the building widths seen on the block.
- Where a building must exceed this width, use a change in design features to suggest the traditional building widths. Changes in materials, window design, facade height or decorative details are examples of techniques that may be used. These variations should be expressed consistently throughout the structure such that the composition appears to be a collection of smaller building modules.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Copyright © 2011 by Winter & Company

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

D. Defensible Decision-making

- The commission's decisions are based on the facts and established criteria and guidelines
- The decision must be accurately documented
- Commissioners should NOT make decisions based on:
  - Personal taste
  - Opinions of the applicant
  - Information that is not in the public record

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

Elements of a Defensible Decision:

- The decision should be based on
  - Relevant ordinances
  - Rules and procedures
  - The formal survey and designation information
  - Design review criteria and guidelines
- It should be clearly stated, avoiding "double negatives" or unclear directives.

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

What should a motion include?

- The stated action -- approve, deny, etc.
- The name and address of the property
- The "title" of the work proposed--alteration, addition, etc.
- Statement of compliance (or lack of)
  - Reference the criteria/guidelines on which the decision is based
- Reference to the significance of the property and its character-defining features
- Reference the submittal documents

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

What should the minutes include?

- A description of the items on the agenda as they occurred
- An indication of the actions taken
- References to the documents that were considered in the actions

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

What should the record contain?

- Application form
- Supporting documentation describing the property and proposed action
- Hearing notice
- Minutes of the hearing
- Formal written letter of the decision and a copy of the Certificate of Appropriateness
- Any other documents submitted that were a part of the hearing

In this chapter:

A. The HPC and Its Staff
B. Basic Legal Tools for the HPC
C. Design Guidelines
D. Defensible Decision-Making

How are appeals handled?

- In the same manner as zoning appeals
- The appellant may go to the Board of Appeals or to Circuit Court as provided by local law
- While an appeal is more likely from an applicant, that members of the public may appeal a commission decision

Chapter 6:
Project Review

In this Chapter…

A. The HPC's Scope of Authority
B. When is a Certificate of Appropriateness (COA) Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

A Starting Question:

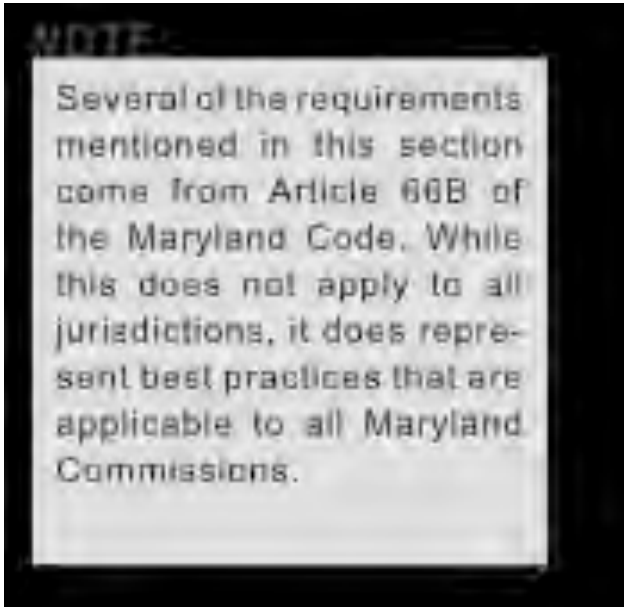
- A property owner has submitted a proposal to make improvements to their house, which is a contributor in the local historic district.
- What will you consider in the evaluation?
- What should you NOT consider in making your decision?

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

A. What is the HPC's Scope of Authority?

- According to state statute, a commission may only consider EXTERIOR alterations.
- Under Article 66B, commissions are required to review any alteration, even those not visible from the public way when any portion of the building is visible from the public way.
- The commission is limited to considering the work described in the application for the COA.



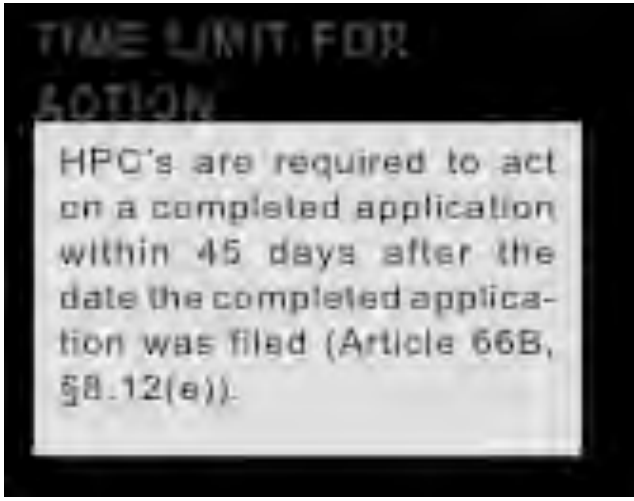
In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

When is a COA Required?

Most commissions require approval for these actions:

- Construction
- Alteration
- Reconstruction
- Moving
- Demolition
- Any other exterior change



In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

What are the Steps in Review?

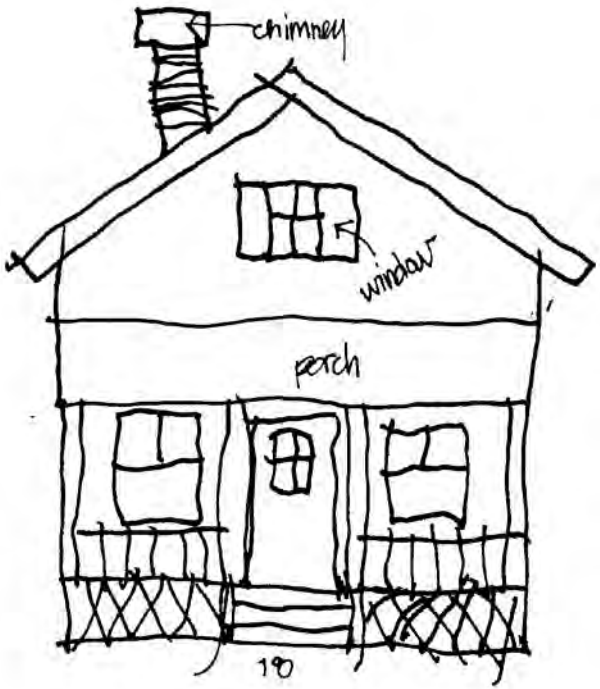
Before the meeting:

1. Confirm that submittal documents are complete.
2. Visit the site.
3. Review background information.
4. Review the submittal documents.

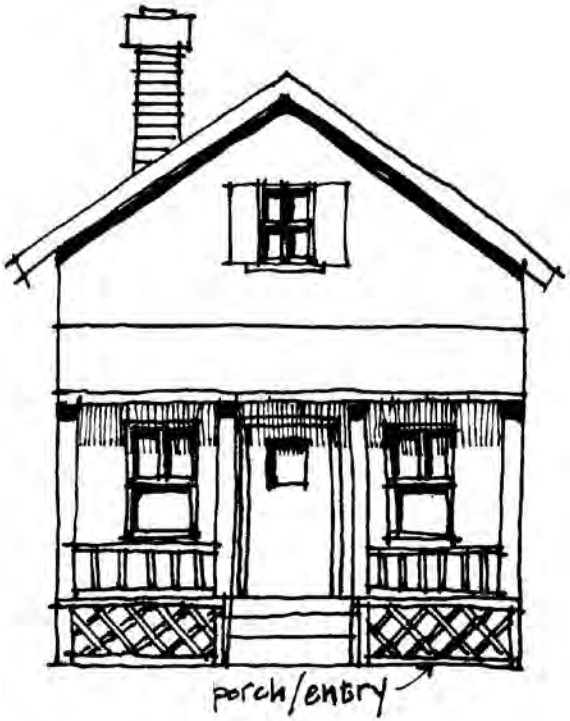
In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Adequate Documentation



Unacceptable
- Not to scale



Acceptable
• Free-hand, but to scale

Acceptable
• Mechanical, to scale

Copyright © 2011 by Winter & Company

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Steps in Review…

At the meeting:

1. Introduce the Commission and the review process.
2. Explain the purpose of the review.
3. Call each case according to the published agenda.
4. Introduce the applicant and their project.
5. Listen to the staff report.
6. Listen to the applicant's presentation.
7. Ask for clarification.

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Steps in Review…

8. Take public comments
9. Take statements from other public agencies or organizations
10. Allow the applicant to respond.
11. Entertain a motion.
12. Vote on the proposal.
13. Summarize the results.
14. Record the decision.

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Special Review Questions:

1. What is the context?
2. What is the impact of the proposal?
3. Which are the critical design issues?
4. Can the design issues be grouped?
5. Are non-design issues embedded?

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Evaluation Techniques:

Use these techniques in your evaluation:

- Use simple, clear language.
- Use the guidelines.
- Keep the discussion moving.
- Keep the discussion on track.

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

What are the Standards for Review?

- The significance of the site or structure and its relationship to the significance of the area
- The relationship of the exterior architectural features of a structure to the remainder of the structure and to the surrounding area
- The general compatibility of exterior design, scale, proportion, arrangement, texture and materials
- Any other factor including aesthetic factors that the commission deems pertinent

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

Citing the Guidelines

- Be certain to cite the guidelines.
- This makes it clear that the commission has made its decision objectively, using the tools that are officially adopted, not through personal taste or arbitrarily.

In this chapter:

A. The HPC's Scope of Authority
B. When a is COA Required?
C. Steps in the Review
D. Standards for Review
E. Citing Design Guidelines
F. Potential Actions

F. Potential Actions

These are the options:

1. Approve as submitted
2. Approve with conditions for alterations to the submittal
3. Deny as submitted
4. Continue for additional information

Chapter 7:
Special Legal Issues

In this Chapter…

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

A Starting Question:

- The owner of a historic house has applied to demolish the building, because keeping it would be an "economic hardship."
- The building is badly deteriorated.
- How should you respond?

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

A. Economic Hardship

- A specific condition that can only be determined using adopted criteria and carefully following procedures outlined in the ordinance.
- It is not something that commissioners should use their personal feelings about.
- Sound legal precedent indicates that a preservation commission can engage in regulations that may raise this question.

PENN CENTRAL DECISION

The Supreme Court ruled in its decision regarding a takings claim by Penn Central in New York City that a taking had not been demonstrated, and that a local preservation commission had the right to regulate a property.

This case is the basis for hardship tests. For more information, see: http://preservapedia.org/Penn_Central_Transportation_Company_v._City_of_New_York,_438_U.S._104_(1978)

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

What is Economic Hardship?

- Exists only when NO reasonable use of a property is available to the owner, due to the regulations in the preservation ordinance.
- Based on language in the Fifth Amendment of the U.S. Constitution.
- The term "reasonable use" is key.
  - If a property is limited in its use due to the regulation, such that the owner cannot maximize the economic benefits, but there is still a reasonable return, then no takings is found to exist.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

How should a hardship claim be handled?

- Consider an economic hardship claim separately from an application to demolish the building.
- First, decide if demolition is permitted.
- If demolition is denied, a second step is to determine whether an economic hardship claim is valid.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

The Permit to Demolish

- A COA is required.
- A demolition permit may be issued if:
  - The property is non-contributing
  - Or, it has lost integrity
- Economics is not a consideration at this step.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

Finding Economic Hardship

- Is heard separately from the demolition request
- A specific test for hardship is applied

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

Demolition Delay

- Some commissions can only delay demolition
- Usually for a defined period of time
- Economic hardship claims are not likely in these situations

Evidentiary Checklist

1. Current level of economic return
2. Any listing of property for sale or rent, price asked, offers received within the previous two years, including testimony and relevant documents
3. Feasibility of alternative uses for the property that could earn a reasonable economic return
4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property
5. Knowledge of landmark designation or potential designation at time of acquisition
6. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

The National Trust for Historic Preservation, in its publication *Assessing Economic Hardship Claims Under Historic Preservation Ordinance*, provides this checklist of information that is a useful tool for local commissions, shown to the left.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

B. Demolition by Neglect

- If a historic building is allowed to deteriorate, it may lose many character-defining features
- This may lead to a loss of significance
- This may also lead to a dangerous condition, in which demolition is the only remaining option.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

How Should it be Handled?

- The preservation ordinance may allow for:
  - Issuing a citation (usually civil, but sometimes criminal)
  - The government taking corrective action
  - Placing a lien on the property

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

How Should it be Handled?

- The ordinance may limit citations to specific classes of property, such as:
  - Unoccupied structures
  - Structures open to the elements
  - Major landmarks
  - Properties in designated revitalization areas

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

How Should it be Handled?

- Approach a citation carefully
- Communicate first
  - Give the owner an opportunity to take corrective action
  - Keep good records of the efforts to communicate

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

C. Enforcement

- Relates to:
  - Non-compliance with issued COAs
  - Work proceeding without a COA

- The Commission does not enforce violations.
  - It may advise or alert officials of a violation.
  - Government staff enforce the violation.

In this Chapter:

A. Economic Hardship
B. Demolition by Neglect
C. Enforcement

Remedies for Violations:

- The government may levy a fine for each day of violation.
- The amount varies by enabling legislation.

Chapter 8:
Special Design Issues

In this Chapter:

A. Substitute Materials

B. Sustainability and "Green" Issues

© 2012 Maryland Association of Historic District Commissions. All rights reserved.

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

A Starting Question:

- The owner of a historic house in the local district has applied to remove all of the original windows and replace them with new ones in order to save energy.
- They also wish to cover the wood siding with a cementious composite board material, in order to save on repainting over time.
- How will you respond?

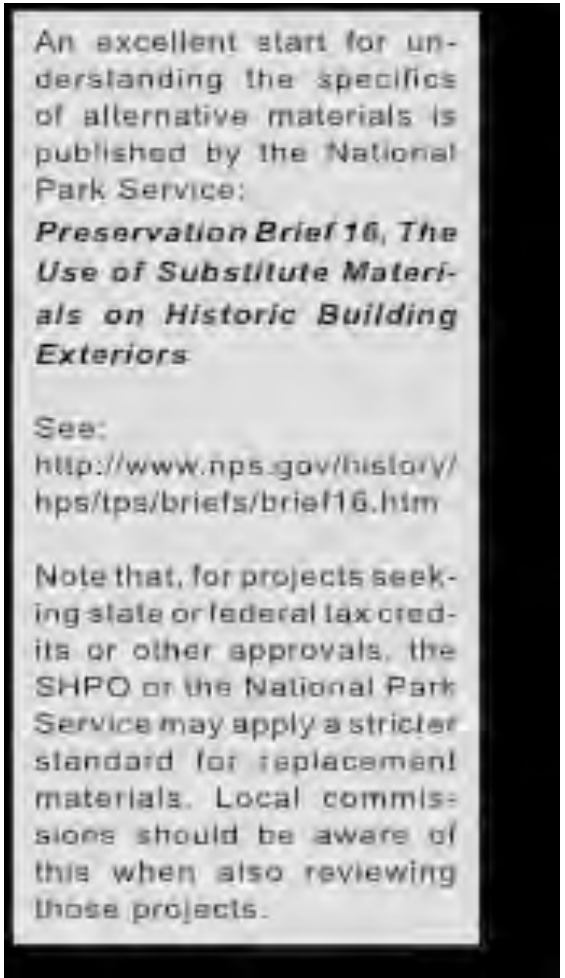
In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

A. Substitute Materials

- What is a substitute material?
  - A new material that is used to appear similar to one used originally
- Should they be allowed?
  - They can be used successfully
  - They are approved frequently by commissions
  - The Park Service also supports their use in certain circumstances

INFO ON SUBSTITUTE MATERIALS



In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Covering vs. Replacing

- Confine the discussion about alternative materials when replacement is warranted.
- COVERING original material is never appropriate.
- Removing original material that is in good condition is also inappropriate.

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Reasons for Using Alternative Materials

- The original has inherent flaws
- Supply of the original material is not practically available
- The craftsmen needed are not available
- New codes make the original difficult to use

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Criteria for Approving Alternative Materials:

- Accuracy
  - Similar in detail, profile, texture & finish
- Durability
  - With a demonstrated record in similar conditions
- Location on the property
  - Secondary walls, and more remote locations are preferred
- Impact on existing materials
  - Must be compatible
- Extent of replacement
  - Limited replacement is preferred

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

B. Sustainability and "Green" Issues

- Preservation of historic resources is inherently "green"
- Preservation and Sustainability are mutually compatible
- Commissions need to be prepared to address this issue

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

What is "Sustainability?"

- The three components:
  - (1) cultural/social,
  - (2) economic, and
  - (3) environmental.

Historic preservation contributes to all of these, and to some extent all three may be addressed in design guidelines.

Copyright © 2011 by Winter & Company

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Key Sustainability Concepts

- Keep the big picture
  - Dont, for example, address window replacement out of the broader sustainability context
- Resource conservation
  - Preserving historic buildings avoids negative impacts from new construction
- Landfill reduction
  - Preserving a building reduces impact on landfills

In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Key Sustainability Concepts

- Life cycle analysis
  - Consider resources consumed to create and maintain materials.
- Energy conservation
  - Sealing leaks and adding insulation are often most effective
- Energy generation
  - Consider installing collectors and other devices only after an overall strategy is developed

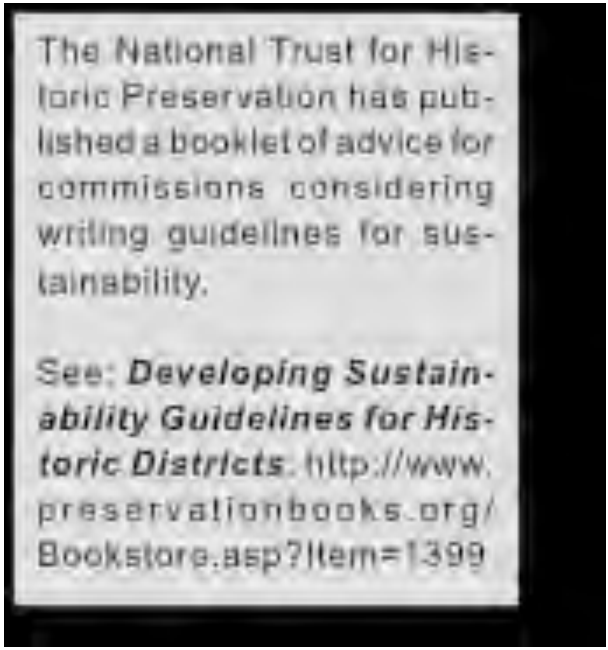
In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues

Steps in Developing a Sustainability Strategy

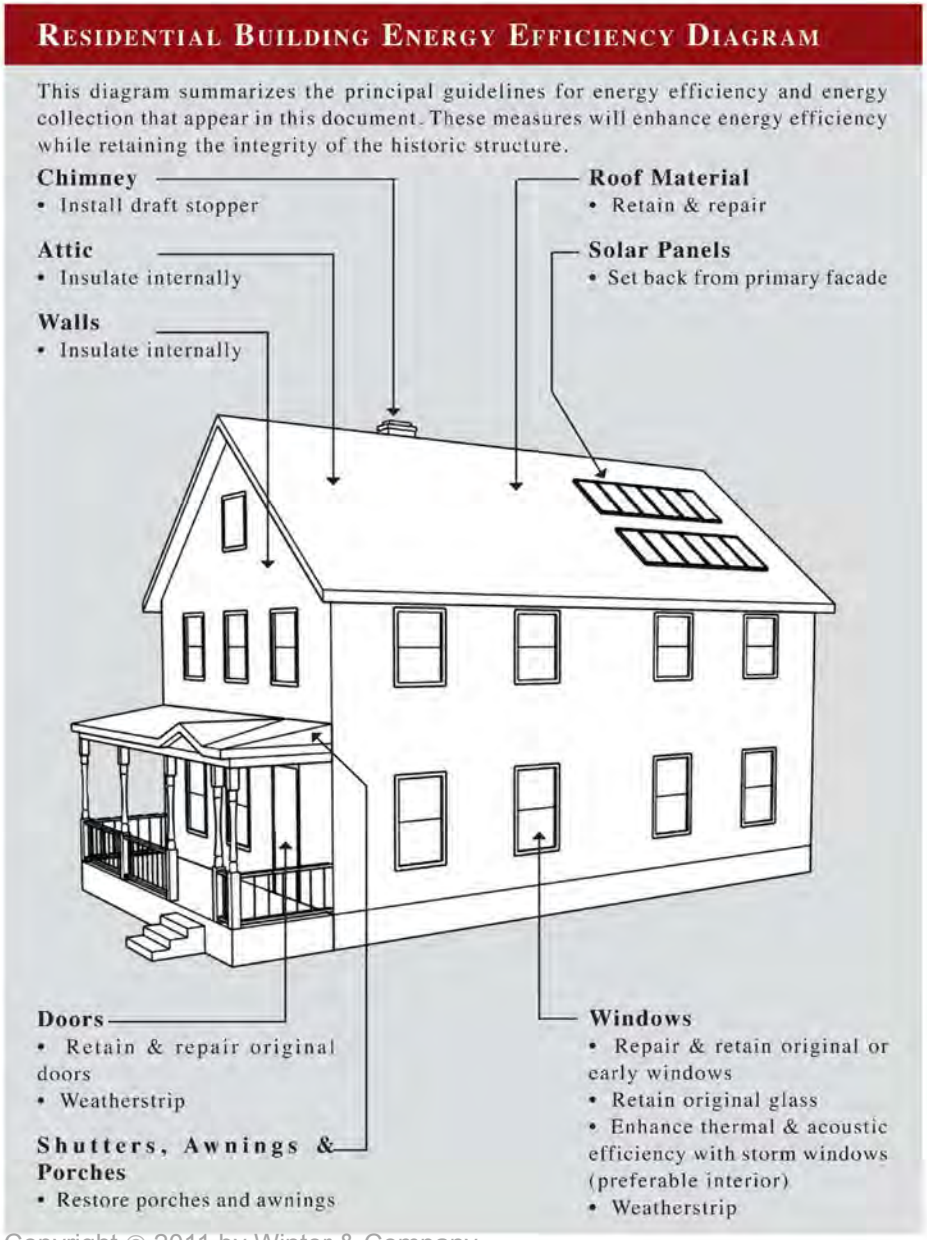
1. Conduct an energy audit.
2. Set goals for sustainability.
3. Identify management opportunities to save energy using existing systems.
4. Develop an overall strategy for the property.

GUIDELINES FOR COMMISSIONS



In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues



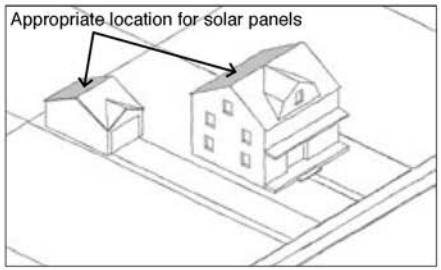
Copyright © 2011 by Winter & Company

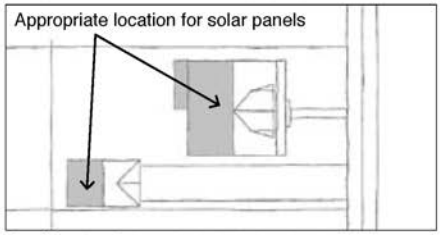
While commissioners should not be expected to evaluate energy efficiency calculations, it is reasonable to ask a property owner to demonstrate that they have conducted an energy audit and developed an overall strategy before undertaking specific projects such as window improvements. This diagram summarizes some of the basic actions related to the exterior of a house. Other, often highly beneficial, work will be internal.

Chapter 8: Special Design Issues

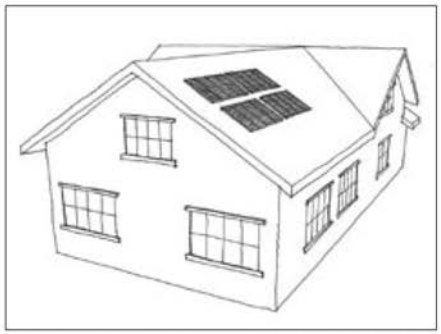
In this Chapter:

A. Substitute Materials
B. Sustainability and "Green" Issues





Guideline 9.1: *Solar panels should be located to the side or rear roof planes or on a secondary structure (all gray surfaces).*



Guideline 9.1: *Solar panels should be mounted flush with the roof.*

9.0 Solar Panels

Solar panels should be located in unobtrusive places. If it is necessary to mount solar panels on a historic building, rather than elsewhere on the site, it is essential that the panels are installed such that they do not change the character of the building. If solar panels are placed on a roof they should be designed and positioned to have a minimal effect on the character of the structure. Placement on rear facing roof planes of the primary structure should be considered first.

Design Objective

Solar panels should not adversely affect the historic character of the structure to which they are being added.

9.1 Reduce the visual impacts of solar panels as seen from the public right-of-way.

- Locate the solar panels away from public view when feasible.
- Solar panels should be mounted apart from the building or on secondary structures, such as a shed or garage, when feasible.
- Solar panels should be located on new construction, such as a new wing, where possible.
- Locate an attached solar panel in a manner such that it does not affect the primary roof facade elevations.
- Location on a primary or street facing roof plane is generally inappropriate.
- Where roof mounted, solar panels should be flush to the extent feasible.
- If not attached to the building, collectors should be located in side or rear yards. Exposed hardware, frames and piping should have a matte finish, and be consistent with the color scheme of the primary structure.
- Panels not attached to the building should be screened by landscaping to reduce their visibility. However, screening may diminish the effectiveness of the collectors to receive sunlight.
- Alternative technologies, such as photovoltaic shingles, may be appropriate in certain circumstances.

Preservation guidelines for Montgomery County recommend that solar panels be located on secondary structures or subordinate portions of the primary buildings, when feasible. Some other communities are more flexible, providing guidance about design details of the panels on a primary elevation. Still other commissions take a stricter position, prohibiting them when visible from the public way.

Copyright © 2011 by Winter & Company