

# The Historic Dimension Series

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## Stopping Them in Their Tracks: Historic Districts and Railroad Easements

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*Historic preservation can be a daunting task on its own merits. Adding in a factor as notoriously intimidating as railroad easements can make a project seem all but impossible. However, as we have seen, solutions do exist to address these problems.*

According to the National Park Service, there are nearly 17,000 National Register Historic Districts spread across the United States, and a great many of these are historic downtown districts. The pattern of city growth and development throughout the country closely coincides with the proliferation of the railroad industry. The Northeast saw great gains in transport efficiency in the early 19th century with the railroads fueling the industrial revolution, and in 1827, the establishment of the Baltimore and Ohio Railroad became the first large scale rail passenger service in the country. From then until the early 20th century, rail lines were built throughout the nation at a furious rate. These lines supported not just the movement of people to the frontiers, but also goods that would not normally or cheaply be moved across vast swaths of open and treacherous terrain.

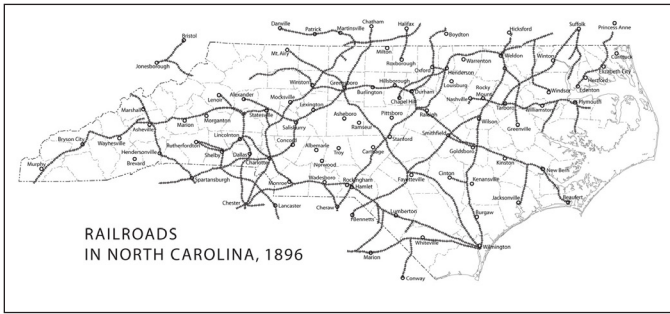
The United States government itself had stated goals to support the rail industry, and did so through numerous pieces of (sometimes controversial) legislation. Initially, the federal government began issuing land deeds to rail companies free and simple to encourage and facilitate expansion. After (justified) complaining from the American populace, the general railroad right-of-way act of 1875 was passed. It states that "[t]he right of way through the public lands of the United States is granted to any railroad company" meeting certain requirements, "to the extent of one hundred feet on each side of the central line of said road." Those rights-of-

way are called easements and are still in effect today.

This brief will explore the concept of railroad easements as well as the legal challenges surrounding them. Potential solutions and compromises regarding these challenges will be discussed and evaluated. Finally, the brief will examine two separate cases regarding railroad easements in downtown historic districts in North Carolina and their solutions.

### What is a railroad easement?

Easements are limited interests in real property held by individuals other than the principal owner or, more commonly, held by the government or the public at large. Most easements are defined by a formal written document that cannot be revoked, even if property ownership changes, and generally "run with the land" until they expire. A railroad easement does not grant ownership of property to the railway company; rather, it protects the company's interests regarding land use. Essentially, the easement states that the railway has permission to enter and leave one's property and that their business-related uses shall not be infringed upon. Nevertheless, the landowner still owns the actual ground below the easement, and generally, the rail company must do its best to prevent their activities from damaging the surrounding property. The convoluted topic of railroad easements and their associated issues can be summed up in one word: nebulous!



*Fig. 2: North Carolina's railroad network in 1896. Note the confluence of Greensboro's multiple lines in the central region of the state.*

### Easements and historic preservation

As discussed, railways were the arteries that carried the lifeblood of commerce and immigration to all corners of the country. Where the rail lines were laid, so followed development. As such, the downtown districts of many cities have rail lines running directly through them. Cities themselves are living, breathing entities that change, sometimes drastically, over time. What might have been a perfectly acceptable case of encroachment by the railroad in 1875 could be a very different situation today. Railroad companies are notoriously difficult to deal with when it comes to protecting their real or perceived easement rights. Regarding historic preservation, these questions present themselves: 1) what is the fate of unused/abandoned rail lines that can be eyesores or otherwise bothersome? And 2) if a historic property exists within a railroad easement, who has the final say about modification to the property and surrounding land? Preservation projects can be difficult and complicated enough on their own without a participant who is unwilling to negotiate.

### What does the law say about railroad easements?

One of the first steps of research when dealing with railroad easements is to determine the actual dimensions of the easement and the method of acquisition by the rail company. Rail companies should have accurate records regarding the easements they hold, but one may wish to avoid drawing their attention. As stated previously, these companies will vigorously defend their easement rights, whether they have the legal standing to do so or not. Older surveys of the property should have railroad easements recorded and can be demarcated by a new survey if necessary. Depending on the method of acquisition, easements are generally between 50 and 200 feet wide (25 to 100 feet on either side from the middle of the track).

Early in North Carolina's rail history, railway companies were given the legal rights of eminent domain and powers of condemnation. If they were to condemn a property, it became theirs, fee and simple. Luckily, the late 19th century case of *Beach v. Wilmington and Weldon Railroad* set the legal precedent that property



*Fig. 3: The old southern railways lines in Greensboro.*

condemned by rail companies would result in nothing more than a simple easement. In addition, many rail lines were given permission to use private lands dating back to the mid 19th century. In many of these cases, the original documentation has been lost or damaged beyond usefulness. In some instances, the language used in the documents is not clear regarding the nature of the land being given over to railway use.

Given the uncertainty of easement width in many areas, property owners may assume that their adjacent property is theirs to do with as they please, without knowing that their property actually sits within a right-of-way. Confusion also takes place with owners who know of an existing easement but fail to realize that the railroad can have final say over any structure placed within the easement because they must be allowed to enter and exit the property and do so without disruption.

Even when lines are abandoned, the associated easements still exist. In these cases, should the property revert to the original owner? If the original documents regarding the rail company's use of the land are lost, damaged, or destroyed, how do we decide who has rights to the property? It has been the opinion of state governments and the federal government, that these easements should remain in place and be used for other transportation needs. The "Rails to Trails" conservancy program perhaps reaches a happy median in these cases.

In 1976, The Railroad Revitalization and Regulatory Reform Act was passed by Congress. This was the first in a series of bills passed to initiate deregulation of the transportation industry in the United States. A small portion of this bill made a huge impact on how unused rail lines are treated. The idea of "railbanking" was introduced. Railbanking is essentially an agreement between the railway company that owns an easement, the federal government, and a third party that has some use of the easement. In the cases where railbanking is approved, the rail company removes all of its property that does not irreversibly damage the corridor (bridges,





Fig. 4: A rails to trails project converting an unused rail line into a recreational pathway.

tunnels, culverts, etc.), and transfers its rights-of-way to the third party. As part of railbanking, a rail company must first file to abandon the line, which would transfer all property rights to the property owner permanently. This is all subject to the provision that should the rail company need to re-establish service through that corridor, the land will be handed back over for rail service. Since the easement has not been abandoned, rather just transferred, it remains in effect. The rail line preserves its long-term rights to the land. The third party (usually a qualified non-profit or public agency) gets to put that otherwise unused piece of land to good use, and what was an eyesore or an inconvenience is addressed. The only party that seems to truly suffer is the original land owner, who still does not have complete control over his or her property.

Nevertheless, the practice of railbanking was dealt a serious blow in the 2014 court decision, *Marvin M. Brandt Revocable Trust v. United States*. In the case, a land owner in Wyoming took the federal government to court over an abandoned rail line. The federal government argued that they had a vested interest in the easement that had been established, and it represented more than a mere "right-of-way." While the court of appeals initially sided with the government, the Supreme Court overturned the decision. The court explained that the Brandt family owned the land, fee and simple, and that the easement was "subject to those rights for railroad purposes." When the rail company abandoned the line, the easement and its associated rights were abandoned and the full use and ownership of the underlying land reverted to the Brandt family.

In writing the dissenting opinion of the court, Justice Sotomayor claimed that rail rights-of-way represented "something more" than a mere easement and were not subject to normal common law practice. She added that the decision

"undermines the legality of thousands of miles of former rights of way that the public now enjoys as means of transportation and recreation. And

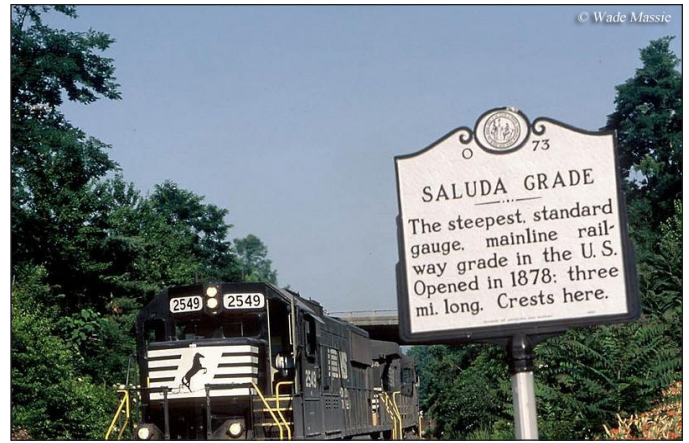


Fig. 5: Historical marker identifying the Saluda Grade.

lawsuits challenging the conversion of former rails to recreational trails alone may well cost American taxpayers hundreds of millions of dollars" (Hansen, 2014).

## Rails to Trails

The Rails to Trails Conservancy Program is one of the major non-profit agencies to make use of the Railroad Revitalization and Regulatory Reform Act's railbanking clause. Established in 1986, the group seeks to make use of abandoned lines by converting them into hiking and cycling trails for public use. Since their establishment, they have helped create over 4,200 miles of rail trails in every corner of the United States. During the conversion from railway to trail way, the actual tracks on the line are removed and the area is resurfaced to provide appropriate ground cover for the intended activities (hiking, biking, recreation). Relying solely on private funding, the group facilitates projects between municipalities, advocacy groups, private citizens, rail companies, and the federal government to make use of otherwise derelict lines.

Given the preponderance of rail lines running through downtown historic districts, this organization provides a potentially useful solution to municipalities and historical preservationists concerned about unused rail lines and what they mean to those communities.

## Saluda, NC

The community of Saluda, NC, is an excellent example of a town grappling with its rail history and beautification of its community while making otherwise unusable land into something the public could use and enjoy. In 1878, the Saluda Grade was opened for passenger rail travel between Asheville, NC, and Spartanburg, SC. The increased traffic through the area eventually resulted in the establishment of the town of Saluda (Saluda being the name of a group of surrounding mountains and the associated river flowing beneath them). Construction of the rail line



*Fig. 6: Saluda, NC now and then.*

was an extremely expensive and daunting task. Due to its position in the Appalachian Mountains, near the present-day Blue Ridge Trail, the feasibility of running a line to link Asheville and Spartanburg was questionable at best. Eventually, private funding for the line dried up, and laborers were in short supply. The project seemed doomed until the North Carolina General Assembly passed legislation providing the funds and manpower needed to complete the project. The result was a section of line that rose from 1,081 feet in elevation to 2,097 feet in very short order (600 feet to the mile), making it the steepest mainline standard gauge railroad in the United States.

The current Saluda depot was built in the first decade of the 20th century to provide rail service to the surrounding communities. The town of Saluda had been little more than a few very loosely situated homesteads before the arrival of the rail line. Following the economic growth the area experienced from construction of the depot, the population boomed, resulting in a vibrant community that grew around the line. Today, even though it has been relocated down the street from its original location, the depot is a contributing structure in the Saluda Main Street Historic District and now serves as retail space and a railroad museum.

In 2001, Norfolk Southern, the rail company that owns the rights to the Saluda Grade, ceased operations on that section of track. Eventually, in 2003, the track connections were severed, rendering the lines inoperable. Nevertheless, in order to protect its interests, Norfolk Southern continued to maintain the line to prevent it from being classified as abandoned.

Fallen trees, encroaching vegetation, and washouts make that an expensive undertaking.

An advocacy group called the Saluda Grade Trail Committee began efforts to increase awareness surrounding possibilities for future uses of the now furloughed rail line. Shortly thereafter, in 2010, the Saluda Board of Commissioners voiced their support of the movement. In 2017, the board approved the decision to move forward with the conversion of the rail line to a pedestrian and biking trail. According to the Board of Commissioners, such an action would result in a multitude of positive consequences for the historic downtown district and the area at large. The trail would spur economic activity in the historic downtown setting by providing more accessibility from within and outside of the city. It would increase eco-based tourism, resulting in larger tax revenues. In addition, it would create a safe, easily accessible space to promote the well-being of the local residents. The trail would also help preserve one of the most historically significant stretches of railroad east of the Mississippi River. Likewise, access to some of the most scenic views in the country would be preserved and easily accessible by foot.

Cases like Saluda's use of the Railroad Revitalization and Regulatory Reform Act occur all over the country, though this one seems to be of particular importance given the historical significance of the rail line and the natural splendor that surrounds it. This case is a good example of how communities can partner with railroads instead of fighting against them to ensure that everyone's interests are acknowledged. Although Norfolk Southern could eventually come back and demand use of the land again, that seems unlikely given





*Fig. 7: The Cascade Saloon and downtown Greensboro as they existed at the turn of the century.*

their plans to scuttle the line voluntarily. In the end, the project brings economic gain, personal physical fitness, and historical awareness that will ensure the survival and growth of the Saluda Historic Downtown District.

### **Greensboro's Cascade Saloon**

Within the downtown historic district of Greensboro, NC lies the Cascade Saloon (a contributing structure to the district). Dubbed “The Gate City” for the confluence of rail lines running through town, Greensboro was truly the gateway to the south. As a major textile manufacturing city, Greensboro saw rapid growth in the early 20th century. The boom in population and manufacturing ensured that Greensboro experienced plenty of rail traffic and in 1851, Governor John Motley Morehead established the North Carolina Railroad in the city.

Originally a wooden structure situated snugly between two railroad tracks, and across the street from Greensboro's original rail station, the saloon found itself in the very heart of Greensboro's vibrant business district. Eventually, architect Samuel McCauley converted the building into a brick structure. The masonry was built around the wood structure for two reasons: first, to stop any potential disruption to business, and second, to avoid having to reapply for a new liquor license. Luckily, by the time federal laws regarding rail easements and rights-of-way were in place, the saloon was well established and grandfathered into place.

By 1907, the saloon was owned by an African-American gentleman named Wiley Weaver, who along with his wife, Ida, operated a café. The couple owned and operated the saloon until 1922 as the only black owned/operated business in the neighborhood. The timing and location of the café is of particular importance. At a time when Jim Crow and segregation were the law of the land in the American South, Mr. Weaver



*Fig. 8: The newly rehabilitated Cascade Saloon.*

ran his successful business in a mostly white part of town. There are several potential explanations for the accepted mixing of the races in Greensboro. First, the city had a large Quaker population that was staunchly anti-slavery and anti-racist. Second, many prominent leaders associated with Greensboro from the time period favored structured education for the masses, which likely made the community a bit more forward in its thinking.

Fast forward to the 2010's and the Cascade Saloon building, after being vacant for many, many years, was in a state of horrid disrepair, such that the city of Greensboro scheduled it for demolition due to safety concerns. Given its intriguing and important contributions to local history, efforts went underway to save the building. Of great importance to the preservation project was the fact that the building sat directly between two very close and very active rail lines. According to federal law, should the existing structure be condemned and demolished according to plan, nothing would be built in its place to maintain and protect existing rail easements. Greensboro's historic downtown district would be left with the eyesore of an empty gravel lot.

Structural engineers were dubious about the prospect of saving the building. It was not until representatives from the Christman Company collaborated with the advocacy group Preservation Greensboro that a preservation plan emerged. The first step was for the city to seize the property through the right of eminent domain, which would ensure that the property would not be condemned and eventually destroyed. Although the North Carolina Railroad Company voiced their displeasure and threatened legal action, they did not have the legal standing to do so. The original structure survived and so did its right to occupy its original space. Today, the building stands fully refurbished and sensitively adapted as the regional office of the Christman Company and once again contributes to the economic fruitfulness of Greensboro's downtown district.



Fig. 9: An artist's rendition of 1900's downtown Greensboro.

## Conclusion

In conclusion, historic preservation can be a daunting task on its own merits. Adding in a factor as notoriously intimidating as railroad easements can make a project seem all but impossible. However, as we have seen, solutions do exist to address these problems. To be prudent, the first step in moving forward with your own project should be to access old property surveys or have a new survey performed. Having an accurate survey in hand will be invaluable to ensure an informed decision is made. Changes to a property within a railroad easement should not be performed without first consulting a land use and zoning attorney. Eventually, whether through the railroad company or public/private records, the original conditions of the easement will have to be outlined. The current condition of the track on the easement in question will provide insight to the landowner's available actions.

Working within the confines of the law, immense planning and preparation, and a mutual respect for the rights afforded to all parties involved will illuminate the path forward. Recent court decisions have stripped some of the power away from railway companies, and as the rail industry continues to change, policy is sure to evolve with it. It is up to preservationists to explore those solutions and to make the best choices to preserve the character of the district and further advance the economic development of the community.

## Bibliography

1895 Saloon Restored With Community Partners. (2018, June 26). Retrieved March 26, 2019, from <https://preservationgreensboro.org/1895-saloon-restored-with-community-partners/>

Aiken, M., Esq. (2000). A brief history of current issues involving railroads in NC. Retrieved February 13, 2019, from <https://www.invtile.com/docs/articles/nc/Brief>



Fig. 10: Original Southern Railroad station in Greensboro, 1908.

History of and Current Issues Involving Railroads in North Carolina Part Two 2000.pdf

Assad, A. (2019, January 10). What Is a Railroad Easement Agreement? Retrieved March 28, 2019, from <https://pocketsense.com/railroad-easement-agreement-8512656.html>

Brandini, J. A. (1997, September 1). The acquisition, abandonment, and preservation of rail corridors in NC: A historical review and contemporary analysis. Retrieved February 13, 2019, from <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3725&context=nclr>

Blackmer, K. (2014, April/May). From right of way to no way: The General Railroad Right-of-Way Act. Retrieved March 7, 2019, from [https://www.ottenjohnson.com/Templates/media/files/pdf/CREJ From right of way to no way by Blackmer 041614.pdf](https://www.ottenjohnson.com/Templates/media/files/pdf/CREJ%20From%20right%20of%20way%20to%20no%20way%20by%20Blackmer%20041614.pdf)

C. (n.d.). Best building project under \$5 million. Retrieved March 24, 2019, from <https://www.cagc.org/CAGC/AtYourService/AwardsPages/PinnacleWinnerFiles/2018/Christman-Company-Cascade-Saloon.aspx?WebsiteKey=0ebbefb-1125-4676-9cca-fcaae025278a>

Carroll, M. (n.d.). Railroad permitting issues. Retrieved March 7, 2019, from <http://alnga.org/wp-content/uploads/SS2012-Railroad-Permitting-Issues.pdf>  
 Conservancy, R. (n.d.). To-Trails Conservancy | Healthier places for healthier people | Rails-to-Trails Conservancy. Retrieved March 26, 2019, from <https://www.railstotrails.org/>

Cox, R. (2018, March 5). Cascade Saloon: Then and now. Retrieved March 7, 2019, from [http://library.uncg.edu/dp/wellcraftednc/history/then\\_and\\_now/cascade\\_saloon.aspx](http://library.uncg.edu/dp/wellcraftednc/history/then_and_now/cascade_saloon.aspx)

Hansen, G. (2017, January 07). Supreme Court Holds That U.S. Government Does Not Have A Reversionary Interest To Abandoned Railroad Right Of Ways Under 1875 Statute. Retrieved March 28, 2019, from <https://blog.aklandlaw.com/2014/09/articles/easements/supreme-court-holds-that-us-government-does-not-have-a-reversionary-interest-to-abandoned-railroad-right-of-ways-under-1875-statute/>

History of Saluda & Railroad. (n.d.). Retrieved March 25, 2019, from <http://www.saludahistoricdepot.com/history-of-saluda-railroad>

Justice, L. (2017, May 11). Saluda approves resolution in support of Rails to Trails. Retrieved March 7, 2019, from <https://m.tryondailybulletin.com/2017/05/11/saluda-approves-resolution-in-support-of-rails-to-trails/>

J. B., & J. P. (2014, June/July). Supreme Court abandoned railroad rights-of-Way. Retrieved February 13, 2019, from [https://www.mto.com/Templates/media/files/Reprints/Josh\\_Patashnik/Bleich\\_Patashnik--Supreme\\_Court\\_Watch\\_Summer\\_2014.pdf](https://www.mto.com/Templates/media/files/Reprints/Josh_Patashnik/Bleich_Patashnik--Supreme_Court_Watch_Summer_2014.pdf)

Killian, J. (2014, August 6). What's ahead for the Cascade Saloon? Retrieved February 13, 2019, from [https://www.greensboro.com/news/what-s-ahead-for-the-cascade-saloon/article\\_1953cc14-1d64-11e4-a7f6-0017a43b2370.html](https://www.greensboro.com/news/what-s-ahead-for-the-cascade-saloon/article_1953cc14-1d64-11e4-a7f6-0017a43b2370.html)

Ladd, S. (2017, February 11). Cascade Saloon holds a mystery of Greensboro history. Retrieved March 24, 2019, from [https://www.greensboro.com/blogs/around\\_town/susan-ladd-cascade-saloon-holds-a-mystery-of-greensboro-history/article\\_57b5983c-509b-5906-bf4d-2f92b2233584.html](https://www.greensboro.com/blogs/around_town/susan-ladd-cascade-saloon-holds-a-mystery-of-greensboro-history/article_57b5983c-509b-5906-bf4d-2f92b2233584.html)

National Register Database and Research. (n.d.). Retrieved March 28, 2019, from <https://www.nps.gov/subjects/nationalregister/database-research.htm>

Off the Tracks: Development and Railroad Rights-of-Way in North Carolina. (2015, July 23). Retrieved February 13, 2019, from <https://ced.sog.unc.edu/off-the-tracks-development-and-railroad-rights-of-way-in-north-carolina/>

S. (n.d.). Railbanking | Rails-to-Trails Conservancy. Retrieved March 25, 2019, from <https://www.railstotrails.org/build-trails/trail-building-toolbox/acquisition/railbanking/>

Schwartz, S. (2013). The Downtown Good Repair Ordinance and the Zoning Enforcement Process(United States, City of Greensboro, Planning department). GREENSBORO, NC.

U.S. Supreme Court Sides with Property Owners in Dispute Over Abandoned Railroad Right of Way. (2018, July 20). Retrieved March 25, 2019, from <https://www.rmmenvirolaw.com/u-s-supreme-court-sides-with-property-owners-in-dispute-over-abandoned-railroad-right-of-way/>

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Fig 4. [www. Railstotrails.org](http://www.Railstotrails.org).

Fig 5. <http://www.waymarking.com>

Fig 6. [www. Historicsaluda.org](http://www.Historicsaluda.org)

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Fig 8. <https://www.christmanco.com/>

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