

**HISTORIC PRESERVATION IN THE CITY OF BEAUFORT, SOUTH CAROLINA:
CONSIDERATIONS FOR RESILIENCE**

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I. INTRODUCTION: BEAUFORT, A HISTORIC “BEST SMALL TOWN” AT RISK

The city of Beaufort, South Carolina is located on Port Royal Island, and is the state’s second oldest city. In 1711, the British founded Beaufort and the city was established as a shipbuilding center, before it became an agricultural hub during the antebellum period. During the Civil War, Beaufort was quickly occupied by the Union forces, and became an important terminus for previously enslaved people as they escaped plantations of the Confederacy. While the city has an estimated population of over 13,000,² around 192,500 tourists visit Beaufort each year to soak in its rich history and enjoy the charming seaside scenery.³ In

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² *Quick Facts Beaufort City, South Carolina*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/beaufortcitysouthcarolina> (last visited July 25, 2019).

³ WOOD ENV’T & INFRASTRUCTURE SOLUTIONS, CITY OF BEAUFORT, SC: PROGRAM FOR PUBLIC INFORMATION 17 (August 2018), https://www.cityofbeaufort.org/AgendaCenter/ViewFile/Agenda/_09182018-432 (last visited July 25, 2019).

2017, Beaufort received the South's "Best Small Town" award by *Southern Living Magazine*.⁴

While Beaufort's proximity to the coast makes for a beautiful setting, it comes with challenges. Beaufort is especially vulnerable to stormwater and tidal flooding due to its location and low elevation. While all of Beaufort experiences inadequate drainage due to tidal influences, three of the city's five historic neighborhoods (The Point, Northwest Quadrant, and Old Commons) have been recognized as stormwater flooding problem areas.⁵ Unfortunately, these historic downtown areas also represent Beaufort's main tourism hubs, and play a key role in the success of Beaufort's economy.⁶ Further, the continuing effects of sea level rise will only compound stormwater and tidal flooding in the future.⁷ The combination of elements means that the future of Beaufort's historic properties and tourism industry are in jeopardy due to flooding.

In light of these risks, projects that help adapt Beaufort to increased flooding must be assessed. An evaluation of adaptation projects must be done not just on the large (e.g., construction of bulkheads and seawalls and improving stormwater management systems) and neighborhood-scale (i.e., properly maintaining catch basin inlets), but also on the household-scale (i.e., building retrofits and structure elevation). Importantly, these household-scale changes may provide homeowners with a crucial opportunity to protect their property now, while neighborhood and large-scale projects take time to gain support and funding.

Homeowners of historic structures face added difficulties compared to other homeowners when deciding whether and how to adapt their home to increased flooding risks. Due to the cultural significance of historic properties, federal, state, and local governments incentivize preservation efforts and regulate what adaptation techniques are available to homeowners. Because household-scale changes are essential to protect historic properties and the future of the tourism industry in Beaufort, this article seeks to understand how federal and state incentive programs and local government regulatory schemes impact historic preservation efforts.

⁴ Cassandra Kink, *The South's Best Small Town 2017: Beaufort South Carolina*, SOUTHERN LIVING (2017), <https://www.southernliving.com/souths-best/beaufort-south-carolina> (last visited July 25, 2019).

⁵ WOOD ENV'T & INFRASTRUCTURE SOLUTIONS, *supra* note 3, at 8.

⁶ *Id.*

⁷ *Id.* at 6.

To do so, this article will first review federal recognition of Beaufort's historic assets. Second, it will describe federal and state incentives (i.e., grants, tax credits, and tax assessments) aimed at preserving historic resources. Crucially, while homeowners may be required to undergo adaptation projects with the "least impact on the historic character of the building, its site, and setting" in order to be eligible for federal and state incentives, they may still undertake even substantial measures when necessary to protect the historic site, as in the case of flooding.⁸ Third, this article will examine how Beaufort preserves its historic assets through local zoning and planning ordinances. This section will emphasize that Beaufort's Historic District Review Board (HRB) has broad discretion to approve preservation projects for historic houses by issuing "certificates of appropriateness." Further, this section will highlight how the HRB can actively promote adaptation to increased flood damage through stabilization of homes determined to be "demolished by neglect." Fourth, this article will examine how the city's local flood damage prevention ordinances, which are required under the National Flood Insurance Program (NFIP), aim to protect all structures at special risk against flood damage. This section will show how Beaufort's Zoning Board of Appeals (ZBOA) can promote preservation through carefully considering which historic houses are eligible for variances from these ordinances. Lastly, this article will take a brief look at how Annapolis, Maryland has used a "resilience guide" to promote historic preservation. Such documents can provide homeowners and local governments with essential guidance on how to safeguard historic properties against damage from flooding.

II. FEDERAL RECOGNITION OF HISTORIC BEAUFORT

The historic significance of Beaufort is reflected in the number of sites listed on the National Register. The National Register, established by the National Historic Preservation Act (NHPA), is a list of properties and sites prioritized by the federal government for preservation. To qualify for listing on the National Register, a property must meet the National Register Criteria for Evaluation, set forth by the National Park Service (NPS).⁹

⁸ TECHNICAL PRES. SERV., NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES WITH GUIDELINES FOR PRESERVING, REHABILITATION, RESTORING & RECONSTRUCTING HISTORIC BUILDINGS 153 (2017), <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf> (last visited July 25, 2019) [hereinafter STANDARDS].

⁹ 36 C.F.R. § 60.4.

Renowned for its preserved antebellum architecture, 304 acres of Beaufort's downtown were designated a National Historic Landmark (NHL) in 1973.¹⁰ In 2000, when the last survey was done, over 470 structures were listed as "contributing resources"¹¹ in this area.¹² The Secretary of Interior has determined the city's NHL district "to be nationally significant in American History and Culture."¹³ The NHL district contains five distinct neighborhoods, each reflecting a unique style and character.¹⁴ These neighborhoods include: the District, the Point, the Old Commons, the Bluff, and the Northwest Quadrant.¹⁵ The various historic homes, churches, commercial buildings, and gardens reflect the federal, neoclassical, and Greek revival styles. The Northwest Quadrant has been the center of Beaufort's African-American population, and its historic structures generally reflect "shotgun" style architecture.¹⁶

Additionally, within the historic district there are seven sites that are individually listed on the National Register.¹⁷ Outside of the NHL, the city is home to fourteen other locations individually listed on the National Register. These sites include the Beaufort National Cemetery, Fort Lyttelton, Huntington Island State Park Lighthouse, Seaside and Laurel Bay plantations, the Seacoast Packing Company building, and seven historic houses.

¹⁰ *Historic District*, CITY OF BEAUFORT, S.C., <http://www.cityofbeaufort.org/178/Historic-District> (last visited July 25, 2019).

¹¹ A contributing resource is defined as a "building, site, structure, or object adding to the historic significance of a property." NATIONAL PARK SERVICE, HOW TO COMPLETE THE NATIONAL REGISTER REGISTRATION FORM- APPENDIX IV, GLOSSARY OF NATIONAL REGISTER TERMS, https://www.nps.gov/nr/publications/bulletins/nrb16a/nrb16a_appendix_IV.htm (last visited July 25, 2019).

¹² NAT'L PARK SERV., NATIONAL REGISTER OF HISTORIC PLACES, LIST OF CONTRIBUTING RESOURCES, BEAUFORT HISTORIC DISTRICT (updated Aug. 2000), <https://www.cityofbeaufort.org/DocumentCenter/View/948/National-Register-of-Historic-Places-Continuation-Sheet-Section-7-Page-14?bidId> (last visited July 25, 2019).

¹³ *Frequently Asked Questions*, NAT'L PARK SERV., <https://www.nps.gov/subjects/nationalhistoriclandmarks/faqs.htm> (last visited July 25, 2019).

¹⁴ Terminology here is important. Beaufort's "National Historic Landmark" district is the federally recognized historic district in Beaufort that was designated in 1973, whereas the "Beaufort Historic District" is Beaufort's locally designated historic district.

¹⁵ *Map of Contributing Structures*, CITY OF BEAUFORT, <https://sc-beaufort.civicplus.com/DocumentCenter/View/4027/Contributing-Structures-?bidId> (last visited July 25, 2019) (map taken from the 2008 Historic Preservation Plan).

¹⁶ "Shotgun" houses are narrow rectangular homes that were popular in the post-Civil War south. Their architectural style reflects Haitian and African roots.

¹⁷ Sites that are individually listed on the National Register include: The Anchorage, William Barnwell House, John A. Cuthbert House, Marshlands, Robert Smalls House, Tabby Manse, and John Mark Verdier House.

III. FEDERAL AND STATE INCENTIVES FOR PRESERVING HISTORIC STRUCTURES IN BEAUFORT

Once a property is listed on the National Register, the NHPA does not place any restrictions on the actions of private owners of historic properties.¹⁸ However, as properties face wear and tear, homeowners will likely want to repair and restore the property in order to maintain the physical integrity of the historic structures. Federal and state governments provide incentives to motivate owners of historic properties to undergo these (often costly) repairs and restorations. If a homeowner wants to receive these incentives he must comply with federal and state requirements. The federal and state incentive regimes are discussed below.

A. Federal Grants and Tax Credits for Depreciable Buildings

To facilitate proper maintenance of historic structures, all individually listed sites and sites within the historic district that are found to be a contributing resource are eligible for federal grants under the Historic Preservation Fund (HPF). HPF grants were established by the NHPA in 1977 and are administered by the NPS on behalf of the Secretary of the Interior.¹⁹ While this fund goes to some “non-construction” activities such as surveying, inventorying, and planning for historic properties, it can also be used to stabilize, preserve, rehabilitate, or restore eligible properties listed on the National Register.²⁰ The funds are distributed according to a state or local government’s needs.²¹

Further, property owners of listed or contributing sources are eligible for up to a 20% tax credit on the total cost of a certified rehabilitation project on a depreciable building.²² A building is depreciable if it is “used in a trade or business or held for the production of income. . . and may not serve exclusively as the owner’s private residence.”²³

¹⁸ 54 U.S.C. § 100101.

¹⁹ NAT’L PARK SERV., THE HISTORIC PRESERVATION FUND ANNUAL REPORT (2016), <https://www.nps.gov/shpo/downloads/2016HPFReportweb.pdf> (last visited Mar. 3, 2019).

²⁰ *Id.*

²¹ *Id.*

²² NAT’L PARK SERV., HISTORIC PRESERVATION TAX INCENTIVES 3 (2012), <https://www.nps.gov/TPS/tax-incentives/taxdocs/about-tax-incentives-2012.pdf> (last visited Aug. 7, 2019).

²³ *Id.* at 9.

To tap into these federal tax credits and grants, a property owner must follow the Secretary of the Interior's Standards for The Treatment of Historic Properties (Standards).²⁴ The Standards are codified in the National Register and address four specific "treatments" available to owners of properties listed on the National Register, including Preservation, Rehabilitation, Restoration, and Reconstruction.²⁵ The Standards set forth the appropriate building materials, external features, and internal structures that a historic property must conform to in order to retain its historical designation.²⁶

When property owners undergo one of these four treatments with federal grant money or with hopes of obtaining a federal tax credit, they must certify with the NPS and State Historic Preservation Office (SHPO) that their project is consistent with the Standards for Rehabilitation.²⁷ Non-conformance with a code section, or poorly executed attempts at compliance can lead to a de-listing if the property has "ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed."²⁸ Removal from the National Register results in ultimate loss of eligibility for federal incentives.

B. State Tax Credits for Historic Structures: "Owner-Occupiers" Get a Bite of the Carrot, Too!

In addition to the federal incentives, South Carolina provides two tax credits for historic rehabilitation projects, which are available to more property owners than the federal tax credits.²⁹ To be eligible for South Carolina's tax credits, the property must already be listed or eligible for placement on the National Register.³⁰ In South Carolina, one tax credit is available to private residential properties, meaning that they do not have to be depreciable, unlike the federal tax credit. Such "owner-occupied" properties are eligible for the 25% tax credit under the State Historic Rehabilitation Tax Credit.³¹ Meanwhile, for

²⁴ STANDARDS, *supra* note 8.

²⁵ 36 C.F.R. § 68.

²⁶ STANDARDS, *supra* note 8.

²⁷ See *Tax Incentives for Preserving Historic Properties*, NAT'L PARK SERV., <https://www.nps.gov/tps/tax-incentives.htm> (last visited Aug. 7, 2019).

²⁸ 36 C.F.R. § 60.15.

²⁹ S.C. ARCHIVES & HISTORY CTR., PRESERVATION HOTLINE #11, [https://scdah.sc.gov/sites/default/files/Documents/Historic%20Preservation%20\(SHPO\)/Programs/Programs/Tax%20Incentives/preservation%20hotline%2011.pdf](https://scdah.sc.gov/sites/default/files/Documents/Historic%20Preservation%20(SHPO)/Programs/Programs/Tax%20Incentives/preservation%20hotline%2011.pdf) (last visited Aug. 7, 2019).

³⁰ *Id.*

³¹ *Id.*

income-producing (depreciable) historic buildings, property owners may receive a 10% tax credit.³² Further, mixed-use historic buildings (e.g., the first floor of a building is used for a store and the second floor is allocated for an owner-occupied residence) can also receive partial state tax credits under both the 10% and 25% State Historic Rehabilitation Tax Credit.³³

In South Carolina, property owners that are eligible for the 20% Federal Historic Rehabilitation Tax Credit automatically qualify for the 10% State Historic Rehabilitation Tax Credit.³⁴ This tax credit is equal to 10% of rehabilitation costs.³⁵ However, owner-occupied historic residences that are not income-producing are eligible for the 25% State Historic Rehabilitation Tax Credit – which can be used towards all allowable rehabilitation expenses.³⁶ In order to be eligible for this credit, the project must be certified by the SHPO, which requires that all of the Standards discussed above will be met.³⁷

C. Local Tax Assessments for Historic Structures under the Bailey Bill

Finally, South Carolina's Bailey Bill allows local governments to assess properties on the pre-rehabilitation fair market value, for up to twenty years, as set by the special assessment period by the local government.³⁸ To be eligible for local tax assessment, the local government must adopt an ordinance to implement this program.

Beaufort adopted a Bailey Bill ordinance in 2014.³⁹ In Beaufort, if an eligible property owner invests 75% or more of the building's assessed value into the building, then the property value will be assessed at the pre-rehabilitation

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ S.C. CODE ANN. § 12-6-3535.

³⁶ Allowable expenses include: exterior rehabilitation work; repair of historic structural systems; improving energy efficiency; repairs and installation of heating, air-conditioning, plumbing, and electrical systems; restoration of historic plaster; and architectural and engineering fees. *Id.*

³⁷ *Id.*

³⁸ *Id.* § 4-9-195 and § 5-21-140; S.C. ARCHIVES & HISTORY CTR., *supra* note 29.

³⁹ *Bailey Bill*, CITY OF BEAUFORT, S.C., <https://www.cityofbeaufort.org/348/Bailey-Bill> (last visited Aug. 7, 2019).

value for ten years.⁴⁰ Eligible property owners can count “costs necessary to maintain the historic character or integrity of the building” towards the expenditures for rehabilitation.⁴¹ Structures that qualify must either be located in the historic district and are at least 50 years old, or listed on the 1997 Beaufort County Above Ground Historic Sites Survey.⁴² Therefore, while some properties eligible for tax assessment under the Bailey Bill may not be eligible for listing on the National Register (i.e., if located within the historic district and is at least fifty years old but is not a contributing resource), most eligible recipients will be listed or eligible for listing on the National Register.

D. Substantial but Proportional Preservation Measures Are Available to Homeowners under the Standards

Because federal, state, and most local incentives depend on adherence to the Standards, property owners must be careful to follow its requirements. For example, if a property owner of a historic structure fails to adhere to the Standard’s requirements during a rehabilitation project, the property will risk de-listing from the federal register. As noted above, de-listing results in ineligibility for federal and state grants, tax credits, and some tax assessments. Therefore, it is essential for homeowners of historic properties to understand what they can do to protect their property from flood damage while continuing to adhere to federal regulations.

Fortunately, the Standards recognize that resilience to natural hazards is an important component of rehabilitation.⁴³ While the Standards require that any new adaptive treatments must produce the “least impact on the historic character of the building, its site, and setting,”⁴⁴ the Standards allow even substantial measures, such as raising historic buildings, when necessary to protect the site in certain situations such as flooding. Such measures to protect against flooding will only be

⁴⁰ CITY OF BEAUFORT, DEP’T OF PLANNING AND DEV. SERV., THE BAILEY BILL PROGRAM (2015), <https://www.cityofbeaufort.org/DocumentCenter/View/3920/Complete-Bailey-Bill-Information-Packet> (last visited Aug. 7, 2019).

⁴¹ S.C. CODE ANN. REGS. 12-120(D).

⁴² *Id.* The purpose of the 1997 Beaufort County Above Ground Historic Sites Survey was to identify all historic resources that are eligible for listing on the National Register. BROCKINGTON AND ASSOCIATES, INC., BEAUFORT COUNTY ABOVE GROUND HISTORIC RESOURCE SURVEY, BEAUFORT COUNTY, SOUTH CAROLINA (1998), <http://nationalregister.sc.gov/SurveyReports/BeaufortCounty1998SM.pdf> (last visited Aug. 7, 2019).

⁴³ STANDARDS, *supra* note 8, at 24.

⁴⁴ *Id.* at 153.

appropriate if the historic character of the building is retained after the project is completed.⁴⁵ Adaptation measures may be implemented using special exemptions and variances from the Standards for treatments that protect against known hazards that would negatively affect the historic character of the site.⁴⁶

IV. LOCAL PRESERVATION DECISIONS IN BEAUFORT: GOVERNING HISTORIC PRESERVATION THROUGH ORDINANCES

In addition to the federal and state incentive-based approaches to preservation, local governments may enact legally binding ordinances to preserve historic properties within their jurisdictions. Unlike federal and state incentives, local ordinances can place *affirmative duties* on property owners to maintain and preserve their homes in accordance with local policies, regardless of whether the property owner wishes to benefit from federal or state tax incentives. The NHPA's Certified Local Government (CLG) program recognizes this extraordinary power of local governments to preserve historic resources and helps local governments in developing local ordinances to protect its historic resources. Beaufort is a CLG under the NHPA, and therefore receives funding, technical assistance, and training from the South Carolina SHPO to develop its preservation plan.⁴⁷ The following section discusses the local zoning ordinances developed by Beaufort that place affirmative duties on owners to maintain and preserve historic properties.

A. HRB's Ability to Promote Historic Preservation under the Beaufort Code

Beaufort's zoning ordinances are codified under Chapter 6, Section 5-6001 of the Beaufort Code of Ordinances. This chapter adopts by reference the Beaufort Code (Code), which governs all parcels of land within the corporate limits of Beaufort that are not exempt under state or federal law.⁴⁸ The Code regulates all "construction, erection, alteration and movement" of "lands or

⁴⁵ *Id.* at 154.

⁴⁶ *Id.* at 154-55. When appropriate, the Standards recommend elevating buildings to protect against flood damage only if the building will retain its historic character, such as by elevating it to a lesser degree to minimize the impact on the historic character of the property.

⁴⁷ S.C. DEP'T OF ARCHIVES & HISTORY, CERTIFIED LOCAL GOVERNMENTS OF SOUTH CAROLINA (2018),

[https://shpo.sc.gov/sites/default/files/Documents/Historic%20Preservation%20\(SHPO\)/Programs/Local%20Government/CLGs.pdf](https://shpo.sc.gov/sites/default/files/Documents/Historic%20Preservation%20(SHPO)/Programs/Local%20Government/CLGs.pdf) (last visited Mar. 3, 2019).

⁴⁸ Beaufort Code § 1.3.1.

structures” within its jurisdiction.⁴⁹ Where the Code imposes stricter standards than provisions of other statutes, local ordinances, or regulations, its provisions must be followed.⁵⁰

Beaufort has designated the same 304 acres that constitutes the NHL as the “Beaufort Historic District,” with few exceptions.⁵¹ The Code states that the purpose of this district is to:

promote the educational, cultural, and general welfare of the public through the preservation, protection, and enhancement of the old, historic or architecturally significant structures and areas of the City and to maintain such structures and areas as visible reminders of the history and cultural heritage of the City, the state, and the nation.⁵²

Projects involving structures within the Beaufort Historic District are subject to review by the Historic District Review Board (HRB).⁵³ The HRB also has jurisdiction over the following areas: structures listed in the Beaufort County Historic Sites Survey of 1997 (or any more recent survey); and structures that apply for the Special Property Tax Assessment for Rehabilitated Historic Properties (a.k.a. Bailey Bill, discussed above), but are located outside the Beaufort Historic District.⁵⁴ Once the HRB approves of a planned project by issuing a Certificate of Appropriateness and before a property owner commences work on a historic property, the applicant must obtain a Project Permit from the City Manager or his or her appointee.⁵⁵

⁴⁹ *Id.*

⁵⁰ *Id.* at § 1.3.3.

⁵¹ *Id.* at § 2.7.1.C. These exceptions include: (1) “Where boundaries are designated at specific roads, the centerlines of the rights-of-way of those roads shall be deemed said boundaries”; (2) The east and south boundaries of the district are established at the Beaufort River. These boundaries are established at the parcel lines, seawalls, or at mean high water mark, whichever extends further from the high ground”; and (3) “Structures attached to the high ground are deemed to lie within the district.” *Id.*

⁵² *Id.* at § 2.7.1.

⁵³ *Id.* at § 10.7.

⁵⁴ *Id.* at § 10.7.2.A.

⁵⁵ *Id.* at § 9.5 and § 9.10. After a Certificate of Appropriateness has been obtained, an applicant must obtain a Project Permit. Project Permits are “required for any building, structure, or attachment to a structure to be erected, moved, added to, or structurally altered.” *Id.* at § 9.5.1. The Code does not provide much guidance on the city manager’s (or anyone designated by the city manager) decision making process when determining whether to grant or deny a Project Permit. However, any changes to a project proposal for a historic property made *after* the Certificate of

The following subsections discuss the HRB's project approval process through approving Certificates of Appropriateness and the HRB's ability to promote preservation through the stabilization of historic structures that are threatened with destruction.

i. Certificate of Appropriateness: Special Approval for Projects Affecting Historic Structures

The main responsibilities of the HRB are to "review and take action on any Major Certifications of Appropriateness," and to approve alterations on historic sites.⁵⁶ All "major" projects under the HRB's jurisdiction must obtain a Certificate of Appropriateness.⁵⁷ The Code uses an exclusionary definition to define "major projects," which is considered to be all projects that are not deemed "minor." Minor projects are ones that include:

- a. Changes to a building or property, to include fences, paint color, roof materials, canopies and awnings, site changes, and window replacements on noncontributing structures
- b. New construction and building modifications to include construction of non-habitable accessory buildings in the Beaufort Preservation Neighborhood
- c. Modifications to non-contributing structures in the BCN [Beaufort Conservation Neighborhood]
- d. Demolitions of non-contributing structures in the BCN
- e. Demolition or partial demolition of a structure that is listed in the "1997 Beaufort County Historic Sites Survey," or the most recent historic sites survey, and lies outside the Beaufort Historic District
- f. Demolition of noncontributing accessory structures (e.g., sheds, carports, etc.).⁵⁸

Appropriateness is approved, shall not be approved by the Administrator without specific approval of these changes by the city manager. If the city manager denies issuance of a Project Permit without being reviewed by the Building Codes Department, an applicant may appeal to the Zoning Board of Appeals (ZBOA) within 30 days of the Administrator's decision. *Id.* at § 9.5.2.

⁵⁶ *Id.* at § 10.7.2.B.

⁵⁷ *Id.* at § 9.10.2.

⁵⁸ *Id.*

Ordinary maintenance and repair of existing features that “does not involve a change in design, type of materials, or outward appearance” are exempt from obtaining a Certificate of Appropriateness.⁵⁹ Further, property owners may request a variance from the Code, if strict enforcement of standards would “result in unnecessary hardship to the applicant and...the spirit of the [Code] will be observed, public welfare and safety will not be diminished and substantial justice done.”⁶⁰ The ability to obtain a variance allows property owners the flexibility to undergo adaptation projects to help reduce risk of flood damage, such as elevation or other flood-proofing measures.

When a historic property owner submits a Certificate of Appropriateness, the HRB will first undergo a “completeness review.” Completeness review ensures all sections of the project proposal were filled out and all relevant documents were submitted. Once an application passes completeness review, it will move on to the “compliance review & report” stage.

Once the completeness review and compliance review and report stage are finished, the application gets sent to the HRB to rule on a certificate of appropriateness. During this stage, the HRB may approve, approve with conditions, or deny an applicant’s Certificate of Appropriateness. The HRB may require the applicant to make modifications to the project application and re-submit the application.

Before the HRB decides on a Certificate of Appropriateness, the HRB has a duty to conduct a public meeting and consider elements such as the nature and character of the surrounding area, use of the structure and its importance to the city, and appropriateness of design, among other factors.⁶¹ During this stage, the HRB is prohibited from considering interior arrangement or interior design, unless it affects the exterior appearance.⁶²

The HRB is also prohibited from making requirements that do not prevent “developments that are not in harmony with the prevailing character of the Beaufort Historic District, or that are obviously incongruous with this character.”⁶³ The Code notes that the HRB may deny a Certificate of Appropriateness on the following grounds:

⁵⁹ *Id.* at § 2.7.1.F.2.

⁶⁰ *Id.* at § 9.14.2.F.

⁶¹ *Id.* at § 9.10.2.C.

⁶² *Id.*

⁶³ *Id.*

1. Arresting and spectacular effects
2. Violent contrasts of materials or colors and intense or lurid colors
3. A multiplicity or incongruity of details resulting in a restless and disturbing appearance
4. The absence of unity and coherence in composition, that is not in consonance with the dignity and character of the present structure, in the case of repair
5. Construction of, remodeling, or enlargement of an existing building in a manner not consistent with the prevailing character of the neighborhood.⁶⁴

Importantly, while these are all valid grounds for denial, the HRB has broad discretion to approve a Certificate of Appropriateness for a major project or to decide on actions to impose on major projects located within the Beaufort Historic District.⁶⁵

The Code references multiple documents that the HRB can rely on when determining if a Certificate of Appropriateness should be issued.⁶⁶ These documents are used “to provide guidance and insight into desirable goals and objectives for the Beaufort Historic District.”⁶⁷ Which documents are considered by the HRB depends on whether the project is located in the “*Beaufort Preservation Neighborhood*” (BPN) or the “*Beaufort Conservation Neighborhood*” (BCN).⁶⁸ While the Code adopts the documents for use by the HRB, it is important to keep in mind that the ultimate decision on whether to approve, approve with conditions, or deny a certificate of appropriateness rests with the HRB’s discretion.

In both the BPN and BCN sub-districts, the HRB must consider the Secretary of Interior's Standards for Rehabilitation. Under federal rules, “rehabilitation” is defined as “the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site . . . which

⁶⁴ *Id.* at § 9.10.2.E.

⁶⁵ *Id.* at 9.10.2.

⁶⁶ *Id.* at § 9.10.2.B.

⁶⁷ *Id.*

⁶⁸ *Id.*

are significant to its historic . . . values.”⁶⁹ The Department of the Interior has enumerated ten Standards for Rehabilitation,⁷⁰ which are intended to generally assist the HRB during rehabilitation projects.⁷¹ The Standards for Rehabilitation recommend that restoration of historic properties should minimally change the property’s defining qualities, maintain the historic character, and not destroy the property’s historic materials with exterior alterations or related new construction.⁷² While there are guidelines for applying the Standards for Rehabilitation generally to rehabilitation projects, these guidelines are not useful for case-specific advice, to address exceptions, or for rare circumstances.⁷³ Instead, they are best understood as the articulation of “basic philosophical principals which are fundamental to historic preservation.”⁷⁴

⁶⁹ 36 CFR § 67.2.

⁷⁰ *Id.* at § 67.7. These standards include: “(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment. (2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided. (3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken. (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved. (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved. (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence. (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible. (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken. (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment. (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.” *Id.*

⁷¹ *Secretary’s Standards for Rehabilitation*, NAT’L PARK SERV., <https://www.nps.gov/tps/standards/rehabilitation.htm> (last visited Aug. 7, 2019).

⁷² 36 CFR § 67.7.

⁷³ *Secretary’s Standards for Rehabilitation*, *supra* note 71.

⁷⁴ JOHN MILNER ASSOCIATES, THE BEAUFORT PRESERVATION MANUAL SUPPLEMENT 3 (1990), <https://sc.beaufort.civicplus.com/DocumentCenter/View/1005/Preservation-Manual-Supplement-?bidId> (last visited Aug. 7, 2019) [hereinafter SUPPLEMENT].

Given these broad standards, Beaufort's HRB is likely able to provide a Certificate of Appropriateness to an owner of a historic property, if the major project implemented adaptation measurements to protect the house from flood risks, so long as there was a threat of damage and the response was proportional.

In addition to the Standards for Rehabilitation and any special standards adopted by the HRB,⁷⁵ the HRB must also take into consideration the Beaufort Preservation Manual (Manual) and the Beaufort Preservation Manual Supplement (Supplement), when considering a Certificate of Appropriateness in BPN.⁷⁶ Both documents were made with the intent to "assist the residents and the City government in preserving Beaufort's unique and characteristic physical environment."⁷⁷

The Manual was created "to provide a guide to sympathetic maintenance and preservation of the man-made elements in the Beaufort Landmark Historic District."⁷⁸ This document contains a whole section on "weatherproofing." However, this section only provides preservation guidance on features such as gutters and downspouts, or preferred roofing repair guidelines. While this document was meant to stress "appropriate repair and maintenance procedures," it would not provide appropriate guidance for owners of historic properties who wish to safeguard their property against serious flood damage.⁷⁹

The Supplement is meant to provide "design guidelines and associated regulatory procedures" involved in Beaufort's preservation goals.⁸⁰ The Supplement divides design guidelines into three categories: recommended, not recommended, and inappropriate.⁸¹ Recommended approaches, treatments, and techniques are those that are "likely to promote the preservation and protection of the Beaufort Historic District."⁸² Approaches, treatments, and techniques that are not recommended are ones that might adversely affect the historic district.⁸³ Finally, the inappropriate designation is reserved for actions that will adversely

⁷⁵ *Id.*

⁷⁶ Beaufort Code § 10.7.

⁷⁷ SUPPLEMENT, *supra* note 74, at ix.

⁷⁸ JOHN MILNER ASSOCIATES, THE BEAUFORT PRESERVATION MANUAL VII (1979), <https://sc-beaufort.civicplus.com/DocumentCenter/View/999/Preservation-Manual-?bidId=> (last visited Aug. 7, 2019).

⁷⁹ SUPPLEMENT, *supra* note 74, at ix.

⁸⁰ *Id.*

⁸¹ *Id.* at xiii.

⁸² *Id.*

⁸³ *Id.*

affect the historic district.⁸⁴ However, the Supplement recognizes that there may be specific instances where “inappropriate” designs may be desirable, while “recommended” ones are disfavored due to the diversity of construction techniques and materials. Therefore, whether to approve a certain design characteristic should be discretionary and made on a case-by-case basis.⁸⁵ Thus, like the Manual, the Supplement does not specifically address or recommend projects homeowners should undertake in order to protect their property against flooding. Because this document is not meant to provide strict standards, a homeowner would likely be able to adapt their historic property to flooding risks, so long as the applicant could convince the HRB that the flood risk is great and the response is proportional.

On the other hand, when deciding whether to issue a Certificate of Appropriateness in the BCN the HRB must take into consideration the Northwest Quadrant Design Principles. A few sections in this document are pertinent to homeowners who want to protect their historic property from flood damage. Section 20 discusses raised cottages, and recommends that raised cottages should remain so. This section acknowledges that raising structures helps protect them against water damage from tropical storms.⁸⁶ Section 14 of this document provides that “work should not destroy the distinguishing qualities or character of the property and its environment.”⁸⁷ Like the other documents described above, the Northwest Quadrant Design Principles merely provide guidance for projects. Therefore, if a property owner of a historic property wants to undergo a project to protect their house from flood damage that destroys some distinguishing qualities or character of the structure, it is likely that HRB could approve such a project under the guidelines of the Northwest Quadrant Design Principles.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ CITY OF BEAUFORT, NORTHWEST QUADRANT DESIGN PRINCIPLES 44 (1999), <https://sc-beaufort.civicplus.com/DocumentCenter/View/998/Northwest-Quadrant-Design-Principles-?bidId> (last visited Aug. 7, 2019).

⁸⁷ *Id.* at 35.

ii. HRB's Active Role in Promoting Historic Preservation through Stabilization

If the HRB⁸⁸ finds a historically significant structure is “threatened with destruction or loss due to failure on the part of the property owner to properly maintain or repair the structure,” then the HRB will conduct a public hearing to determine if the property is being “demolished by neglect.”⁸⁹ Once the HRB determines that a historically significant property is being demolished, it has a duty to develop “specifications for the stabilization of the property,” which the homeowner must complete.⁹⁰ Economic relief may be available to a property owner if they prove to the HRB that stabilization imposes an undue economic burden.⁹¹ Economic relief may come in the form of property tax relief, loans or grants, or acquisition by purchase or eminent domain, among others.⁹²

If a property owner fails to complete the specifications identified by the HRB, the city may move to stabilize the structure itself.⁹³ Once the city moves to stabilize a structure, it can place a lien on the property in order to be reimbursed by the property owner for its stabilization efforts.⁹⁴ This means that if a property owner fails to reimburse the city, Beaufort could seize title to the property after stabilizing the structure.

Importantly, the language of the “demolished by neglect” ordinance is broad enough to encompass properties damaged by flooding. Therefore, the ordinance can be used to promote stabilization when properties risk losing their historic characteristics due to a failure to incorporate appropriate household scale changes that would protect the home from flood damage. After the HRB determines that stabilization is necessary to protect a historic property from flood damage, it can then be completed by the homeowner or by the city if the

⁸⁸ It is important to note that while the Beaufort Code of Ordinances refers to the “board of architectural review,” the HRB is established as the board of architectural review under section 10.7.1. of the Code.

⁸⁹ Beaufort Code of Ordinances § 5-1202(c). A “significant structure” under the City of Beaufort Ordinances, is defined as “a structure in the Historic District determined to be a contributing structure according to National Register criteria, or a structure in the Historic District which the board of architectural review...reasonably considers to be historically or architecturally significant.” *Id.* at § 5-1201.

⁹⁰ *Id.* at § 5-1202.

⁹¹ *Id.* at § 5-1205.

⁹² *Id.* at § 5-1205(f).

⁹³ *Id.* at § 5-1203.

⁹⁴ *Id.* at § 5-1204.

homeowner fails to take identified steps required by the HRB. In this way, the HRB can play an active role in promoting historic preservation after inadequately protected homes risk losing their historic characteristics due to flood damage.

While Beaufort can move to stabilize a property itself, other options are available to the city to promote preservation of historic structures at risk of being demolished. Indeed, Beaufort has a history of working with the community in order to promote historic preservation. One example involved a historic property located in the Old Commons neighborhood called the Mulligan Grayson House. Built between 1875 and 1880 by black artisans after Emancipation, the Mulligan Grayson House was bought in 2005 by the Baptist Church of Beaufort for \$230,000.⁹⁵ After the church purchased the historic property, the house sat empty for seven years after the HRB required renovations that would cost up to \$400,000 before the church could use the property as a ministry center.⁹⁶ Further, the HRB quickly denied the Church's plan to demolish the property to put in place a prayer garden in 2012, reasoning that the house was too valuable and that the historic integrity of the property should be maintained.⁹⁷ After the HRB denied the proposed demolition, Beaufort's Redevelopment Commission entered into a "land swap" agreement with the Church. In this agreement, the city acquired title to the Mulligan Grayson House in exchange for two nearby properties.⁹⁸ After the city engaged in the land swap, the historic property was stabilized before it was sold to be renovated into a single-family home, thus preserving its historic characteristics.⁹⁹

This example shows that Beaufort can use creative tools to work with the community in order to promote stabilization of historic homes that have been demolished by neglect. Beaufort should use these creative tools and the economic relief mechanisms discussed above in order to promote historic preservation of historic homes that risk being demolished due to inadequate protection against flooding damage when seizure of properties is undesirable.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Erin Moody, *Renovations to begin soon on historic Mulligan Grayson House*, THE ISLAND PACKET (Mar. 1, 2014), <https://www.islandpacket.com/news/business/article33559359.html> (last visited Aug. 7, 2019).

⁹⁹ *Id.*

B. The Zoning Board of Appeal's Power to Promote Historic Preservation through Appropriate Application of Beaufort's "Community Standards"

Homeowners located in a "special flood hazard areas" (SFHA), as determined by the Federal Emergency Management Agency (FEMA), can obtain affordable flood insurance under the National Flood Insurance Program (NFIP). Before these homeowners are eligible for assistance under the NFIP, their local government must adopt and enforce floodplain management regulations, also called "community standards." To provide its citizens with assistance under the NFIP, Beaufort has enacted community standards under Section 5-4032 of the Beaufort Code of Ordinances.

While Beaufort's floodplains were last mapped in 1986, approximately 38.3% of Beaufort structures are located within a SFHA under the Effective Flood Insurance Rate Map (FIRM).¹⁰⁰ Further, much of the downtown area, which contains the bulk of the historic landmarks, falls in a SFHA, meaning that all properties located within the SFHA must comply with the community standards in order to receive federal flood insurance assistance.¹⁰¹

Beaufort's community standards contain requirements aimed at reducing the risks homeowners face due to flood damage. The community standards require that residential structures that undergo new construction, substantial improvement, or additions greater than 33% of the structure's footprint "shall have the lowest floor elevated no lower than the base flood elevation," and prohibit the building of any basements.¹⁰² Further if "foundation perimeter walls [are] used to elevate a structure, openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided."¹⁰³

If an owner of a building fails to comply with these requirements, the city manager or his or her designee can issue a stop-work order.¹⁰⁴ The city manager may take further action and revoke the development permit for "any substantial departure from the approved application."¹⁰⁵ After notice and an opportunity to be heard, if the property owner fails to take corrective action after a violation of the

¹⁰⁰ WOOD ENV'T & INFRASTRUCTURE SOLUTIONS, *supra* note 3, at 4.

¹⁰¹ *Id.*

¹⁰² Beaufort Code of Ordinances § 5-4032.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at § 5-4021.

¹⁰⁵ *Id.* at § 5-4024.

permit has been identified, the city manager “may issue such order to alter, vacate, or demolish the building.”¹⁰⁶ Further, this failure to take corrective action can result in a misdemeanor.¹⁰⁷

While the community standards apply generally to all structures located in the SFHA, Beaufort provides variances for property owners of historic structures.¹⁰⁸ In order to obtain a variance, the homeowner must submit a request to the Zoning Board of Appeals (ZBOA).¹⁰⁹ The ZBOA must consider certain conditions when determining whether to grant a homeowner of a historic property a variance under the community standards.¹¹⁰ For instance, variances should not be issued “when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances” or “for unpermitted development or other development that is not in compliance” with Beaufort’s ordinances.¹¹¹ Likewise, variances should be issued only “upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.”¹¹² Further conditions for issuing a variance include:

[A] showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship, and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.¹¹³

After consideration of these conditions, the ZBOA may issue a variance if it finds “that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure,” as well as that “the variance is the minimum necessary to preserve the historic character and design of the structure.”¹¹⁴

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at § 5-4043.

¹⁰⁹ *Id.* at § 5-4041.

¹¹⁰ *Id.* at § 5-4048.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at § 5-4043.

As this article has shown, homeowners of historic properties may undertake even substantial measures if necessary to protect the structure, without risking de-listing from the National Register, which effects both state and federal historic designations. Therefore, the ZBOA can actively promote preservation through carefully considering which historic houses are eligible for variances from the community standards. To promote adaptation to flood risks, the ZBOA should only grant variances from the community standards when they represent what is minimally necessary for the homeowner to preserve the historic character and design of the structure.

V. RESILIENCE EFFORTS IN HISTORIC ANNAPOLIS: A POSSIBLE GUIDE FOR BEAUFORT

The city of Annapolis, Maryland became a National Historic Landmark District in 1965.¹¹⁵ Like Beaufort, historic structures in Annapolis are at risk from flooding due to sea level rise. For instance, Annapolis had an average of 39.3 days of nuisance flooding between 2007 and 2013.¹¹⁶ In order to combat against this threat to its historic structures, Annapolis has taken a proactive approach in planning for its future. The city started the “Weather It Together” initiative to address “the issue of protecting and adapting the City’s cultural resources to an increasing risk from flooding.”¹¹⁷

This initiative recognized the need for a hazard mitigation plan catered to the needs of historic properties. Therefore, in 2018, the initiative followed FEMA’s “how-to guide” for mitigation planning on the state and local government level for historic properties and cultural resources¹¹⁸ to develop a Cultural Resource Hazard Adaptation and Mitigation Plan (CRHMP).¹¹⁹ Using FEMA’s approach, the CRHMP assesses risks to historic assets, develops a

¹¹⁵ PETE GUTWALD, WEATHER IT TOGETHER: A CULTURAL RESOURCE HAZARD MITIGATION PLAN FOR THE CITY OF ANNAPOLIS 1 (2018), <https://www.annapolis.gov/DocumentCenter/View/10064/Consolidated-CRHMP-Report-April-2018> (last visited Aug. 8, 2019).

¹¹⁶ *Id.* at 13.

¹¹⁷ *Id.*

¹¹⁸ FED. EMERGENCY MGMT. AGENCY, INTEGRATING HISTORIC PROPERTY AND CULTURAL RESOURCE CONSIDERATIONS INTO HAZARD MITIGATION PLANNING: STATE AND LOCAL MITIGATION PLANNING HOW-TO GUIDE (2005), https://www.fema.gov/pdf/fima/386-6_Book.pdf (last visited Mar. 3, 2019).

¹¹⁹ GUTWALD, *supra* note 115, at 41.

mitigation plan, implements the plan, monitors progress, and organizes reassures in four different phases.¹²⁰

In developing the CRHMP, the Weather It Together team identified forty-eight actionable ideas. The group then organized these ideas into nine projects. Notably, the projects identified in the CRHMP cover not only changes to individual houses such as elevation, but also includes structural adaptation measures, such as stormwater infrastructure improvements, which work to safeguard houses on a neighborhood or city-wide scale.

In order to better protect its historic resources for the future, Beaufort would likely benefit from developing a planning document similar to the Annapolis CHRMP. While the DOI's Standards for Rehabilitation, Beaufort Manual and Supplement, and Northwest Quadrant Design Principles provide general guidance for maintaining historic structures for the future, Beaufort has not yet developed a comprehensive vision for protecting these assets in the face of persistent flooding. A similar document would not only be helpful for individuals wishing to protect their own properties, but would also provide guidance for the HRB when issuing Certificate of Appropriateness and the city in adopting ordinances that reflect the community's desire to preserve its historic structures.

VI. CONCLUSION

The city of Beaufort, South Carolina, is one of the nation's most appreciated historical communities, which is shown in the amount of federal and state support Beaufort homeowners receive in preservation efforts. At the federal level, Beaufort's downtown is listed on the National Register as a NHL under the NHPA, and there are numerous other properties in the city listed on the National Register as well. Federal designation on the National Register provides owners of historic properties incentives for preservation and rehabilitation of their property. South Carolina also provides tax credits to incentivize property owners to preserve and rehabilitate their properties. These state incentives expand the number of recipients that can receive rehabilitation incentives under the federal scheme. Both the federal and state incentive schemes require property owners to comply with the Standards when rehabilitating historic properties.

¹²⁰ *Weather It Together: Overview*, CITY OF ANNAPOLIS, <https://www.annapolis.gov/885/Weather-It-Together> (last visited Aug. 8, 2019).

While federal and state governments have clearly indicated their support for the preservation of historic properties, the incentive programs must reflect changing local conditions that will adversely affect preservation efforts. Notably, the success of rehabilitation incentive programs will partially depend on a homeowner's ability to adapt their properties to rising sea levels. Fort Pulaski, located about ten miles outside of Beaufort County, has calculated that sea level is rising at a rate of one foot per century since the station was established in 1935.¹²¹ Further, recent studies have shown that the oceans are warming faster than previously predicted,¹²² which will only continue to increase the rate of sea level rise. The effect of sea level rise on local flooding is further heightened due to tide cycles and storm surge. With a 1-2 foot increase in base sea level, South Carolina Sea Grant has predicted that extreme high tides could cause "significant property damage in properties not built to current FEMA flood zone standards."¹²³ This reflects just how vulnerable Beaufort's historic properties will be to flooding in the future.

Because of Beaufort's vulnerability to sea level rise, local zoning and planning decisions should support preservation efforts that implement smart adaptation strategies on the household-scale. To support such preservation efforts, the city's ZBOA may encourage homeowners of historic properties to adapt to sea level rise through limiting the number of variances available in the flood damage prevention ordinances. Second, Beaufort's HRB should grant Certificates of Appropriateness for preservation efforts that seek to adapt historic properties to sea level rise. Finally, the City of Beaufort can develop a mitigation plan, as was used in Annapolis, that utilizes FEMA's "how-to guide" for mitigation planning in order to develop a CRHMP. These actions would provide homeowners with further incentives and support to preserve historic properties in Beaufort from rising sea levels.

¹²¹ S.C. SEA GRANT CONSORTIUM, SEA LEVEL RISE ADAPTATION REPORT: BEAUFORT COUNTY, SOUTH CAROLINA 4 (2015), http://www.scseagrant.org/pdf_files/Beaufort-Co-SLR-Adaptation-Report-Digital.pdf (last visited Aug. 8, 2019).

¹²² Lijing Cheng et al., *How Fast are the Oceans Warming? Observational Records of Ocean Heath Content Show that Ocean Warming is Accelerating*, 363 SCIENCE 128 (2019). This article states that recent studies show the rate of ocean warming in the decades after 1991 have increased from .55 to .68 W/m⁻² in the upper 2000-meter water column.

¹²³ S.C. SEA GRANT CONSORTIUM, *supra* note 121, at 10.