



City of Hickory
PO Box 398
Hickory, NC 28603
Phone: (828) 323-7422
Email: planning@hickorync.gov

Historic Preservation Commission

Agenda
City of Hickory
Historic Preservation Commission
Tuesday January 23, 2024
5:30 P.M.

Location: Hickory City Hall, Council Chambers

Historic Preservation Commission Members: Sam Hunt, Simon Lucas, Katherine Mull, Dan O'Malley, Dan Rink, Ernest K. Sills, Adam Oakley

Youth Council Advisory Member: Kate Bridges

1. Call to Order Chair
2. Roll Call
3. Swearing in of New Members
4. Approval of Minutes from the November 28, 2023 Meeting
5. Public Hearing to Consider Certificate of Appropriateness 24-01 Staff
6. Announcement of Vacancies
7. Other Business
8. Adjourn

Attendance Roster
FY 23-24

Key

A	Absent	AX	Excused	No meeting	No Quorum
P	Present			Vacant/Not yet appointed	

Historic Preservation Commission

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Appoint	Expire
Historic Properties Katherine Mull				P	P								Jul-22	Jun-25
Historic Properties Daniel O'Malley Jr.				P	A								Jul-22	Jun-25
Historic Properties Vacant													Dec-19	Jun-26
Building Trades Vacant				A	A								Jul-22	Jun-25
Building Trades Simon Lucas				A	P								Aug-23	Jun-26
Licensed Architect Earnest K Sills				A	A								Jan-23	Jun-24
At-Large (1) Dan Rink				P	P								Jul-22	Jun-25
At-Large (2) Adam Oakley													Mar-22	Jun-26
At-Large (3) Sam Hunt				P	P								Jul-21	Jun-24
Youth Council Advisory Kate Bridges				A	A								Jul-23	Jun-26

**Historic Preservation Commission
Tuesday, November 28, 2023, 5:30 pm**

A regular meeting of the City of Hickory’s Historic Preservation Commission (HPC) was held on Tuesday, November 28, 2023 at 5:30 pm, in Council Chambers of the Julian G. Whitener Municipal Bldg.

Members Present: Katherine Mull, Dan Rink, Sam Hunt, and Ernie Sills

Members Excused: none

Members Absent: Dale Rockensuess, Kate Bridges, Simon Lucas, and Dan O’Malley

Others Present: Senior Planner Mike Kirby, staff liaison; Deputy City Attorney Arnita Dula; and, Minutes Clerk Anne Starnes

Call to Order: Katherine Mull, Chair, called the meeting to order at 5:35 pm.

Roll Call: Mr. Kirby said a quorum was present and no members were excused.

Approval of October 24, 2023 Minutes: Minutes of the previous meeting were distributed in advance. No additions, deletions, or corrections to the minutes were stated. Ernie Sills moved, seconded by Dan Rink, to approve the October 24, 2023 minutes as presented. The motion carried unanimously.

Quasi-Judicial Procedure Presentation: Mr. Kirby provided a refresher for members on different types of hearings, particularly the quasi-judicial Certificate of Appropriateness (COA) hearings.

Slide #2 (Types of Hearings).

- Legislative
 - Making a decision based on public policy
 - Recommendations to City Council
- Quasi Judicial
 - Making a determination based on existing legal standards and evidence presented
 - Functions like a court case
 - Decisions on Certificates of Appropriateness

Slide #3 (Differences between Hearings).

	Legislative	Quasi-Judicial
Type of hearing	Legislative (policymaking)	Evidentiary
Evidence	None	Witness testimony
Findings	Generally none	Written findings of fact; must address contested facts
Standards	Establishes standards	Can only apply standards already in place (Guidelines)
Conditions	Generally not permitted	Allowed if based on standard in the ordinance
Conflicts of Interest	Requires direct, substantial, identifiable financial interest	Any financial interest, bias, or undisclosed ex parte communication

Mr. Kirby explained the hearing differences in detail. A quasi-judicial hearing is an evidentiary hearing, requiring testimony from the applicant and any other witnesses with standing. Eyewitness testimony is accepted as evidence, but hearsay is not. Commission members basically replace the judge during quasi-judicial hearings, and they must weigh the witness testimony and evidence in making their decisions. Members are not making decisions simply because “they believe it looks good,” it must actually meet the review criteria. Typically, anyone is allowed to come and speak, and present their testimony at hearings. Members must make findings of fact, and can only make their decisions based on the applicable standards that are already in place, which are the guidelines.

Slide #4 (Ethical Concerns).

- Quasi-judicial proceedings require ethical behavior to ensure fairness
 - No ex-parte communication/behavior
 - No conflicts of interest
 - No Commissioner bias
- According to 160D-109, conflicts of interest should be avoided in general, even in legislative hearings.

Mr. Kirby said 160D recently changed in North Carolina. All of the Land Development Code from different sections was condensed, and it is now contained in 160D. If a member believes they have a conflict of interest, they should recuse themselves and not participate in the hearing.

Slides #5 & 6 (Ex Parte Behavior).

- Who can a Commissioner speak with about a COA prior to the hearing?
 - Another Commissioner?
 - Applicant?
 - Adjacent Property Owner?
 - City staff?

Mr. Kirby said members should be very careful if discussing a COA with another Commissioner, but they should definitely not have any communication with the applicant or adjacent property owners. It is permissible to ask questions of staff related to procedure and the design guidelines, but staff are not permitted to share their opinions.

- When does the clock start?
 - When an application is received.

Mr. Kirby said that, technically, if a member knew of information prior to staff receiving the application, it would not be considered ex parte communication.

- Can the Commissioner visit the subject property prior to the hearing?
 - Yes, but they must disclose this during the beginning of the hearing and state any findings
 - Commissioners may not trespass on private property

Mr. Rink asked if visiting the property included driving by it, or standing nearby to view it from the sidewalk. Mr. Kirby said driving by simply to view it is acceptable, but driving into or walking onto the property would not be, even for staff. He said this is a General Assembly decision. Members discussed their need to see the property and site, as the application only provides limited information to them. Mr. Kirby said this is why various photos are included for each application, but Mr. Rink noted a photo could tell a limited story. Mr. Kirby has known of instances where Commission members went out to the site together during a hearing, and then came back for the discussion.

Slide #7 (Conflicts of Interest and Bias).

- Can a Commissioner hear a case regarding a family member?
 - No family members

- How about an adjacent neighbor? Fellow church parishioner? Business partner?
 - No business partners
 - Neighbors and friends are a maybe

Mr. Kirby reviewed slides #8 & 9 (Collecting Evidence).

- Competent, material, and substantial evidence required.
- Burden
 - Does the applicant carry the burden for approval or does the City/opposing party have to prove otherwise?
 - The person requesting the COA has the burden of proof to provide sufficient evidence for their approval
- Hearsay
 - A statement about facts made by someone who is not present
 - Can the Commission consider a petition with 20 signatures from neighboring owners opposing a COA?
 - Generally not permitted; Commission must determine what weight, if any, to give to hearsay during findings of fact
- Opinion
 - A view formed about something, not necessarily based on fact
 - Only expert witness testimony is permissible
- Exhibits
 - Witnesses may present documents, photos, etc. for consideration by the board
 - Must be entered into the record
- Continuances
 - If more time or evidence is needed, it is permissible to table the hearing to a future date; up to 90 days, per City ordinance
 - Can an applicant request more time if they realize the case is not going in their favor? Can an opponent? No.

Slide #10 (Making a Decision).

- Quorum and Voting
 - Majority of the board must be present at the hearing (5 out of 9)
 - Simple majority vote needed for approval
 - What about conflicts of interest, or if someone is absent?

Mr. Kirby said if someone recuses themselves and they do not have a quorum, they could postpone the meeting and carry it over to when they do have a quorum.

- Precedents
 - Prior decisions are not legally binding, but the board should be aware of similar cases and target consistency

He cited a variance case in a nearby municipality where a decision was made that went against their code, which was based on the Board of Adjustment members' opinion that it looked good. He said this sets a precedent going forward and creates the potential for legal liability.

Slide #11 (Findings of Fact).

- Translating the presented evidence (photos, testimony, etc.) into a written statement
- Making a decision on any disputed facts

- Conclusion of law (approving/denying) must be based on the findings of fact

Mr. Kirby reviewed **slide #12** (NCGS 160D-947).

- The Commission shall take no action except to prevent that which would be incongruous with the special character of the landmark/district.

Mr. Kirby reviewed **slide #13** (Eight Statutory Factors).

1. Height
2. Setback and placement
3. Materials
4. Architectural details
5. Roof
6. Fenestration
7. General form
8. Appurtenant features

Mr. Kirby reviewed **slide #14** (Design Review Guidelines).

- Document designed to define what is congruent
- Covers specific situations/requests to be used as a flexible standard for decision-making, in example: “Modern exterior light fixtures, such as flood lights, should be placed in inconspicuous locations where they cannot easily be seen from the street.”

Mr. Kirby reviewed **slide #15** (Sample Congruent Finding of Fact).

- “I move that the Commission find as fact that the proposed project to 123 Main Street is congruent with the character of the district because all eight criteria are generally in harmony with special character of the neighboring properties and the district as a whole for the following reasons {...}”

Slide #16 (COA Findings of Fact).

- ... is congruent with the character of the district, based on the fact that all 8 criteria are generally in harmony with the special character ... for the following reasons:
- the height of the addition will bring it more in balance with the surrounding buildings (HEIGHT)
- the setbacks are minimal and do not affect the existing area (SETBACKS)
- the addition will expand the building footprint but the placement is consistent with the remaining structure (SETBACKS)
- the proposed materials are consistent with the existing materials, architectural details are similar to the existing building (MATERIALS)
- the flat roof is appropriate with the architectural style (ROOF)
- Three parking stalls will be lost but the overall parking need is met, (APPURTENANT FEATURES)
- the windows and doors will remain the same (FENESTRATION)
- and the general form is consistent with the surrounding area (GENERAL FORM)

Mr. Kirby said this example Finding of Fact motion touches on each of the eight (8) criteria.

Slide #17 (Sample Decision to Approve/Deny).

- “I move that the Commission, based on the previously adopted findings of fact, approve Certificate of Appropriateness 20-01 {as proposed / subject to the following conditions} ...

Mr. Kirby said members could choose to set conditions for approval of a COA, if deemed necessary.

- Can you approve a COA if it goes against the established Design Review Guidelines? Eight Statutory Criteria? No.

Slide #18 (Procedural Change).

- Would the Commission prefer to have staff draft a basic findings of fact that would accompany the staff report?
 - Commission would still need to review and add additional findings of fact

Mr. Kirby said staff could draft a new resolution if members request it.

Slide #19 (Referenced Materials).

- Portions of this presentation use material from a handout from the January 4, 2017 Quasi Judicial Decisions Workshop by Dave Owens, UNC-CH SOG

Mr. Kirby asked if there were any additional questions, and there were none.

A few members requested a copy of his slide presentation. He will e-mail it to everyone and mail a hard copy to members who request one.

Announcement of Vacancies: There are currently two vacancies on the Commission, one each in the at-large and historic property categories. Ms. Mull contacted a local contractor regarding the at-large seat, and he is interested. Mr. Kirby said he should complete the application on the City's website. When the City Clerk receives it, she will send it to City Council for approval.

CLG Credits: Mr. Kirby said one staff member and two Commission members must attend a CLG training during the year in order to meet the State requirement. Mr. Sills recently participated in a training session. Earlier today, Mr. Kirby sent members a link to historic preservation training videos that members could watch on-line for CLG credit. If they watch the videos by the end of the calendar year, the Commission will meet their CLG requirement for the year. Next year, he suggested members could view a training video together, possibly on design standards or another topic, which would meet their 2024 CLG requirement.

Other Business: Mr. Kirby contacted the owner of the First National Bank building in downtown Hickory and suggested they apply for designation on the National Register of Historic Places, but they were not interested. Their pre-application meeting was held with City staff, and Mr. Kirby said their greatest challenge would be installing a fire suppression system in the building, including water sprinklers.

Next Meeting: Last month, members agreed to hold at least one regular meeting per quarter, whether or not the Commission has formal business to consider. Mr. Kirby proposed holding the next meeting in March unless staff receives an application for review, and members agreed.

The next regular meeting will be on Tuesday, March 26, 2024, at 5:30 pm, unless members are notified otherwise.

Adjourn: Dan Rink moved, seconded by Sam Hunt, to adjourn. There being no further business, the meeting adjourned at 6:05 pm.

Katherine Mull, Chair
Historic Preservation Commission

Anne Starnes, Minutes Clerk
City of Hickory

**Certificate of Appropriateness at 534 3rd Ave NW
Staff Report**

Applicant: Steve Miller

Property Owner: City of Hickory

Petition Number: COA 24-01

Property Location: 534 3rd Ave NW

PIN: 3703-18-31-5186

Lot Size: ~1.82 acres

Property Background: The Abel A. Shuford II House is a two-story brick and waterboarded, Dutch Colonial home built around 1904 on 3rd Ave NW. Character defining features include gambrel and gable roof, stone foundation, porch, an end chimney, and wood shingle exterior. The property is located in the Oakwood Local Historic District.

Nature of Request: The applicant has requested approval to restore the exterior appearance to its original color and function, replace any damaged wood on the walls, soffits, porch, and decking, as well as replace gutters with an appropriate look and finish.

Analysis: The request must be reviewed according to the design review criteria and the general statutory criteria contained in the ordinance.

1. **Height.** *There will be no replacements for this requirement.*
2. **Setback, lot coverage, yards, orientation and positioning of the building, and spacing of buildings.** *As this will be an upfit to the exterior, there are no requirements for the criteria.*
3. **Materials, surface textures and patterns.** *The upfit will be replacing the vinyl with wood to match the original home. The City will replace any damaged wood on the walls and soffits. No patterns or textures were noted.*
4. **Architectural detailing.** *The upfit will use the original design details and will not impact any known architectural details associated with the house.*
5. **Roof shapes, forms, and materials.** *The upfit will include reroofing the house. The roof material will be fiberglass shingles. The applicant noted the roof materials will closely match those historically. No equipment or special features were noted.*
6. **Fenestration proportions, shapes, position and location, and pattern.** *The upfit will include the reglazing of the existing windows and painting to match the original colors.*
7. **General form and proportions of buildings and structures.** *The addition will be Dutch Colonial in form and will remain two stories.*
8. **Appurtenant features and fixtures including, but not limited to, lighting, walls, and fences.** *No impacts to appurtenant features were mentioned in the application.*

Guidelines: Section 3 contains the guidelines for changes to building exterior. The *relevant* guidelines for each section are listed below:

3.2 Wood

1. It is recommended that all original or existing wood siding and wooden architectural features be retained whenever possible.
2. Repairs or replacement for any deteriorated wood materials should match the existing in size, shape, material and texture.
3. Historic structures, as well as accessory structures, should be appropriately painted or finished with a material that is congruous with the structure and the surrounding neighborhood.
4. When certain wooden architectural features are no longer produced or are deemed economically unfeasible by the Historic Preservation Commission, substitute materials (i.e., fiberglass, plastic molding, etc.) may be appropriate, if they are matching in appearance and texture.
5. It is recommended that whenever artificial materials, such as asphalt shingles and vinyl siding, are removed, they should be replaced with materials matching the original wood in appearance and texture.

3.4 Roofs and Roofing Materials

1. As roofs are one of the most important visual features of a building, the existing roof shape should be preserved. All architectural features that give a roof its essential character (dormer windows, cupolas, cornices, brackets, chimneys, and crestings) should be retained. Roof equipment and alterations (such as skylights, solar panels, power ventilators, and television antennas) should be located on rear slopes or inconspicuous where they are not easily visible from public view.
2. Whenever possible, the existing original roofing material should be retained. The application of new roofing material that is inappropriate to the style and period of the building or surrounding structures is not recommended. A deteriorated roof covering should be replaced with new materials that match the existing in composition material.
- 3 It is recommended that metal roof elements be protected from pitting, streaking, rust and corrosion. For information on recommended methods please contact the City of Hickory Planning Department.
4. If new gutters or downspouts are required, they should be installed so that no architectural features are lost or damaged.
5. In order to prevent roof deterioration and damage, gutters and downspouts should be cleaned and maintained regularly.

6. It is recommended that deteriorated roofing materials be replaced with materials matching the original. If alternative materials are required, they should match the original in shape, size and design, so as not to change the appearance of the structure.

7. Remove asbestos shingles from the roof with great care. Warning: Asbestos in old shingles can be a health hazard during removal. Asbestos dust can be dangerous if breathed. Contact the City of Hickory Planning staff for further information.

8. Chimneys are significant features of historic properties and should be preserved whenever possible. They should be repaired or rebuilt rather than shortened or removed when they become deteriorated.

9. Special care should be taken to ensure that the repairs blend in. Chimney stacks should not be stuccoed above the foundation as a means of stabilizing weak masonry.

10. Non-original chimneys may be removed if the appearance of the structure will otherwise remain unchanged.

11. Wooden boxed chimneys and exposed metal vent pipes are not appropriate where easily visible from a street.

12. New chimneys should be congruous with the original structure and the surrounding neighborhood.

13. It is not appropriate for antennae to be attached to chimneys in a way that would cause damage or deterioration.

3.5 Windows

1. The original window and door openings, their size and dimensions should be retained, especially on front and side street façades, unless restoring the appearance of the structure to its original design. Also, important elements pertaining to the windows and doors, such as sashes, lintels, sills, and architraves should be retained.

2. The repair of existing original windows and doors is encouraged. If replacement of a window or door element is necessary, the replacement should be compatible with the architectural style of the structure and match the original as closely as possible.

3. It is recommended that new window or door openings match the pattern, style, location, and appearance of the architectural period of the structure and the surrounding district.

4. Whenever possible, the existing original door and window materials should be retained. The application of new material to original doors or windows on principal elevations that are inappropriate to the style and period of the building or surrounding structures in the district is not

recommended. A deteriorated window and door should be replaced with new materials that match the existing in composition and material.

5. If additional windows and doors are necessary to accommodate a new or expanded use, they should be installed on a rear or non-character defining façade of the building.

6. Snap in muntin may be deemed appropriate upon individual review to determine that the size and pattern of the muntin are congruous with the existing patterns and sizes on the structure or surrounding structures.

7. It is recommended that replacement shutters be constructed of wood or a similar material. Shutters made of an alternative material should match the original in appearance, texture, and design.

8. Original windows and door elements should not be destroyed when storm windows or doors are installed.

9. Storm windows and doors should blend in with the building rather than appear to be tacked on. The shape and general appearance should match the existing window or door as closely as possible. Storm doors and windows should be full view or sectioned in an unobtrusive manner so as not to obscure or distort the existing window or door. Storm windows should have a meeting rail which aligns with the meeting rail of the window to which it is applied.

10. Storm doors should be detachable.

11. Raw metal storm window and door frames are discouraged as raw metal conflicts with traditional building material finishes. Traditional wood, baked enamel, or painted storm windows are preferable alternatives to raw metal. Raw metal storm doors may be appropriate on certain post 1945 buildings.

12. Whenever possible, the Commission encourages the placement of storm windows on the interior side of the existing windows.

13. The use of both awnings and shutters for window openings is not appropriate.

Staff Analysis:

The upfit will include removal of the vinyl that was installed previous and replace with wood matching the original design and material. Repairs will be made to all damaged wood soffits, nose boards, crown, cedar shake siding, door and window trim and wood on the porch.

The upfit will include removal of the existing 2 layers of shingles and existing felt and replace such with new underlay and new 30 year architectural shingles. The shingles will match what is existing on the house. All windows on the house will be reglazed and painted to match the original color.

As previously discussed, the exterior will be scraped and painted to match the original color of the house.

As such, staff recommends approval of the petition as proposed.

Visual Aids: A complete list of photos and plans provided by the applicant will accompany this report. The following figures have been selected and commented on by staff:



Figure 1: Photo showing the original design and color.



Figure 2: Applicant photo showing the side windows on the house.



Figure 3: Applicant photo showing current siding conditions.



Figure 4: Applicant photo showing current porch conditions.



Figure 5: Applicant photo showing current porch photos.



Figure 6: Applicant photo showing current gutters on the house.



Figure 7: GIS aerial from 2021 showing the property in relation to others in the general area. *Note the location and potential visibility from 6th Street NW and 3rd Ave NW.*

Citizen Input: As of January 17th, staff has received no inquires on the petition.

Commission's Decision: The Commission must weigh the factors presented by the applicant along with the Design Review Guidelines in their deliberation. Staff would like to remind the Historic Preservation Commission they have the right to make modifications, to be applied in a reasonable manner, based on the economic or technical feasibility of a particular situation. The guidelines thought to be most applicable by staff were included above. The commission can consider other guidelines it deems important. Before voting on the proposed Certificate of Appropriateness, the commission must adopt findings of fact based on the evidence presented at the hearing. The findings of fact must address specific design guidelines and whether or not the proposed project is in harmony with the design guidelines and the special character of the neighboring properties and the district as a whole.