

3922 Baltimore St.(Kensington HD)

Preliminary Consultation

11/26/97

HISTORIC PRESERVATION COMMISSION STAFF REPORT

Address: 3922 Baltimore Street
(Lot 25, Block 11) Meeting Date: 11/26/97
[Postponed from 11/12/97]

Resource: Kensington Historic District Review: PRELIMINARY CONSULTATION

Case Number: N/A Tax Credit: N/A

Public Notice: 11/12/97 Report Date: 11/19/97

Applicant: Ellison Corporation (Cary Hoobler) Staff: Robin D. Ziek

PROPOSAL: Garage demolition or relocation; New house construction RECOMMENDATIONS: **Reduce size of structure**

RESOURCE SUMMARY

RESOURCE: Kensington Historic District, Primary Resource (1880-1910, 1910-1930)

PROJECT DESCRIPTION: Demolish or move existing garage, and construct new single-family dwelling with 2-car garage at rear

STAFF RECOMMENDATION SUMMARY: While the current proposals attempt to address some of the HPC's stated concerns, they - like the original HAWP application - continue to represent construction of a new single family dwelling which is as large or larger than the Primary Resource at 3920 Baltimore Street. This is not in conformance with the historic development patterns of the Kensington Historic District and does not protect the environmental setting or streetscape of the historic area. Construction of a new structure of some type on this property may be possible; however, the new structure **must clearly defer in size, massing, and scale** to the Primary Resource. Additional study by the applicant may be possible to consider this design issue.

BACKGROUND

The applicant was before the HPC on April 23, 1997 with an application for a HAWP to demolish the existing garage at 3920 Baltimore Street, and build a new house in a Victorian style on the side lot. The new house would have an address of 3922 Baltimore Street. The application proposed a 2-1/2 story house (1,716 sf footprint) and a two-car garage (576 sf footprint) on Lot 25. The house was proposed to be 32' high from finished first floor to the ridgeline of the roof. The total lot coverage would be 26.6%.

The application was denied by the HPC and the applicant has appealed that decision to the Board of Appeals. The hearing date is December 17, 1997. In an effort to avoid a hearing before the Board of Appeals, the applicant contacted HPC staff to suggest a redesign of the project proposal. Staff has worked with the applicant to explain preservation concerns, as presented in the original staff report dated April 16, 1997, and discuss alternative designs for this site.

Staff is guided by the Kensington Amendment to the Master Plan and other documents cited in the 4/16/97 staff report. Staff will draw on that information for this report as well.

Speakers: Barbara Wagner, LAF
Julie O'Halley
Heka Wilkes (J. of K. p21)
Larry Peoples
Bob Ritzmann

①

Overview:

Kensington developed, for the most part, after the B&O Railroad stop was built in 1873. The Kensington Amendment to the Master Plan notes that the 1890 subdivision of Brainard Warner was "designed in the Victorian manner with ample sized lots and a curvilinear street pattern." The subject property was among the earlier houses built in this subdivision, but was substantially renovated in the second period of Primary Resources in Kensington, and therefore is representative of both periods.

The Kensington Historic District was established in July, 1986 when the County Council adopted an amendment to the Montgomery County Master Plan for Historic Preservation. As stated in the Amendment (p.2),

"The district is architecturally significant as a collection of late 19th and early 20th century houses exhibiting a variety of architectural styles popular during the Victorian period including Queen Anne, Shingle, Eastlake and Colonial Revival. The houses share a uniformity of scale, set backs and construction materials that contribute to the cohesiveness of the district's streetscapes. This uniformity, coupled with the dominant design inherent in Warner's original plan of subdivision, conveys a strong sense of both time and place, that of a Victorian garden suburb."

The purpose of the designation and the role of the HPC is clearly described in the Introduction to the Amendment (p.1):

"Once designated on the Master Plan for Historic Preservation, any substantial changes to the exterior of a resource or its environmental setting must be reviewed by the Historic Preservation Commission and a historic area work permit issued. The Ordinance also empowers the County's Department of Environmental Protection and the Historic Preservation Commission to prevent the demolition of historic buildings through neglect.

It is the intent of the Master Plan and Ordinance to provide a system for evaluating, protecting and enhancing Montgomery County's heritage for the benefit of present and future residents."

One of the key issues which is addressed above and which staff considered in the evaluation of this proposal is the issue of "integrity." The nomination to the Master Plan addresses this issue, but it may be helpful to quote from the National Register Bulletin #15, How to Apply the National Register Criteria for Evaluation, page 46 which provides a definition of integrity of historic districts and discusses the implications of new construction within a historic district:

"For a district to retain integrity as a whole, the majority of the components that make up the district's historic character must possess integrity even if they are individually undistinguished. In addition, the relationships among the district's components must be substantially unchanged since the period of significance.

When evaluating the impact of intrusions upon the district's integrity, take into consideration the relative number, size, scale, design, and location of the components that do not contribute to the significance. **A district is not eligible if it contains so many alterations or new intrusions that it no longer conveys the sense of a historic environment.**

A component of a district cannot contribute to the significance if:

- o it has been substantially altered since the period of the district's significance or
- o it does not share the historic associations of the district."

Project Location

Lot 25, Block 11 is part of a grouping of three lots (25, 26, 27) which provide the environmental setting for the house at 3920 Baltimore Street; it is the west sideyard for this house; Lot 27 provides the east sideyard (See Circle). Each of lots measures 50' x 172.5' (8,625 sf). The driveway is located on Lot 25, and leads to an **original garage** which is clad in wood shingles similar to those on the house. The garage is a small (12.5' x.18.5', or 231 sf) single-car frame structure with the gable end perpendicular to the street. The original doors are stored inside the garage, and the building has shifted off of its foundations and is need of maintenance work. The lot is relatively flat, although it slopes up both from the street and from 3920 to the adjacent property at 3924 Baltimore Street. There are some shrubs on this property, small trees to the rear, and a large redbud between Lot 25 and Lot 26.

The house at 3920 Baltimore Street has been identified as a Primary Resource (1910-1930) in the Master Plan . It is a center gable I-House (1,440 sf footprint) with a rear ell, and small additions to the rear and east side. Originally, there was a front porch on the house, but this was removed some time in the past, and there is a small stoop now to provide access to the front door. The house is approximately 26'-6" high from the finished first floor to the ridge line of the roof. The owner of the house has mentioned (HAWP 31/6-92E) that the house was actually constructed in the 1880's, and this earlier date is evidenced by the use of fishscale shingles in the side gables as original cladding (evident on the west gable end where the wood shingles are failing), indicating that the wood shingles are an overlay cladding material. The Kensington Master Plan notes two distinct periods for construction of Primary Resources (1880-1910, 1910-1930), and there is no question that this resource is a Primary Resource within the Kensington Historic District.

The dwelling at 3920 Baltimore Street sits on Lot 26 between its flanking side lots. These provide the garden setting for the house which was typical in this Victorian garden suburb. With three exceptions (3913, 3941 and 3948 Baltimore Street), all of the other houses on Baltimore Street in this portion between Connecticut and Prospect are Primary Resources dated between 1880-1930 (see Circle). 3920 Baltimore Street is flanked by two large homes sitting on multiple lots. The home to the east, 3914 Baltimore Street, is a Queen Anne Cottage (Primary Resource 1880-1910) sitting on three lots. The house to the west at 3924 Baltimore Street is a large Georgian Revival Cottage (1880-1910) with a hipped roof, sitting on two lots.

The streetscape on Baltimore Street was established with a building pattern where the earliest purchasers typically bought 2 or more platted lots and built only one dwelling on the property (1880-1910). The earliest homes are typically either the Queen Anne style (large homes of irregular shape), or the Georgian Revival Cottage style (large symmetrical homes with hipped roofs). These individual homes sit within a generous landscape where neighbors are close by, but are not typically on adjacent lots. The suburban setting was landscaped, treed, and spacious in contrast to the urban environment of Washington, D.C., and this was one of the selling features of the suburban development. (See Circle).

The second period of development on this street (1910-1930) included the development of three Colonial Revival style homes on lots purchased from existing homeowners. These dwellings are characterized by their modest scale, massing, and size in contrast with the earlier constructed dwellings.

Finally, there are two recently constructed buildings in this block - 3913 and 3948 Baltimore Street. The proposal for 3948 Baltimore Street was brought to the HPC for consideration prior to the actual date of historic district designation, so that it was reviewed as an Atlas site and was considered solely from the perspective of "substantial alteration." This level of review is not comparable to the review which is given to any proposals within an established historic district, and does not provide guidance in terms of precedence.

The project at 3913 was approved by the HPC in August 1987, shortly after the historic district was designated. Staff notes that this new construction illustrates the concerns with in-fill construction and, therefore, illustrates the potential for the loss of the environmental setting for the historic district as a whole, and for individual resources within the district on their own. (See Circle).

PROJECT DESCRIPTION

The applicant is presenting two different proposals for HPC consideration. Both of these proposals are in direct response to HPC comments on the previous HAWP proposal.

General parameters:

- o Lot 25, Block 11 is located on the west side of Connecticut Avenue, and measures 50' x 172.5' (8,625 sf).
- o The original house at 3920 Baltimore Street has a c1,440 sf footprint.* The height from the first floor to ridgeline of roof is c26'-6".
- o There is an existing garage or "auto house" on the property measuring 12.5' x 18.5' (231 sf), which was built between 1911 and 1924.
- o The house has an existing environmental setting of 25,875sf. With house and garage (1,671 sf), the property coverage is currently 6.5%.
- o If the setting for the original house is reduced to 2 lots, or 17,250 sf, the property coverage for 3920 Baltimore with the house alone would be 8.3%, and if the garage were relocated to either of these two lots, the property coverage would be 9.7%.
- o A mature redbud is located at the edge of Lots 25 and 26, and provides some constraints in terms of new construction. The tree is healthy and a large specimen.

Proposal A:

Applicant proposes to relocate the original garage to either of the adjacent lots at 3920 Baltimore Street, for use at the rear as a shed. No new driveway is proposed for 3920 Baltimore Street at this time.

Proposal A is a 2-story house styled after early 20th century resources, with a front facing gable and full-width front porch. The footprint of the house is 1,536 sf. As no plans are available at this time, staff approximates the total living space, exclusive of basement area, at c3,072 sf.

* Square footage calculation includes footprint of all new construction, including porches, to provide basis for comparison of built environment to landscape/environmental setting.

The applicant proposes a new 2-car garage at the rear of the lot, measuring 22' x 22', for a total of 484 sf. A 10' wide driveway is also proposed along the entire length of the west side of the property, to a parking pad in front of the garage at the rear, for a total of additional paving at c1,989 sf. (This would replace the existing driveway, which measures ca. 70' x 13', or 910'.

The new house matches the setback of the existing house at 3920 Baltimore Street, at 50' back from the street with a side setback of 10' on each side. The proposed house would be approximately 20' from the house on Lot 26 (3920 Baltimore Street), and approximately 20' from the house at 3924 Baltimore Street.

The proposed property coverage for the new house alone is 17.8%. With the proposed garage and the house, the property coverage would be 23.4%.

Staff discussion on Proposal A:

Staff feels that, while this proposal is an improvement over the initial submission to the degree that the proposed architecture is not a Victorian derivative, the proposal does not address any of the concerns regarding integrity of the historic district. The proposed property coverage is only slightly less than was originally proposed to the HPC in April, and is still 2-1/2 times the property coverage recommended for Primary Resources in this historic district, which is 9%.

Proposal B:

Applicant proposes to relocate the original garage to either of the adjacent lots at 3920 Baltimore Street, for use at the rear of the property as a shed. No new driveway is proposed at this time for 3920 Baltimore Street.

Proposal B is for a 1-1/2 story house, in the bungalow style. This is an early 20th century architectural style, with a side gable roof, a large shed dormer in the front, a full-width front porch, and an addition at the rear. The footprint of the proposed house is 1,370 sf (including the front porch with c40 sf), or approximately 2,660 sf of total living space, exclusive of basement area. The same 2-car garage is proposed for this proposal, as for Proposal A, with 484 sf, and a 10' driveway along the full length of the west side of the property.

The proposed house would be set back approximately 70' back from the street, and therefore would not match the front yard setback of its neighbors. The new house would be located behind the front section of 3920 Baltimore Street, at approximately the line of the side door. In relation to the neighbor on the other side at 3924 Baltimore, this is approximately in line with the back end of its wrap-around front porch. This increased setback would provide more landscape opportunities in the front of the new house, in an effort to maintain the existing building patterns and rhythm on the street.

The property coverage for the new house alone is 15.9%. With the proposed garage and the house, the property coverage would be 21.5%.

Staff discussion on Proposal A:

Staff feels that this proposal is an improvement over the initial submission, in that the choice of the bungalow, which is typically a small house style, is more appropriate for in-fill construction. In addition, the placement of the new house back on the lot begins to address some of the concerns regarding integrity of the historic district. However, the proposed property coverage is still far above that recommended for Primary Resources in this historic district, which is 9%.

STAFF DISCUSSION:

The applicant has been working with staff to explore the possibilities and constraints of building at this particular lot on Baltimore Street in the Kensington Historic District. The applicant has worked with the HPC in the past, and has built other new structures with HPC approval in Montgomery County, and so is familiar with the process. As staff has noted to the applicant, this particular site is a difficult site for new construction because of the very character of Baltimore Street, as typical of the Victorian garden suburb.

The HPC and the Town of Kensington have both adopted the Vision of Kensington as the planning guideline for the Kensington Historic District. These guidelines provide objective criteria to guide future decisions affecting the historic district, based on the defining characteristics of the district.

The quality and character of Baltimore Street is a combination of the existing structures, the existing landscapes, and the existing ancillary structures which all combine to provide "a strong sense of both time and place" (Kensington Amendment to the Master Plan). A balance must be struck between the existing environment and any new construction to protect the integrity of that valued environment or this strong sense of both time and place are in jeopardy.

Property coverage is one of the main tools for testing the suitability of any proposed new construction, as analyzed in The Vision of Kensington. This is an objective method for understanding the percentage of built-over land in contrast to open space. The greater the percentage of open space, the more opportunity for landscape development such as is characteristic of this garden suburb historic district. As presented in the Vision of Kensington, table on page 47 (See Circle), the average property size of Primary Resources 1890-1910 is .42 acres (18,295 sf) and the average property coverage (including multiple recorded lots) of Primary Resources 1890-1910 in this district is 9%.

Neither of the two proposals before the HPC today approach this figure. One factor is the sheer size of the proposed new houses. The smaller proposal, "B" is only 70 sf smaller than the Primary Resource at 3920 Baltimore Street (110 sf if you don't count the front porch). Proposal "A" is actually 96' larger than the house at 3920 Baltimore Street. While the new proposals are both smaller in height, and in width, the differences are too small to actually support the existing building pattern. In other words, neither proposal is small enough to avoid disrupting the existing rhythm of the street, with its established pattern of building to open space.

The amount of grading which would be required to build either Proposal "A" or "B" is extensive. The side lot in question slopes steadily down towards 3920 Baltimore Street. There is a small bank which divides the lot from 3924 Baltimore Street, and staff is concerned with the intrusiveness of the new construction. To build the driveway along the west boundary, the applicant would probably have to build a retaining wall for the adjacent property. Extensive drainage efforts would be required to prevent runoff from the extensive roof system from attacking the foundations of 3920 Baltimore Street. In addition, the redbud is also put at risk by the need for extensive drainage control. The HPC has had too many experiences with new construction where mature trees looked fine at sale time, but were dead within the year for the new occupants and for the residents of the historic district not to be concerned.

Another factor in the overscaled property coverage is the proposed 2-car garage at the rear of the lot, with the extensive driveway. There has been a long history of discussion of new construction in Kensington where the goal is that new construction should be designed as an ancillary structure to the existing Primary Resources. An ancillary structure to an ancillary structure is redundant and out of character with the historic district. One of the goals of new construction in the historic district is that it work within the scope and character of the district so as to not be intrusive, and ultimately threaten the integrity of the district.

6

Staff and the applicant have discussed the possibility of building a new house without a garage. The least intrusive thing would be a parking area and driveway of pea gravel or paving bricks, which could also be heavily landscaped. Staff had suggested moving the small garage structure to the rear of the lot, maintaining to some degree the original relationship between the house at 3920 Baltimore and its small garage. The new house would use the original garage as a shed, and there would be no new 2-car garage.

The proposal "A" is too similar to the original application to bring up any new comments. The proposed house would be an intrusive element in the historic district at this location, and would disrupt valued patterns of the environment and open space in the district. Proposal "B", however, raises the issue of whether or not a structure pushed to the rear of the lot might not be acceptable. Staff feels that this specific proposal is still too large in relation to other Primary Resources in this part of the district, and that it doesn't equate to an ancillary structure in terms of size. The proposed use of a bungalow seems an appropriate in-fill style, but the question remains whether the goal is to moderate in-fill, or to preserve the existing character of the street. In other words, construction of a new structure in the form of an ancillary structure might preserve the overall feel and character of the street. The proposed new bungalow would merely be easily identified as in-fill construction.

The revised proposals attempts to respond to HPC comments, but Staff is concerned that neither proposal goes far enough to actually satisfy the preservation concerns. For example, the revised proposal is to move the original garage rather than demolish it. This is certainly an improvement, but moving historic structures also takes a lot of consideration including consideration of the proposed new site, and the proposed new use of the structure. A structure will be maintained only if the owner has a need for it.

While staff feels that both proposals are too large for the site, the proposed siting of "B" to the middle of the property would apparently provide less disruption of the existing rhythm on the street. However, the proposal does not go far enough to actually accomplish this. Staff is concerned that the project would not read as an ancillary structure which fits into the existing building pattern, but would merely be odd.

Finally, the new proposals do not address the effect on the Primary Resource at 3920 Baltimore Street, which sits comfortably now in the middle of its generous garden space. Historically, the homes in Kensington were developed with generous side yards, where the average distance between buildings is 87.3', ranging from 40' to 170'. The intervening open space provides the garden setting for the entire district. The new house would be only 20' away from both neighboring Primary Resources, effectively encroaching on their individual setting within the district.

The issue of **environmental setting** is central to the designation of any historic site or district because it is key to the retention of **integrity** of the district. The proposed new construction is considered "in-fill" because it is built on what was historically open space. In other words, in-fill housing fills in the space between existing structures. In the Kensington Historic District, the potential loss of integrity due to the loss of the open space component is significant, even in terms of retaining the nomination to the National Register. As noted in the National Park Services' Manual for State Historic Preservation Review Boards (p.32),

"Integrity is the ability of a property to convey its significance.
Historic properties either retain integrity, or they do not."

Loss of an important component of a historic district, such as open space, can result in a loss of integrity for the district (See Circle). The Manual also notes (p. 33),

"There is no easy formula or standard rule concerning the number of intrusions that renders a district ineligible for National Register listing...Any proposed district must convey a sense of time and place through the collective

7

significance of its buildings or features...if there are too many scattered non-contributing features...then the district's integrity may be lost or seriously damaged."

Further assistance in staff's evaluation of this proposal is provided by the National Register Bulletin #30 which provides guidelines for the evaluation of rural historic landscapes. While Kensington is clearly a suburban rather than rural historic district, the description on page 23 of Bulletin #30 concerning threats to integrity is helpful:

"Integrity may also be lost due to the cumulative effect of relocated and lost historic buildings and structures, interruptions in the natural succession of vegetation, and the disappearance of small-scale features that defined historic land uses."

STAFF RECOMMENDATION

In working with the applicant to get to this point, staff notes that the applicant has been most cooperative and has been trying to respond to HPC concerns and comments. Staff has been working with the applicant to try and determine just how small a structure he would be willing to build on the site. He is sensitive to various constraints, including the desire to preserve the mature redbud on site, and to also preserve the original garage, albeit by moving it to another location.

The willingness of the applicant, and the new proposals before the HPC seem to point out just how difficult this general proposal is. Staff feels that neither proposal "A" nor "B" approaches a suitable size of a structure which would not disrupt the existing character of Baltimore Street. The existing pattern of primary residence and small-scale ancillary structures permits the construction of new ancillary structures on the property of a primary residence. This would not disrupt the relationship of the primary residence to its garden, or to its neighbor.

The proposed Option "B" is clearly not an ancillary structure, and is too large a structure on the site, with over 20% lot coverage. The proposal would be differentiated from the historic resources by its architectural style, but that does not address the major concern of the impact on the integrity of the Historic District through the loss of the open space and environmental setting of the district. Staff finds, however, that the proposal to move the new structure back on the site appears to have potential, in combination with the reduction in size of the proposal.

The HPC may wish to discuss the further reduction in size of the proposed new construction, including the potential for the construction at the back of the lot in the form of an ancillary structure. The problem is to balance the proposal for a new full-scale residence in the district, and the need to protect the district in its essential form as designated. The HPC is charged with the preservation of historic resources. There is point where the scale of the proposal is such that it does not contribute to the district, but would constitute an intrusion in the district with the resulting loss of integrity.

Staff notes that these proposals would not be compatible with the existing patterns of development including rhythm of building to open space, or the environmental setting of the District. This is based on the fact that the proposed new construction would substantially exceed existing average property coverage, would be substantially below existing average distances between dwellings, and that this represents a cumulative loss of integrity for the Historic District as a whole through the above non-conformance with existing development patterns and with the demolition/relocation of an existing historic outbuilding.

8

ELLISON CORPORATION
BUILDERS10907 JARBOE AVENUE
SILVER SPRING, MD 20901TELEPHONE 301-681-1411
TELEFAX 301-593-1930

23 Oct 97

FAX TO: Robin Zick 495-1307

FAX FR: Carey Hoobler

RE: 3922 Baltimore St. Kens.

Dear Robin,

These arrived too late to me yesterday to turn around to you at 4:30 + I had to be in Bethesda late pm as well + couldn't get them to you. So I've faxed them to you this am.

We've tried hard to incorporate some of the ideas you suggested into these plans. Both are a reduction of what I showed you last. I'll try to get the actual heights to you today. Pls call with your thoughts.

Thanks.

Carey Hoobler

(9)

ELLISON CORPORATION

BUILDERS

10907 JARBOE AVENUE
SILVER SPRING, MD 20901TELEPHONE 301-681-1411
TELEFAX 301-593-1930

27 OCT 97

FAX TO: ROBIN ZIEK 495-1307

FAX FR: CAREY HOOBLER

RE: 3922 Balt St Kens - Heights

Dear Robin,

The plan I submitted for a HAWP last March was 32'± from first floor to ridge. The plan I showed you a couple of months (1½) ago was 28'± ff→r. I am faxing the 2 elevations I have of that to you to include in the consultation w/ the H.P.C. (site plan is same as Design Proposal "A" mentioned below)

The 2 plans you rec'd last Thursday AM are 25'± ff→r for Design Proposal "A", and 24'± ff→r for "B".

The garage "auto house" is proposed for relocation onto a spot on 3920 or its adjacent lot. The structure does not appear adequate to "house" an auto very comfortably today, but certainly any structural improvement would be an aesthetic one and a move onto a new foundation couldn't hurt.

Thank you.

Sincerely,
Carey
Carey Hoobler

(10)

ELLISON CORPORATION

BUILDERS

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TELEPHONE 301-681-1411
TELEFAX 301-593-1930

27 Oct 97

FAX TO: Robin Zick 495 1307

FAX FR: Carey Hoobler

RE: 3922 Balt St Kews - Heights amendment

Dear Robin,

I had only scaled the info I gave you earlier today. I
came across my notes from Chas Poor of Studio Partnership Architects
and should tell you that the "A" model is 24'6"± and
the "B" model is 22'6"±. These are less than I had
told ^{you} earlier.

Thanks again,

Carey Hoobler

(11)

ELLISON CORPORATION

BUILDERS

10907 JARBOE AVENUE
SILVER SPRING, MD 20901

TELEPHONE 301-681-1411
TELEFAX 301-593-1930

5 Nov 97

FAX TO: ROBIN ZIEK 495-1307
HPC Staff

FAX FR: CAREY HOUBLER

RE: 3922 Baltimore St, Kensington - footprints + lot coverages

Dear Robin,

Here is the info you requested:

Design Proposal "A"

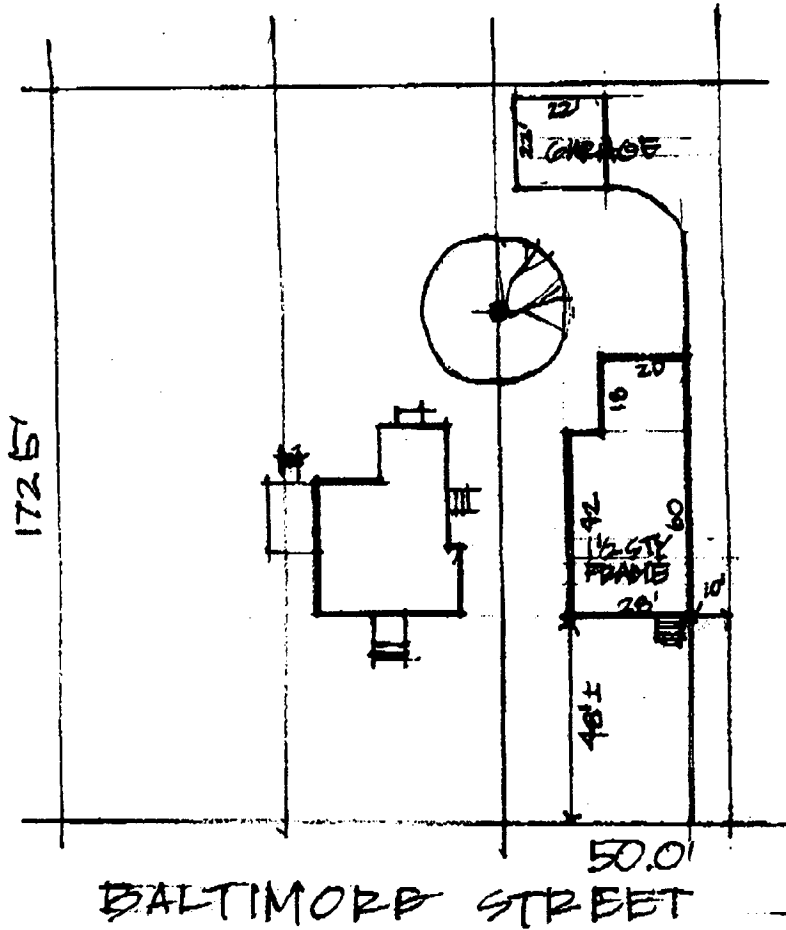
- 484 ∇ detached garage
- 1312 ∇ enclosed house footprint
- 224 ∇ front porch footprint

Design Proposal "B"

- 484 ∇ detached garage
- 1330 ∇ enclosed house footprint
- 224 ∇ front porch footprint

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997



(house) $28 \times 42 = 1176$
 $18 \times 20 = 360$
 1536

(garage) $22 \times 22 = 484$
 Total = 2020 sf

property coverage: 23.4%
 for house + garage

House alone = 17.8%

DESIGN PROPOSAL 'A' @ 1" = 40'
 3922 BALTIMORE KENSINGTON, MD.

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STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
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301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'A'
ELLISON CORPORATION



FRONT ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE AVE. KENSINGTON, MD.

51

10-22-1997 4:39PM

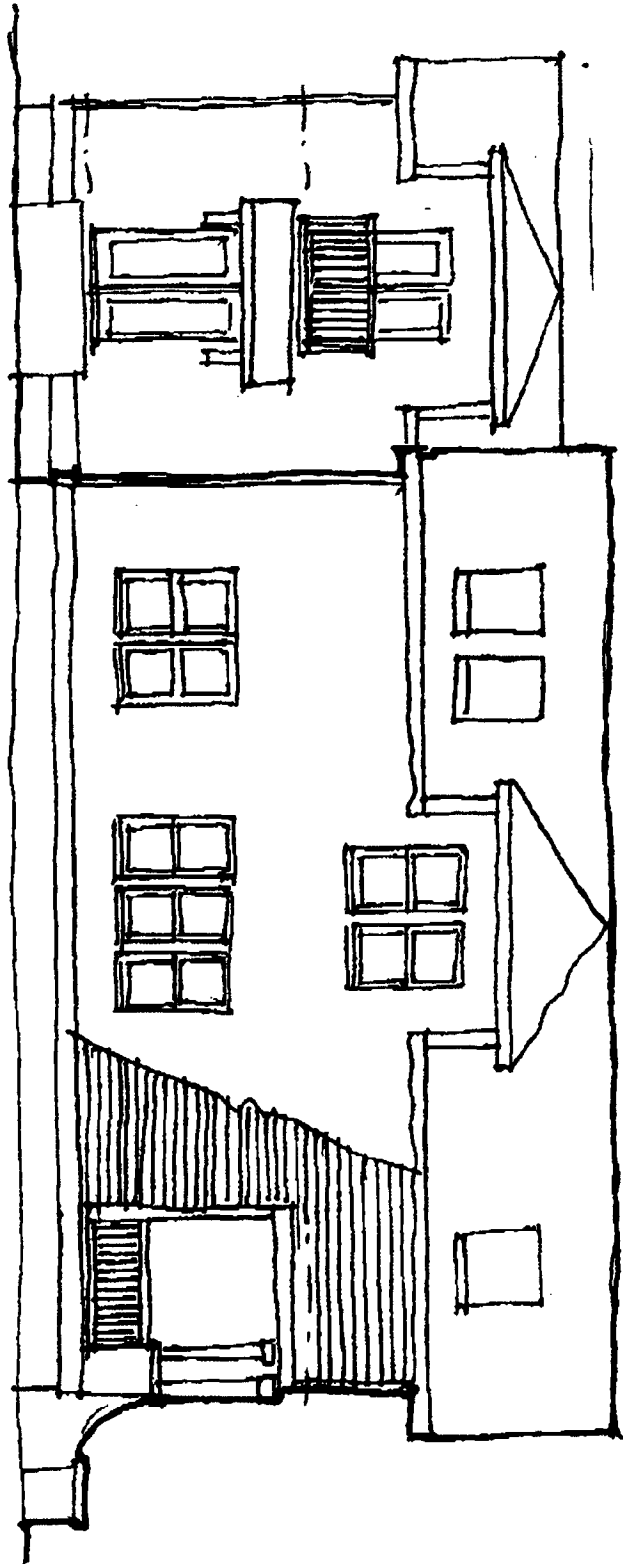
FROM STUDIO PARTNERSHIP 3012700092

P. 10

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0390 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL A
ELLISON CORPORATION



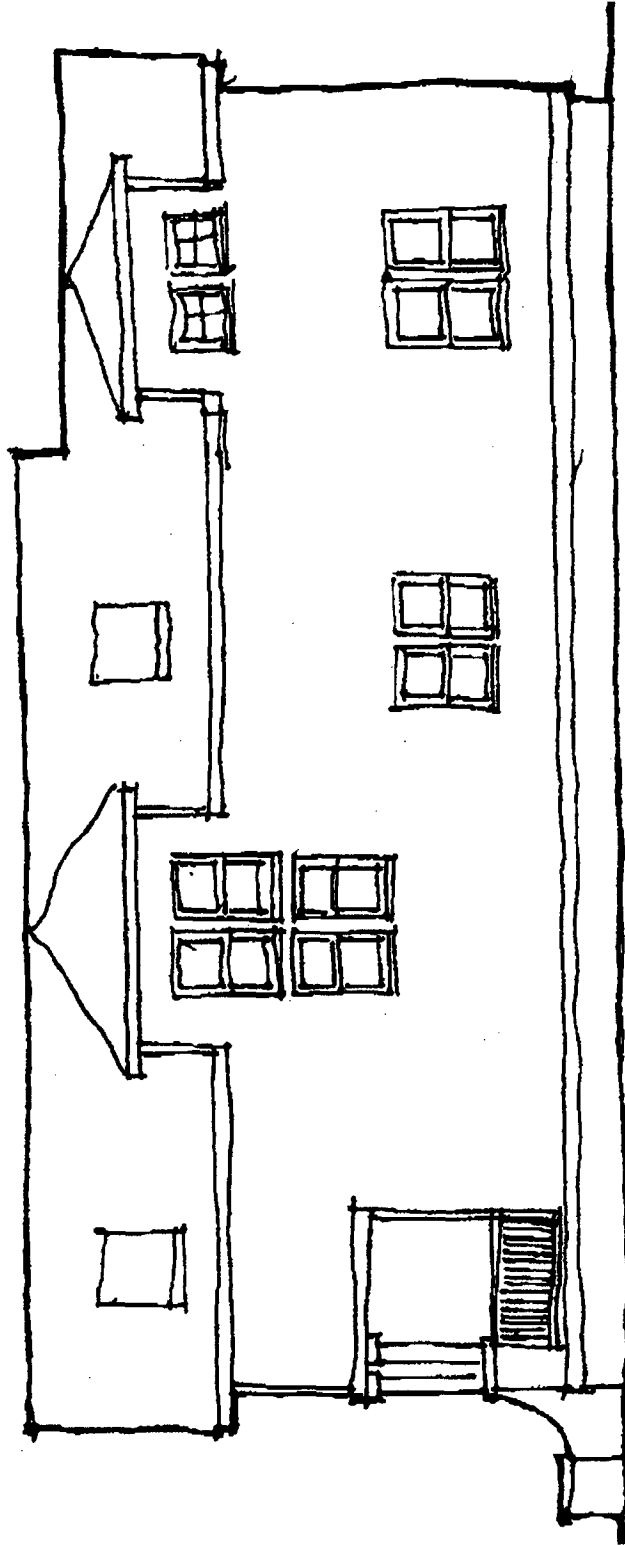
SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE AVE. KENSINGTON, MD.

© 1997

DESIGN PROPOSAL A
ELLISON CORPORATION

STUDIO PARTNERSHIP ARCHITECTS
26 PINE AVENUE
TAKOMA PARK, MARYLAND 20812
301.270.0990 301.270.0092 Fax

OCT 22 1997



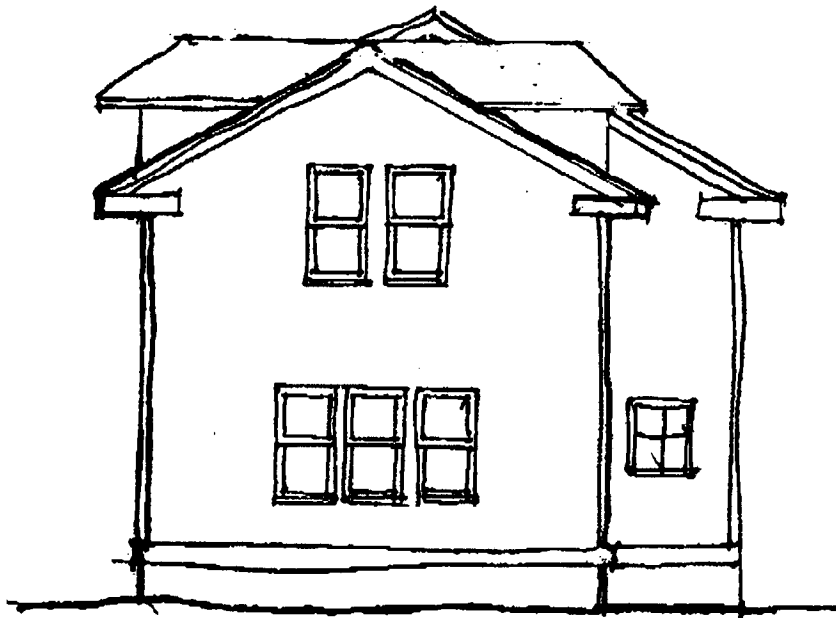
SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE W. KENSINGTON, MD.

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STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

SET 2 2 1997

DESIGN PROPOSAL 'A'
ELLISON CORPORATION

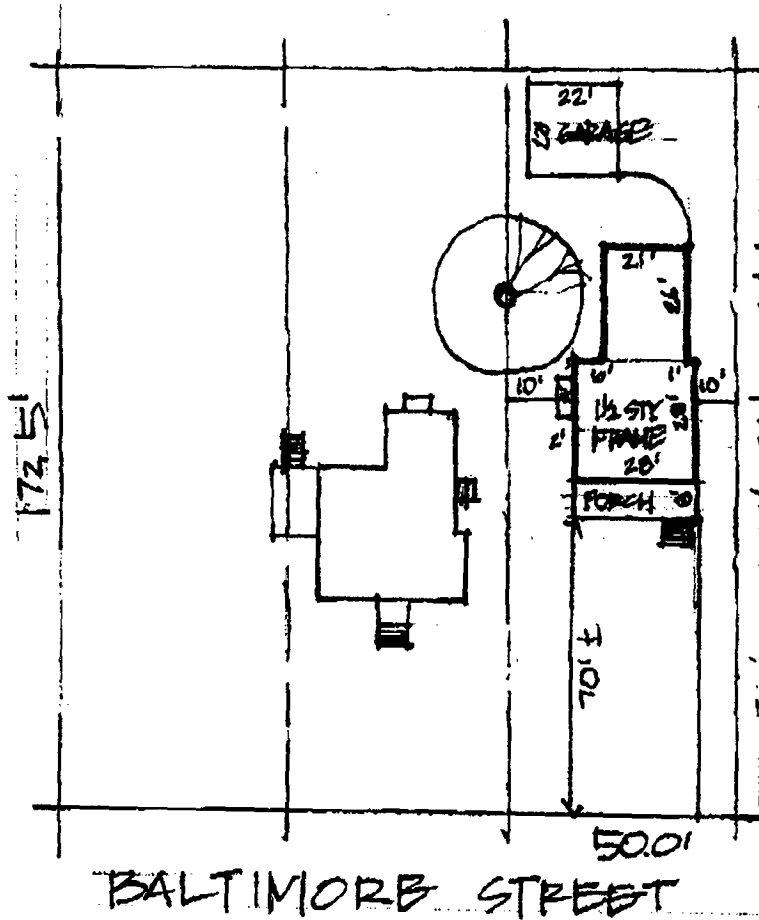


REAR ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE . . . KENSINGTON, MD

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997



House

$$\begin{aligned} 26 \times 21 &= 546 \\ 28 \times 28 &= 784 \\ 8 \times 5 &= 40 \\ \hline &1370 \text{ s.f.} \end{aligned}$$

Garage

$$22 \times 22 = 484$$

Total lot coverage =

$$\frac{1854}{8600} = 21.5\%$$

House alone = 15.9%

DESIGN PROPOSAL 'B' @ 1" = 40'

3922 BALTIMORE KENSINGTON, M.D.

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'B'
ELLISON CORPORATION



FRONT ELEVATION @ 1/8" = 1'-0"

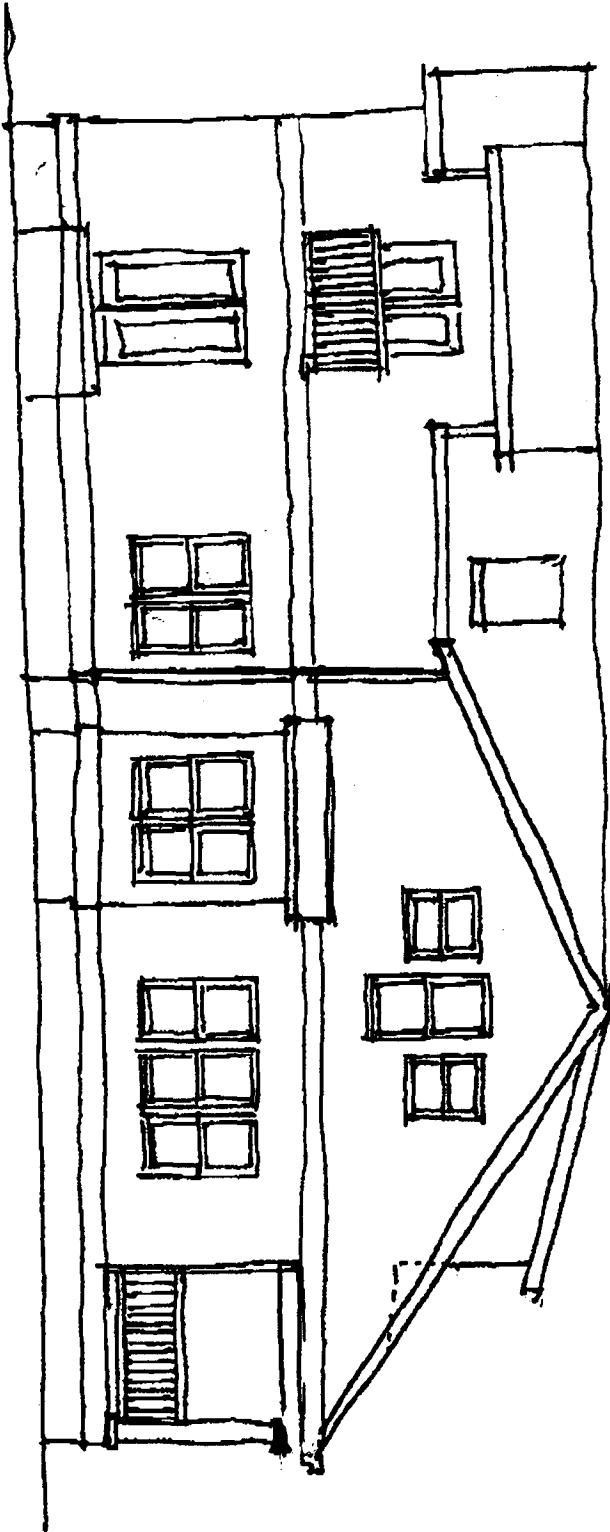
3922 BALTIMORE KENSINGTON, MD.

2

STUDIO PARTNERSHIP
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN FIRM
ELLISON CORPORATION



SIDE ELEVATION @ 1/8" = 1'-0"

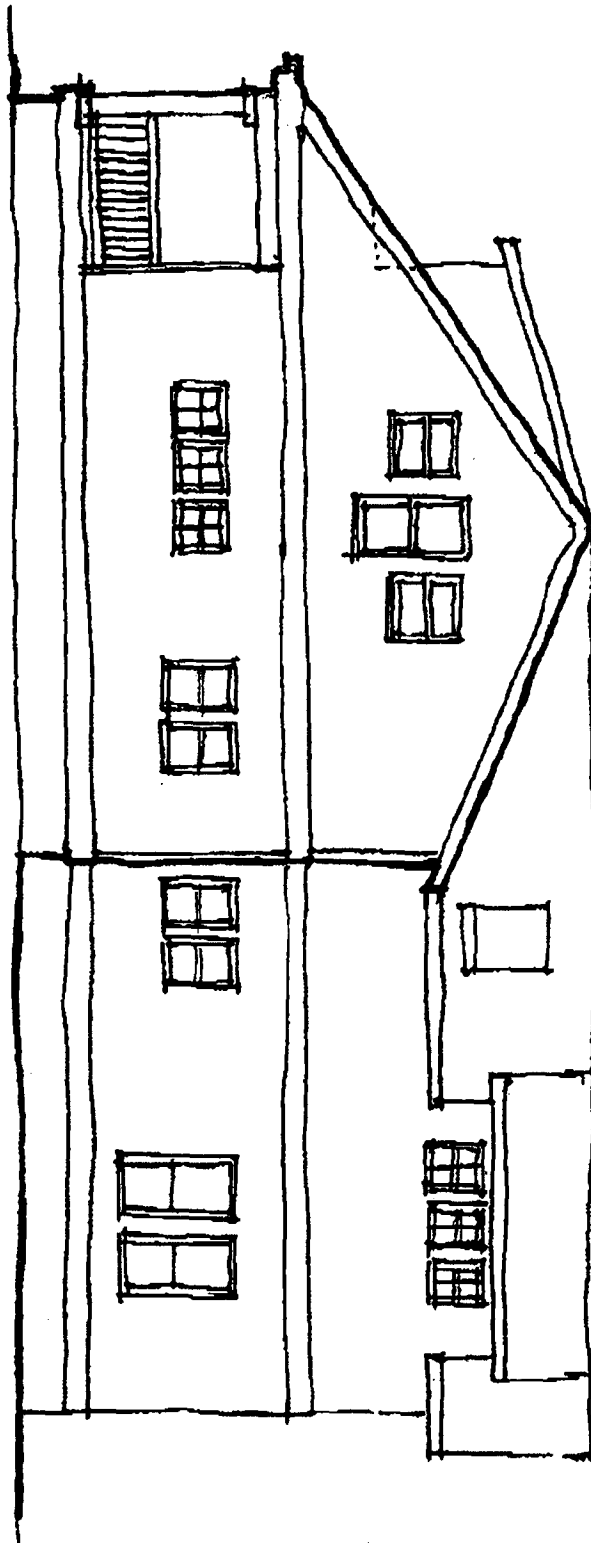
3922 BALTIMORE KENSINGTON, MD.

20A

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 FAX

OCT 22 1997

DESIGN PROPOSAL #
ELLISON CORPORATION

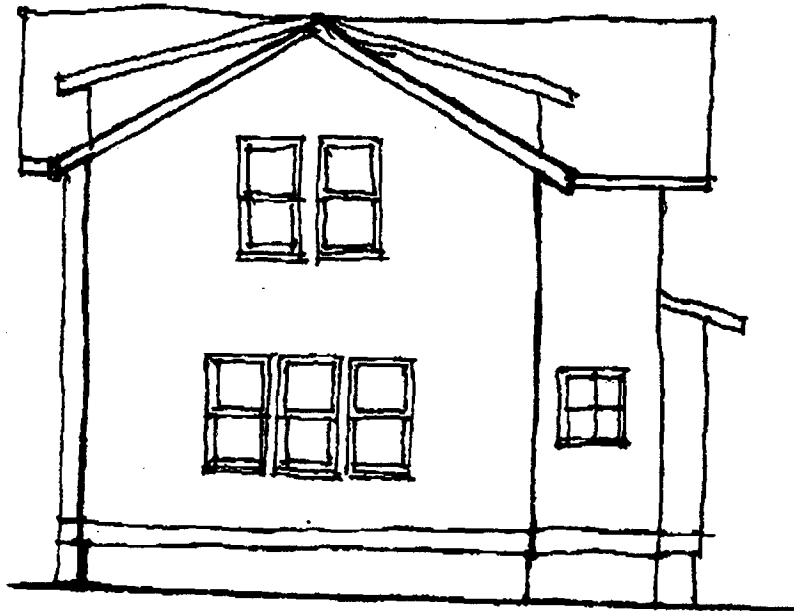


SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE KENSINGTON, MD

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

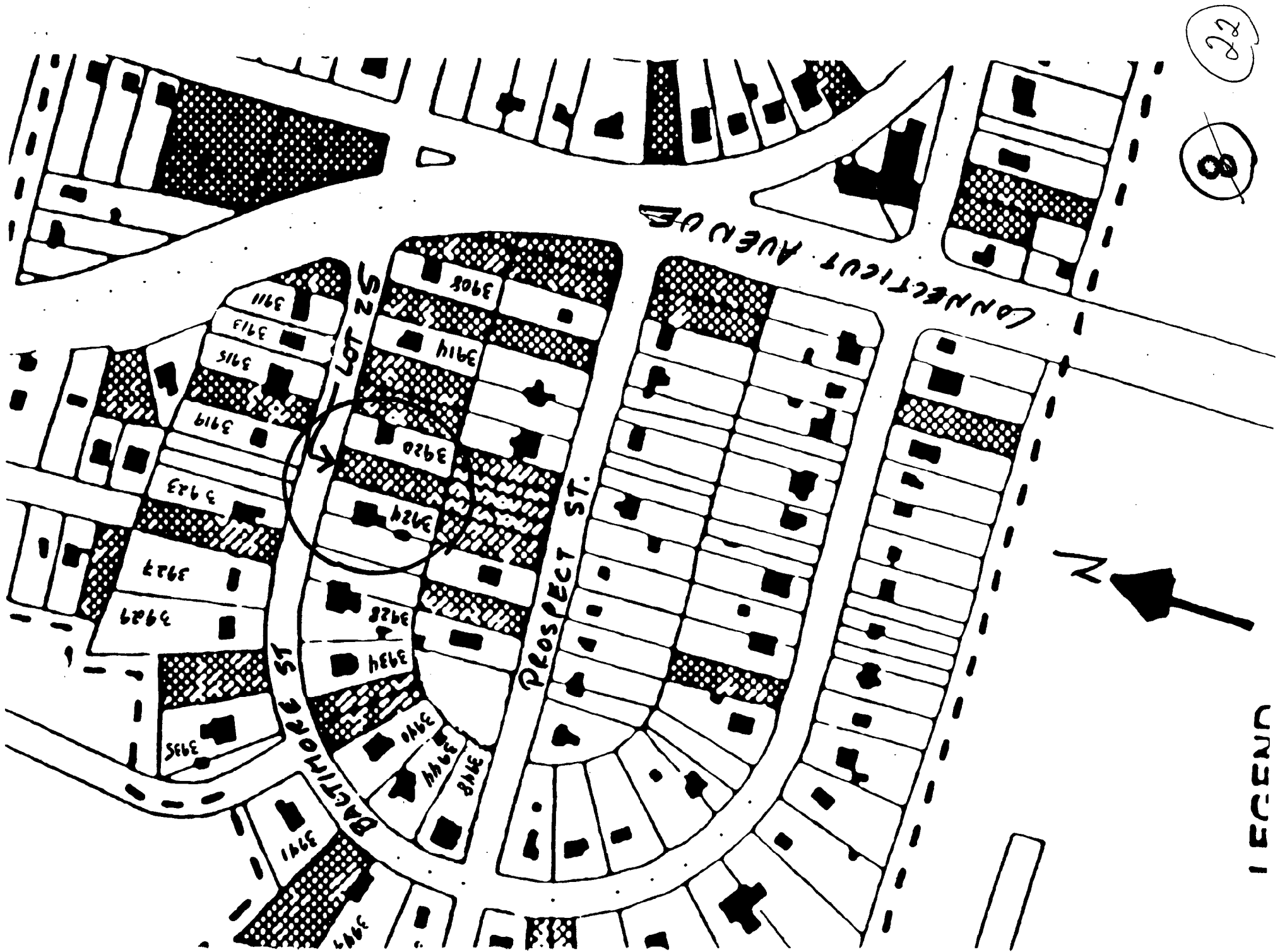
DESIGN PROPOSAL 'B'
ELLISON CORPORATION



REAR ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE

KENSINGTON, MD.



22
 8

LEGEND

33

10

NOTE: This location for title purposes only - not to be used for determining property lines. Property corner markers NOT guaranteed by this location

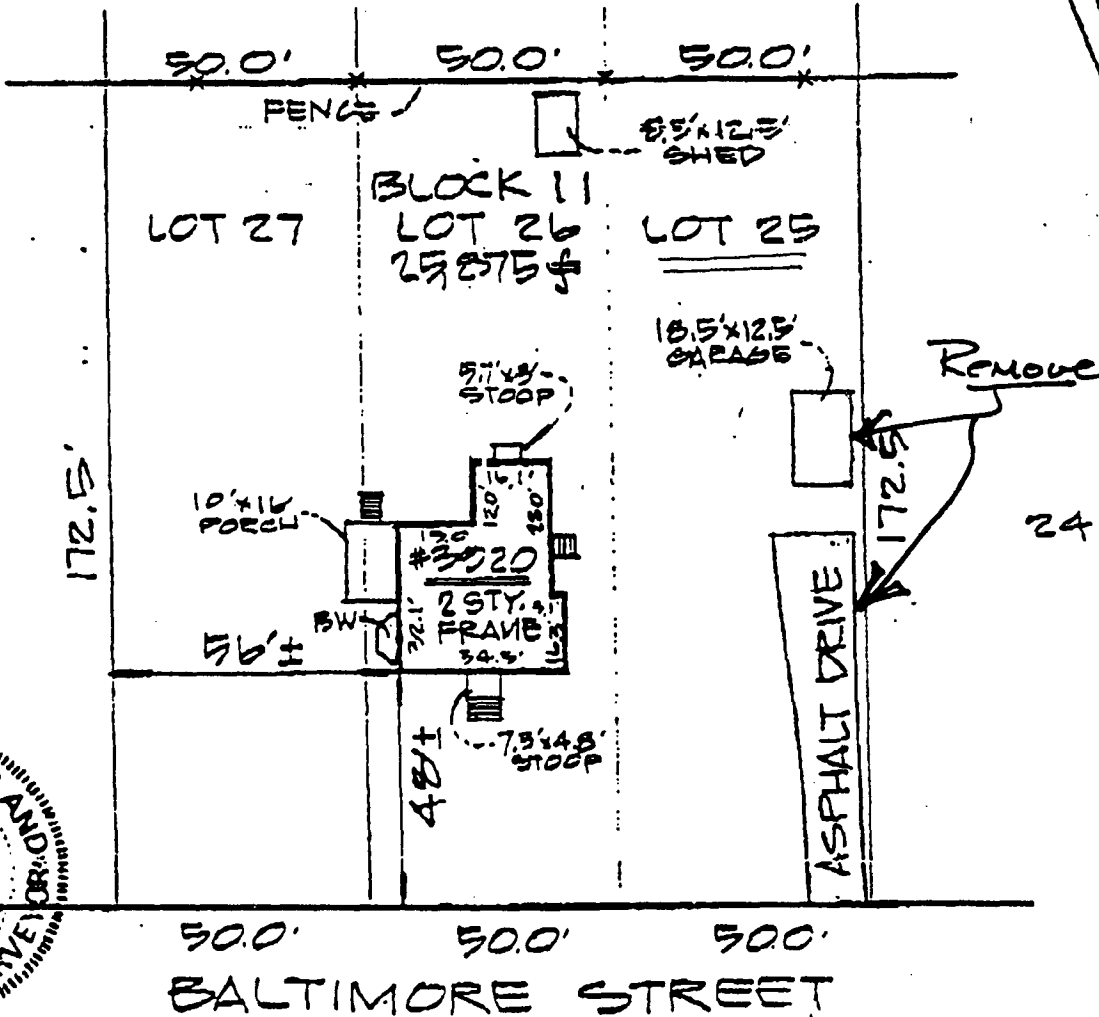
HOUSE LOCATION
LOTS 25, 26 & 27 BLOCK 11
KENSINGTON PARK
MONTGOMERY COUNTY, MD.

7

8

9

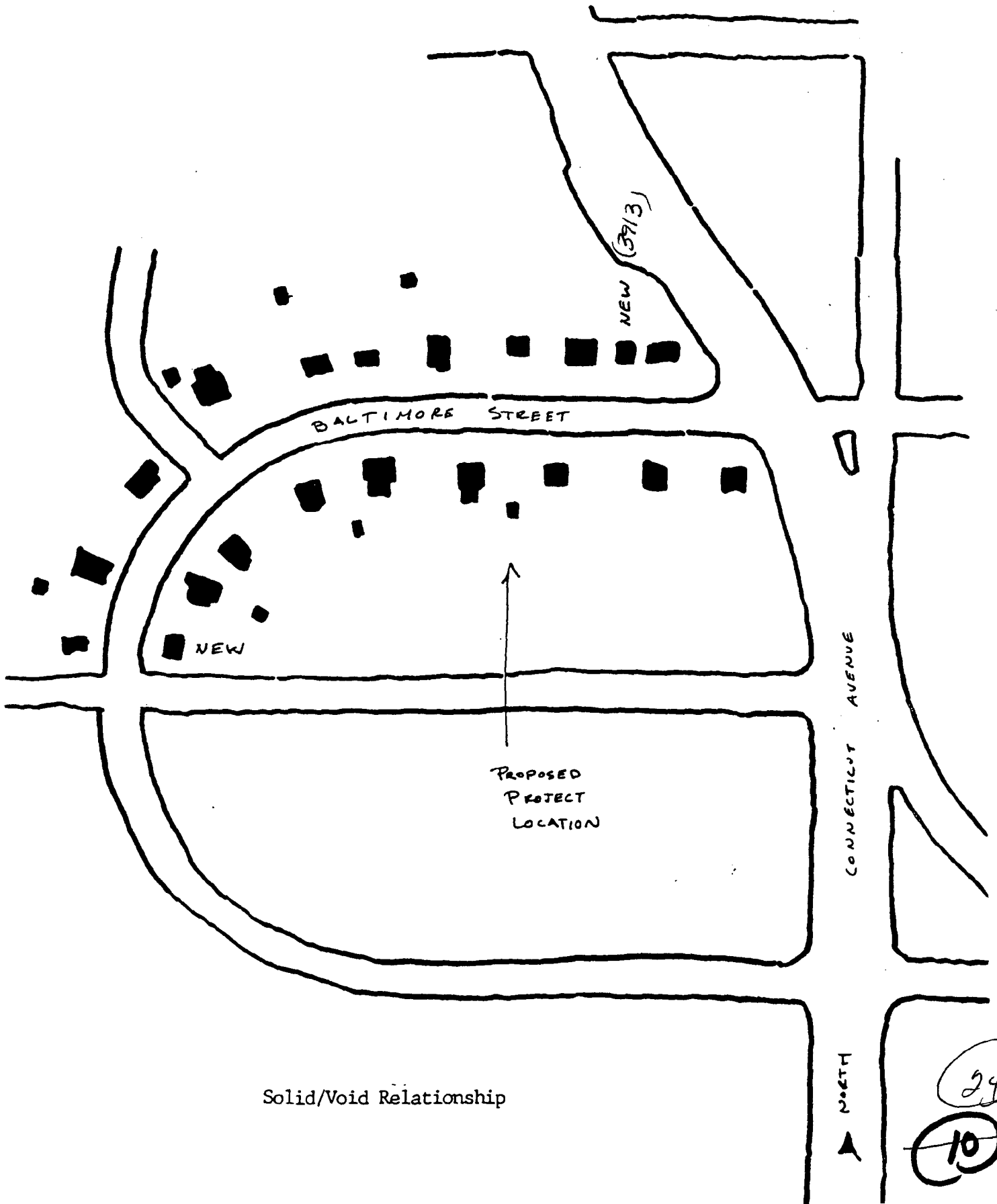
10



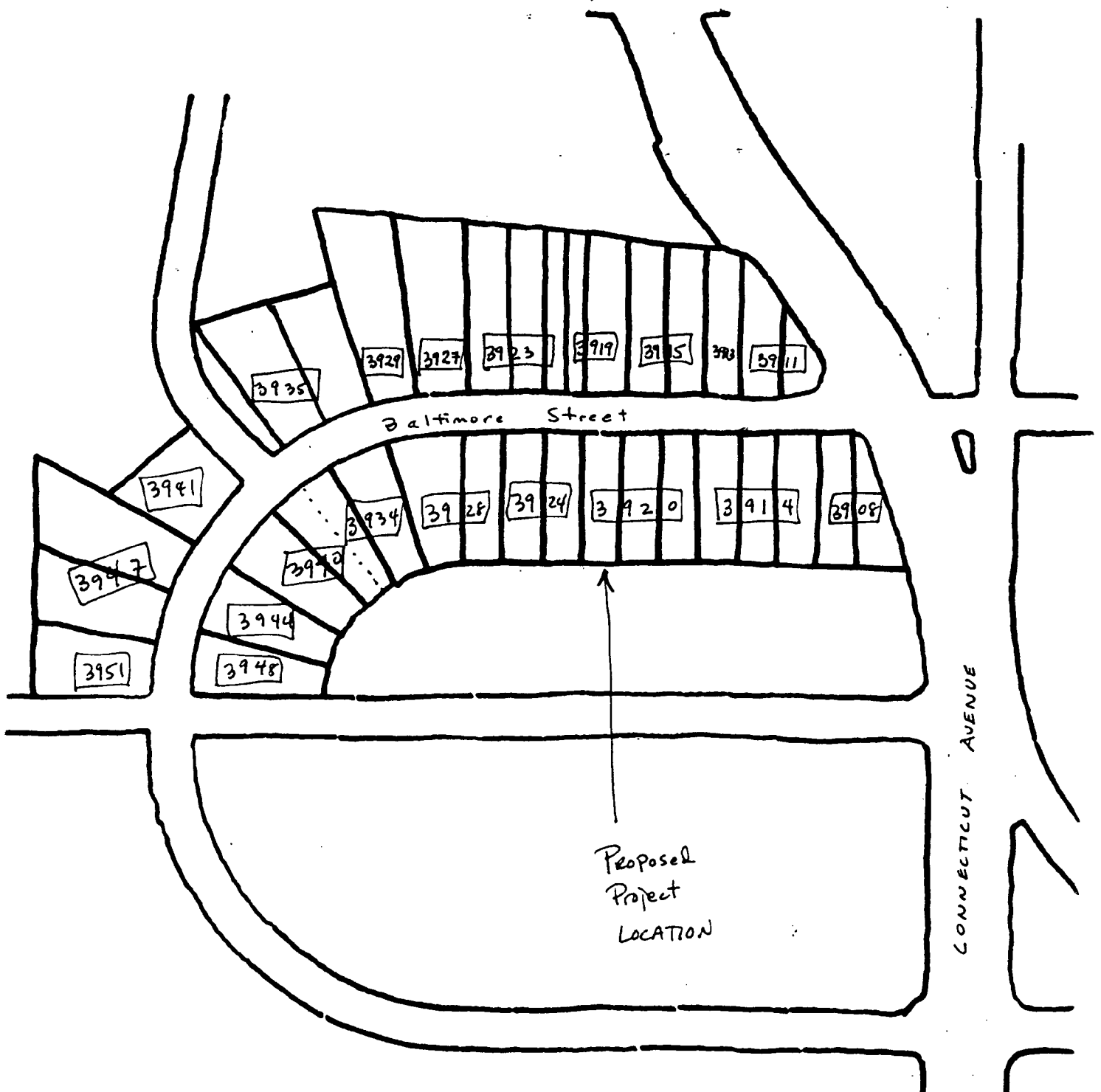
CERTIFICATE I HEREBY CERTIFY THAT THE POSITION OF ALL THE IMPROVEMENTS ON THE ABOVE DESCRIBED PROPERTY HAS BEEN CAREFULLY ESTABLISHED BY A TAPE SURVEY AND UNLESS OTHERWISE STATED THERE ARE NO ENCROACHMENTS	REFERENCES PLAT BK B PLAT NO 4	ALLEN ASSOCIATES P.O. BOX 6263 SILVER SPRING, MARYLAND 20906 301-871-2154	
	LIBER FOLIO	DATE OF SURVEYS WALL CHECK NSE LOC 5-25-82 BOUNDARY	SCALE 1" = 40' DRAWN BY BA JOB NO 851188

Information for title purposes only - not to be used for determining property lines. Property corner markers NOT guaranteed by this location. Information shown herein is not to a true plan per existing records unless otherwise stated. Information, if shown, was obtained from M.N.C.P. & P.C.

23



Solid/Void Relationship

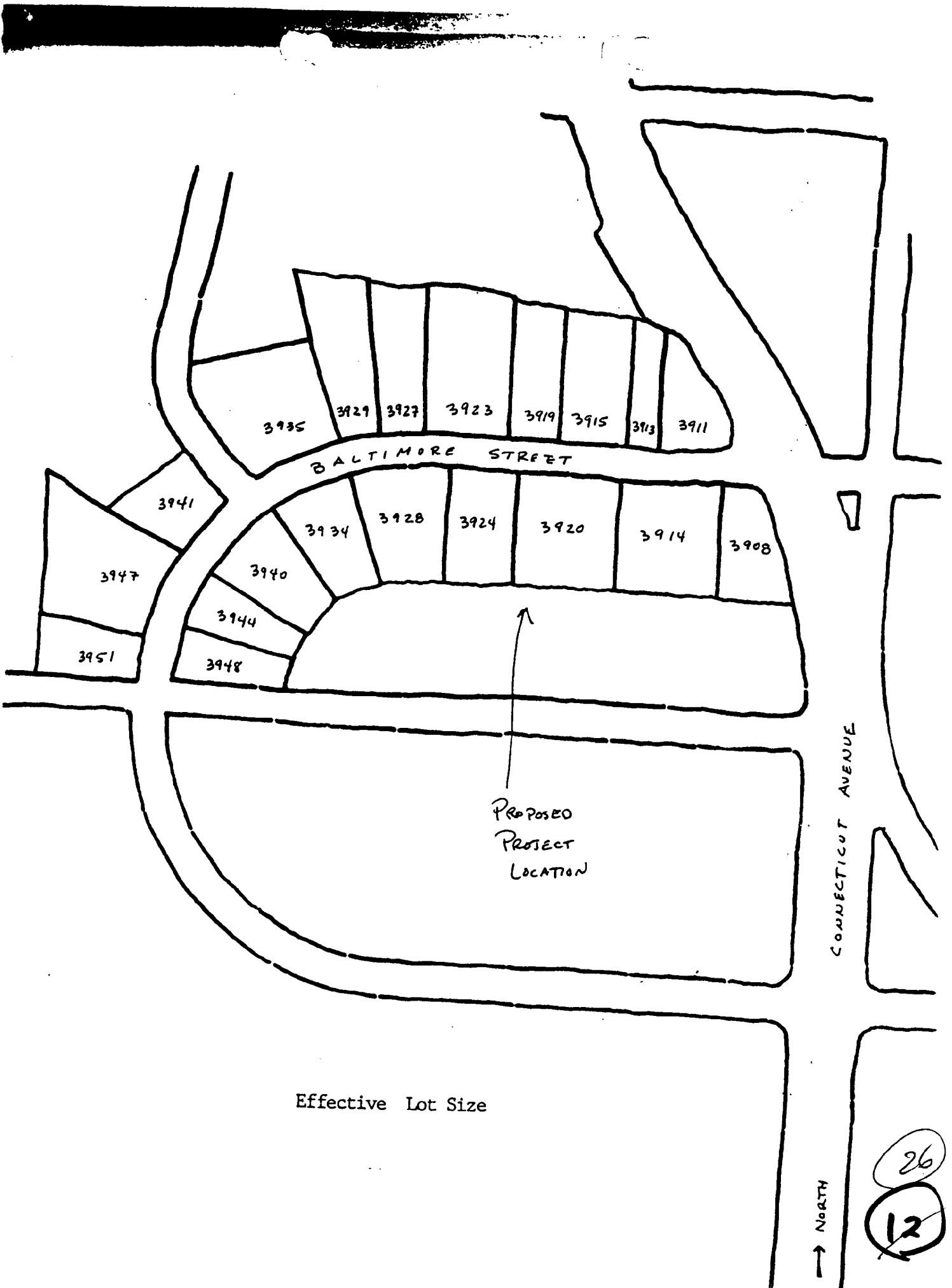


Lot Affiliation with Dwelling

11

NORTH

25



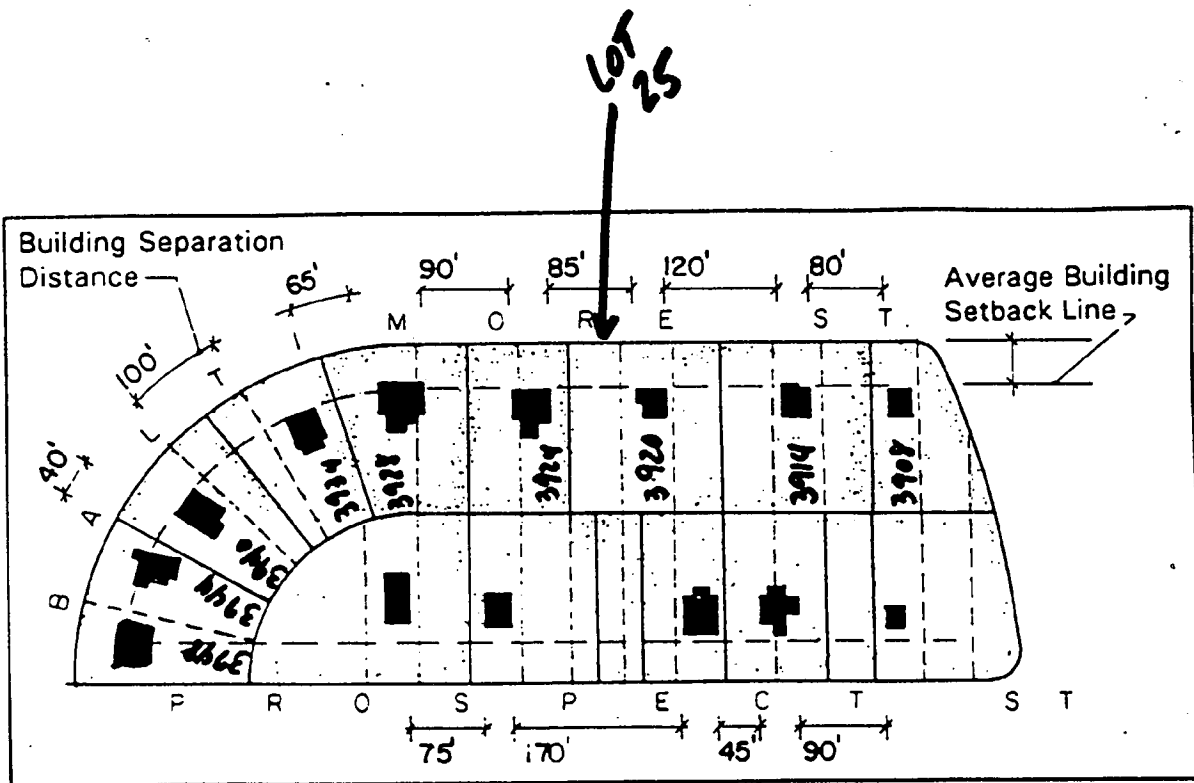
Effective Lot Size

→ NORTH

26
12

Relationships of Front Yard Setback and Building Separation

The front yard "setback" is the distance a building is set away or back from the property line on the street or road which it fronts. The front yard setback determines how prominent a building is in the streetscape of a community. When many buildings are involved, a pattern can be established which helps to define the character of the streetscape through the width of sidewalks, the amount of green space (lawn or vegetation area) between street and building, the apparent scale of the buildings in relation to pedestrians, and other subtle qualities of the community. In combination with setbacks, building separation distances establish the openness or visual porosity of the streetscape. Buildings which are separated allow for view and landscape elements in the interstitial space. These relationships are illustrated in the map titled Kensington Historic District Vacant Land and Open Space(Figure 34).



Pattern of Building Setbacks and Separation Distances for Block #11

13 27

Lot Coverage Patterns

Lot coverage is the ratio of the building footprint area to the overall lot area, and it reflects the density of development on a given parcel of land. Lot coverage was identified using planimeter take-offs of the building footprint area from the County's topography maps and compared with lot areas to determine percent of coverage as given in the table Kensington Historic District Lot Characteristics. Analysis of lot coverage in Kensington reveals that the density of development is greater for the overall district than in the areas where the primary resources are located. This is related to the inclusion of the commercial district for the calculation, as well as the use of fewer lots per dwelling for post-1930s' construction. The lower lot coverage figures for primary resources reflects the pattern of using multiple lots for the older primary resource dwellings.

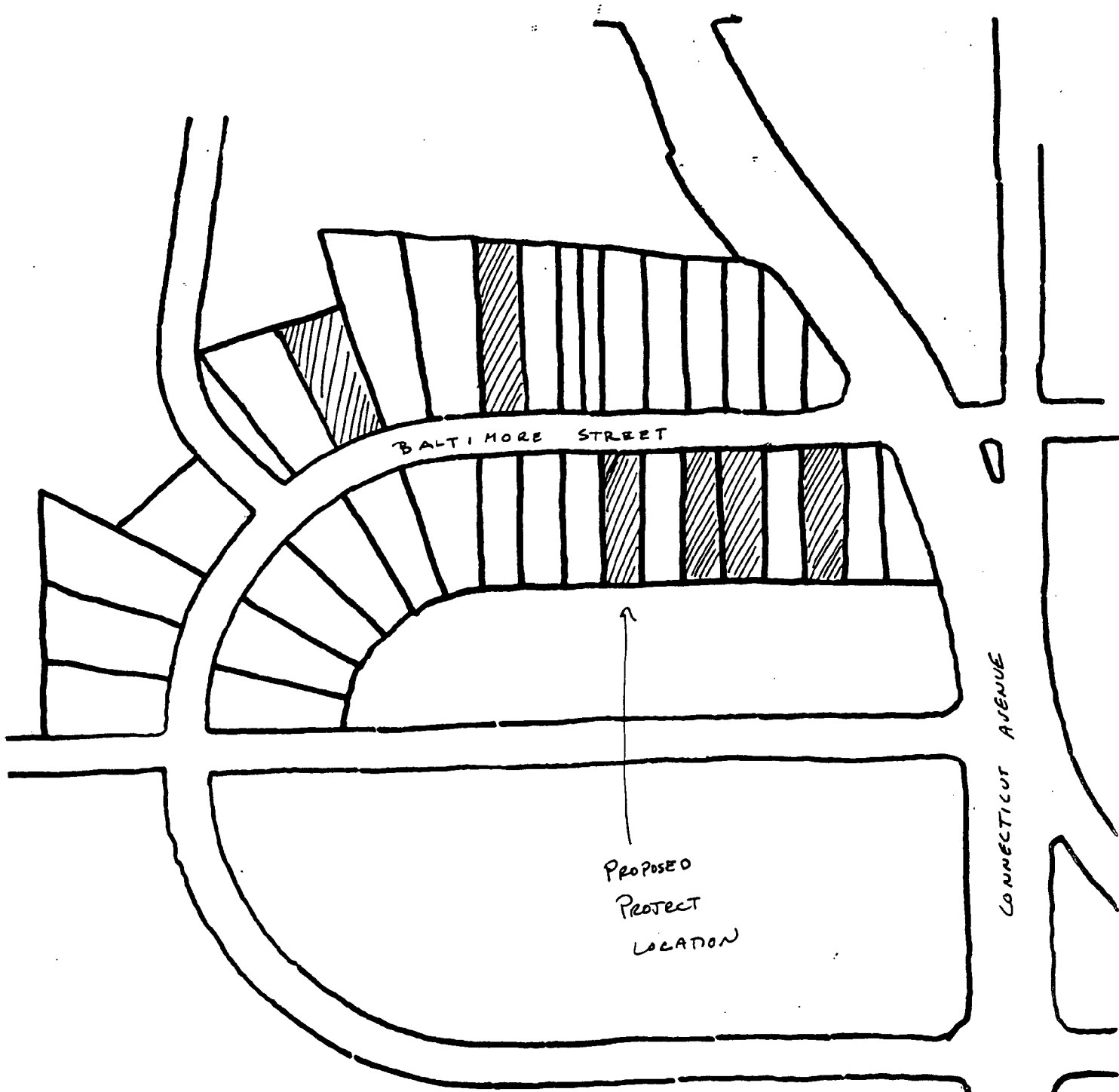


Kensington Historic District Lot Characteristics

Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
	Average	0.40 acres	0.38 acres	0.42 acres ←
	Minimum	0.15 acres	0.15 acres	0.18 acres
Lot Coverage	Maximum	25%	25%	25%
	Average	15%	10%	9% ←
	Minimum	5%	5%	5%
Front Yard Setback	Maximum	65 ft	65 ft	65 ft
	Average	33 ft	35 ft	38 ft ←
	Minimum	0 ft	20 ft	20 ft
Building Separation	Maximum	170 ft	170 ft	170 ft
	Average	40 ft	55 ft	75 ft ←
	Minimum	15 ft	20 ft	50 ft

14

28



Platted lots with Development Potential

~~15~~

29

3915 Baltimore Street
Kensington, MD 20895
November 11, 1997

George Kousoulas, Chairperson
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Chairman Kousoulas:

The Local Advisory Panel (LAP) met Saturday morning to review the plans submitted by Carey Hoobler for a preliminary consultation for new construction at 3922 Baltimore Street, Kensington. During the meeting, the LAP discussed Plan A and Plan B. They noted that Mr. Hoobler had changed the design and lowered the height, but little else had changed since his application on April 23, 1997.

The LAP compared the proposed lot coverage under plans A and B with that of the average for the south side of Baltimore Street and the north side of Prospect street. For plan A lot coverage is almost 100% greater without the garage and 145 % greater with the garage. Plan B is almost 75% greater without the garage and 133% greater with the garage. Even more striking is what happens to the distance between houses with the construction of either A or B. The average distance goes from the average of 87.3 to 10 feet and this happens two times once on each side! The distance between houses is 400 percent less than the minimum distance between the houses in that area of the historic district.

In addition to discussing the irreversible damage to the district posed by these plans, the LAP reviewed a letter from Mr. Mark Edwards, Deputy State Historic Preservation Officer of the Maryland Historical Trust (MHT) to Mr. Steven Karr, a former Chairman of the Montgomery County Historic Preservation Commission on November 17, 1988. It was written with respect to proposed construction on the side yard of 10234 Carroll Place, a Queen Anne house which is one of only a few buildings identified as "individually significant," either historically or architecturally, in the National Register nomination for the Kensington Historic District. The property at 3924 Baltimore Street, adjacent to Hoobler's proposed construction, like Carroll Place was identified in the National Register nomination as "individually significant."

Mr. Edwards wrote in 1988 that although his office could not offer an informed opinion at that time on the design details of the proposed development, "We do, however, have a sufficient understanding of the concept of the development to be able to assess its general effect within the context of the district listing on the National Register of Historic Places.

It is now almost exactly nine years since Mr. Edwards wrote to the HPC, but his comments apply equally well tonight and I will quote the remainder of the letter:

In this location, there are Queen Anne and Foursquare houses with large yards and lawns set back from the street in a wooded, open setting. There is uniformity among the houses, a quality of openness and a rhythm to the streetscape, and a defined sense of time and place. These are the factors which were cited as the basis for significance in the National Register nomination for the district:

The district is significant primarily for the collection of late 19th and early 20th century houses which stand in a turn-of-the-century garden-like setting of curving streets, tall trees, and mature shrubbery. The houses, which exhibit the influence of Queen Anne, Shingle, Eastlake, and Colonial Revival styles, have a uniformity of scale, design, and construction materials, that combine with their juxtaposition and placement upon the gently sloping terrain to create a significant urban neighborhood which still retains much of its early 20th century environment.

It appears that any new construction on the two lots in question would have some degree of adverse effect on the qualities from which the district derives its historic significance. The setting of the house at 10234 Carroll Place, with its large yard and extensive shrubbery by the proximity of new buildings on either side. The historic streetscape of large wooded lots and the sense of time and place conveyed by this district would be changed by the introduction of greater density.

The Kensington Historic District previously has experienced some development that is incompatible with the characteristics that qualified the district for listing in the National Register. However, that development has not been of sufficient magnitude to jeopardize continued listing. We are not in a position to judge whether the proposed development would alter that situation, but a significant trend in its direction certainly would.

In addition to the careful review afforded by your Commission, we encourage continued efforts to secure the donation of historic preservation easements within the district to Montgomery County or the Maryland Historical Trust.

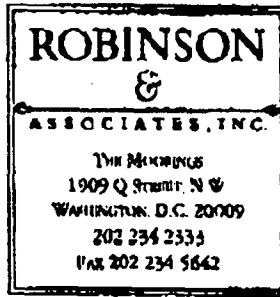
We hope that our comments will be useful to the Commission in your important deliberations.

The LAP urges the Historic Preservation Commission to inform the applicant that the plans for this lot would not only irretrievably alter the "uniformity of the houses, the openness and rhythm of the streetscape and the sense of time and place, but may also jeopardize Kensington's continued listing as a National Register Historic District.

Thank you for the opportunity to share our concerns.

Sincerely,

Barbara H. Wagner, Chair
Kensington Local Advisory Panel



November 11, 1997

Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: 3922 Baltimore Street (Lot 25, Block 11), Kensington Historic District

Dear Commissioners:

I have been asked to review development plans for the site at 3922 Baltimore Street in the Kensington Historic District and to evaluate their potential impact on the architectural and historical significance of the historic district. In making these comments, I draw on over 20 years of professional experience in the fields of architectural history and historic preservation. This assessment has included on-site study of the site (its spatial relationship and visual character), as well as a review of key historic designation and planning documents.

I came away from the study of development plans for this site with a clear view that the Historic Preservation Commission's denial (4/23/97) of the applicant's request to build a new house and garage is a correct finding. I also strongly concur with the current staff report (11/12/97), evaluating subsequent revisions to the development plan, that those revisions still fail to merit approval. It would be inappropriate and detrimental to the character of the historic district to allow the use of this narrow lot for new construction of this size and scale -- encroaching on the two adjacent primary historic resources by a mere 20-foot distance. It would seriously erode the historic streetscape in this notable section of the historic district.

The significance of the Kensington Historic District is defined in four key planning documents: the Maryland Historic Sites Inventory Form, the National Register of Historic Places Nomination Form, the Montgomery County Planning Board's historic district recommendation, and the Master Plan Amendment. The basis for the Kensington Historic District is clearly laid out in these documents. Several key phrases from the Planning Board document and the Master Plan Amendment identify critical characteristics of the historic district and define its significance. These include: 1) large lots, 2) uniformity of scale, 3) cohesiveness of streetscapes, and 4) park-like setting. Each of these justifications for the designation of Kensington as a historic district on the Master Plan would be violated by the current development plans.

I urge you to deny approval for this proposed construction, which would be inappropriate and inconsistent with the preservation, enhancement, and ultimate protection of the historic district.

Sincerely yours,

Judith Helm Robinson
Principal

The Concept of the Carriage House

Throughout the "Battle for Carroll Place" there has been much talk about a "carriage house type" of structure as an appropriate design for infill development. It seems worthwhile to undertake some research into the history, style and frequency of carriage houses in historic Kensington.

Definitions

Forerunner of the automobile garage, with downstairs space for horse/s, carriage/s and the like and upstairs space for hay, tackle and perhaps accommodation for a groom or other staff.

Usually built at the greatest possible distance from the house for aesthetic reasons and to be close to a back alley for access.

Apart from doctors, tradespeople, farmers and people in isolated areas, probably only the "gentry" would have kept private carriages (note the term "carriage trade" used to refer to up-market customers.)

Opp
7

Kensington

Local historian Edith Saul says that very few Kensington families "kept horses" because of the easy accessibility of excellent public transportation - trolley and train. Because of the close proximity of Ken-Gar, then a poor black community, few if any of the large houses employed live-in servants. In other parts of the country, the secondary structure would often have served as staff quarters.

For the doctor who lived at 10308 Montgomery Avenue, horse and buggy were essential, and a back alley, no longer there, gave him access to Howard Avenue.

The family who lived at 10226 Carroll Place wintered in the District and probably took their horses and carriages with them.

Survey

In the immediate Carroll Place area, there are only 3 true carriage houses (4 if the smaller "transitional" carriage house/garage at 10225 Montgomery Avenue is counted)

2 properties have garages

8 properties have no secondary structure.

In the historic district west of Connecticut Avenue, there is only 1 carriage house (at 3947 Baltimore Street)

In the entire historic district, there are no more than 5 carriage houses, representing 3.6% of the properties.

It is significant that, in this age of the automobile, 42 of the historic houses with side lots have never built so much as a shed! Clearly, this is a garden suburb.

Specifics (attached analysis)

There is a direct correlation between property size, house size and carriage house size. Circle Manor, by far the biggest property has by far the biggest carriage house. The proposed "carriage house" on Lot 17 is almost the same length as the Sharp house, not counting its porch.

The proposed "carriage house" on Lot 17 is almost exactly the same size as the Circle Manor carriage house.

The footprint of the Shulman house at 10221 Montgomery Ave,

excluding porches, is a little smaller than the proposed "carriage house."

Size of footprint can be misleading: the Hanks Henn house has a bigger footprint than the King house at 10300 Fawcett St although it is a much smaller house, because almost half of the dimensions of the Hanks Henn house is porch. The King house appears much bigger because it is on a much smaller piece of property (2 lots rather than 3) has no tall trees and has a minimal porch. The proposed house has a footprint almost as big as the King house, excluding porch, will have no tall trees and will be on only 1 lot! Thus it will appear bigger.

With the exception of the Circle Manor carriage house, which is really more like a barn, all the other carriage houses are only one and a half stories high.

The Circle Manor carriage house is 114 feet away from the house; the other carriage houses are at an average of 78 feet from their main houses.

Flora Morris
5.9.90



CARRIAGE HSE. @ CIRCLE MANOR
50' x 30' x 32' HT.



CARRIAGE HSE. @ 10226 CARROLL PL.
30' x 28' x 21' HT.

10019 Frederick Ave.
Kensington, MD 20895
November 26, 1997

Chairman Kousoulas
Historic Preservation Commission
8787 Georgia Ave.
Silver Spring, MD 20910

Dear Chairman and Commissioners:

I am writing for the Preservation Committee of the Kensington Historical Society in response to the preliminary proposal submitted for 3922 Baltimore Street in Kensington. We are again facing a problem similar to the one we had on Carroll Place some years ago. Due to this specific location where homes are surrounded by open space with ample gardens it would be extremely difficult to build a home which would neither disrupt the rhythm of the street, nor take away from the environmental setting, major factors in Kensington's designation as a Historic District.

We concur completely with the staff's report. The scale is inappropriate for the lot size. The percentage of lot coverage recommended by The Vision of Kensington should be used to guide new construction. This proposal far exceeds that guidance. While realizing that the percentages cited as appropriate only pertain to the house and garage, the actual impact would be even worse than those measurements indicate. Because of the difficulty of building a large house on this 50 foot front parcel, the builder has been forced to put in a long driveway, extending the entire depth of the property. Considering the driveway as well, the builder proposes a total of over 4000 square feet of coverage on an 8525-square foot lot! It's inconceivable that this amount of coverage could be consistent with the green space and landscape development characteristic of this garden suburb historic district. These proposals would cover almost half the lot with asphalt and other building materials. This would certainly be a threat to the integrity of our district and extremely difficult to justify. 8625 #

This is a very difficult site to work with as a new building site. We hope the Commission will do everything possible to preserve the integrity of our Historic District.

Sincerely,



Julie O'Malley
Preservation Committee
Kensington Historical Society

THE KENSINGTON HISTORICAL SOCIETY
P. O. BOX 453
KENSINGTON, MD 20895

November 26, 1997

Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

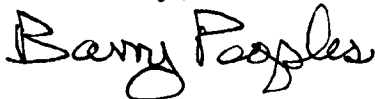
Subject: 3922 Baltimore Street

Dear Commissioners:

The Kensington Historical Society has approved an expenditure to have the infill lot at 3922 Baltimore Street and the adjacent homes to that lot appraised. Kensington's Local Advisory Panel and the Kensington Land Trust have been fully apprised and are supportive of having this appraisal done. The purpose of the appraisal is to try and put together a financial package for the possible purchase of all or part of the lot. The components of such a package ~~would~~^{might} include, but are not limited to, the possible purchase of half the lot by neighbor Dr. Lossing, and the possible purchase of the conservation easement~~x~~ for the lot by the Kensington Land Trust, chaired by Helen Wilkes. Part of this package would also include determining the value of the conservation tax easement credits that would be available by placing a ~~non-building~~^{conservation} easement on the property and determining the potential decrease in value on the lots adjacent to the infill lot if construction occurs. Finally, we would evaluate the potential decrease in taxes for the property owner on a new smaller lot than she presently owns.

I met with the property owner, Mrs. Ahearn, and the builder this afternoon and talked with Dr. Lossing last night regarding this proposal.

Sincerely,



Barry Peoples
President

Pat Harris:

Buildable lot

Meets zoning standards

lot coverage in R60 35%

Concept B w/ garage = 20%

George - "B"

This wants to be up front. And the lot needs something to the back...

Loop off back of "B" for smaller structure... but bungalow style "plugs up lot"

Steven - driveway? could be gravel, says Cary.

Cary: This is a 2nd-ary home, not an ancillary structure.

Susan - ~~Be~~ Make disappear -

Back on lot, Landscape, Small

Paula - Likes the design, but w/ N.R. district, needs something else... like Snow Suterby's.
No structure at all.

Mandha - No structure at all... also agree w/ Staff report - not an ancillary structure -
but something 750-800 \$ could go. Make it disappear...

Trumble - Lots can be built in! But what? 1300 - 1500 \$ too much!
But small footprint may not sell!
Wants to talk "takings". This is not a taking issue!

David - Suggests reducing size by lopping off rear "addition".
mentions ~~reducing~~ dropping garage + driveway!
Reduce overall size of home.

Directs ~~to~~ Cary to lower end of property coverage...
Driveway of gravel or grass-type.
Pushing back on lot → far back as possible.

Cary: idiosyncratic ancillary structure a problem...

Chronology





- ☒ appreciate staff's helpfulness as we have tried hard to produce a reasonable house.

Chronology

- 1 the house plan from last summer's HAWP was comparable to many of the medium sized houses of this part of the district but not as large as some of the larger houses of this part of the district.
- 2 the HPC found it too large for this site.
- 3 met w/ staff - staff suggests smaller house + look at Prospect St. infill, (1920s - 1930s infill)
- 4 produced smaller house + met w/ staff + Steve Carey on site.
- 5 Staff suggests smaller still house w/ placement further back on lot to help maintain sense of garden sideyards.
- 6 produced Proposals A + B - "B" even smaller + farther back to allow garden/open space.
- 7 Staff report to HPC feels still to ~~small~~ ^{large} + will "not read as an ancillary structure"
- 8 met w/ staff to find more definition/parameters.
- 9 produced structure "ancillary" in appearance - tried to get within staff size suggestion, could not. Upon consideration found it too idiosyncratic, lacking home-like feel or warmth. Not a Kensington type house.

* have investigated existing garage "auto house" and believe it can be relocated as an outbldg for 3920. It is too small to serve as a garage for most cars today. It is an interesting bldg in poor shape. It was an engineered kit bldg w/ labeled parts. Some of the labeling still exists.

INFILL OPTION CHART

	4	3	2	1	0
MAXIMUM SCALE	LARGE SCALE	MEDIUM SCALE	SMALL SCALE	NO SCALE	
<p>"ZONIUS MAXIMUS"</p> <p>Anything can be built to the limits of the zoning.</p>	<p>Size + Scale of larger houses typically built during turn of century.</p> <p>Examples found on Baltimore + Prospect of this type</p>	<p>Size + Scale of smaller houses typically built in the 1920s + 1930s.</p> <p>Examples found on Baltimore + Prospect of this type</p>	<p>Size + Scale of secondary or accessory structures.</p> <p>"Carriage house" converted to SFD use.</p> <p><u>No</u> examples found on Baltimore + Prospect of this type</p>	<p>"ZERO OPTION" (NIL-FILL)</p> <p>Nothing can be built despite the zoning</p>	
	4	3	2	1	0
	INFILL SCALE LINE				
	 HAWP Proposal	   Proposal at street level OPTION OPTION			

Coverage Patterns

Lot coverage is the ratio of the building footprint area to the overall lot area, and it reflects the density of development on a given parcel of land. Lot coverage was identified using planimeter take-offs of the building footprint area from the County's topography maps and compared with other areas to determine percent of coverage as given in the table Kensington Historic District Lot Characteristics. Analysis of lot coverage in Kensington reveals that the density of development is greater for the overall district than in the areas where the primary resources are located. This is related to the inclusion of the commercial district for the calculation, as well as the use of fewer lots per dwelling for post-1930s' construction. The lower lot coverage figures for primary resources reflects the pattern of using multiple lots for the older primary resource dwellings.

3922
w/ "B"

3920 w/o one side lot
+ gar. moved

Kensington Historic District Lot Characteristics

Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
	Average	0.40 acres	0.38 acres	0.42 acres .40 ←
	Minimum	0.15 acres .20	0.15 acres	0.18 acres
Lot Coverage	Maximum	25% .24	25%	25%
	Average	15%	10%	9% .11 ←
	Minimum	5%	5%	5%
Front Yard Setback	Maximum	65 ft ** 70' proposed	65 ft	65 ft
	Average	33 ft	35 ft	38 ft 48' ←
	Minimum	0 ft	20 ft	20 ft
Building Separation	Maximum	170 ft	170 ft	170 ft
	Average	40 ft	55 ft	75 ft
	Minimum	15 ft 18'	20 ft	15' - 50 ft * 32' ←

* 15' exists between 2 houses on Baltimore St across + towards Conn Ave from 3922 Balt. St.
 ** "B" can be moved forward on lot to as close as any other house on street - it could be 48' + match 3920.

14

28

I believe "B" is a good choice because—

- similar to many examples of infill that defer to the "Victorians".
- smaller than any recent infill here.
- small enough it can be set back to "provide less disruption of the existing rhythm on the street".
- small enough to defer to 3920 and 3924 Balt. St.
- "B" is only $22\frac{1}{2}'$ tall (ridge to ffj)
- flexible so that it can be slid forward on the lot to meet the average setback if desired.
- footprint reads small due to "rear addition" and its inset. Is comparable to 3920 + much less than 3924.
- not visible side elevations due to size of 3924 Balt.
- Red bud can be maintained. I met Steve Cary on site.
- Exist garage can be relocated onto 3920.
- any further reduction of size + character ~~could~~ to produce an "ancillary" structure would potentially lack the quality most people want in a home.
- an "ancillary" structure converted to a primary dwelling has no precedent and could be odd in Kensington.

○ letter by Barry Peoples to the HPC as opposed to Mrs Ahearn. as he ~~said~~ he would seem to me to be posturing before the board to lessen the possibility of your approval of "B".

*Cooson -
has to be
still concerned about
usual d. fluence of
extra bulk ...*

C. Francis Strube
8850 Fingerboard Road
Frederick, MD 21704

Friends of Historic Hyattstown
P.O. Box 467
Hyattstown, MD 20871

C.M. Helliwell & M.J. Jones
25925 Frederick Road
Clarksburg, MD 20871

M.S. Rourke
25914 Frederick Road
Clarksburg, MD 20871

Karen Kiebler
25908 Frederick Road
Clarksburg, MD 20871

Rocco Campanaro,
25901 Frederick Road
Clarksburg, MD 20871

Jeff Gross
25820 Old Hundred Road
Clarksburg, MD 20871

(LAP)

Rick Wagner
2111 Slidell Road
Boys, MD 20874

(LAP)

Ellison Corporation
Attn: Carey Hoobler
10907 Jarboe Avenue
Silver Spring, MD 20901

Jeanie L. Ahearn
2910 Baltimore Street
Kensington, MD 20895
301-949-6357

C.C. & H.C. Wilkes
3923 Prospect Street
Kensington, MD 20895

933-0859

J.H. & V.G. O'Neill
3915 Prospect Street
Kensington, MD 20895
949-4332

Joe Brennan

J.H. & J.B. Lossing
3924 Baltimore Street
Kensington, MD 20895
through B. Wagner.

Seaborn & J.W. McCrory
3919 Baltimore Street
Kensington, MD 20895
301 933. 8539

*Barbara Wagner
949. 5018
703-648-8915*

LOUISE MYERS
TOWN OF KENSINGTON
949. 2424
(15 COPIES)

Julia O'Malley - 942-8933
Barry Peoples 942-4820
Barbara Wagner
(are on Louise Myers list)

Lynn Raufaste
Kensington Historical Society
10301 Armory Avenue
Kensington, MD 20895
949-4298

Frank O'Donnell, Vice Pres.
Kensington Historical Society
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Bob Ritzmann - ~~XXXXXXXXXX~~
Sean Scanlon 949. 5146
Kensington Town Council
3710 Mitchell Street
Kensington, MD 20895

3713-97W
Daniel M. Treadwell
7126 Sycamore Avenue
Takoma Park, MD 20912

Eileen Kirlin
Steve Rosenthal
7124 Sycamore Avenue
Takoma Park, MD 20912

Jack Bennett
7127 Sycamore Avenue
Takoma Park, MD 20912

Christine & Bud Ruf
7125 Sycamore Avenue
Takoma Park, MD 20912

Turner Electric Company
201 Ethan Allen Avenue
Takoma Park, MD 20912

3116-97F
Susan & Jon Gerson
3808 Washington Street
Kensington, MD 20895

The Salamat's
3810 Washington Street
Kensington, MD 20895

The Leaning's
3806 Washington Street
Kensington, MD 20895

Mr. Snyder
3805 Calvert Place
Kensington, MD 20895

The Kaplan's
3803 Calvert Place
Kensington, MD 20895

Kensington!

37/3-94EE
David & Nancy Weiman
517 Albany Avenue
Takoma Park, MD 20912

Andrew Manak
H.C. 6, Box 214-B
Etlan, VA 22719

Sarah & Eric Hertfelder
521 Albany Avenue
Takoma Park, MD 20912

Steve & Katherine Pappas
7420 Buffalo Avenue
Takoma Park, MD 20912

Marilyn Park & David Fritz
7415 Buffalo Avenue
Takoma Park, MD 20912

Fred Meyer
7417 Buffalo Avenue
Takoma Park, MD 20912

24/29-97B
H. Richard Gault
Nancy Slomowitz
14800 Seneca Road
Darnestown, MD 20874

Melvin M. & O.H. Gienau
14821 Seneca Road
Darnestown, MD 20874

George W. & E.P. Van Tassel
14811 Seneca Road
Darnestown, MD 20874

Nicole L. Kobrine & Paul Garrett
13513 Magruder Farm Court
Germantown, MD 20874

Signal Tree Farm, LP
13517 Magruder Farm Court
Germantown, MD 20874

31/6-97I
Mark Ruminski
10320 Fawcett Street
Kensington, MD 20895

Carrie Ann & Sean Scanlon
10318 Fawcett Street
Kensington, MD 20895

Ginnie Stuart
10319 Fawcett Street
Kensington, MD 20895

Town Hall
Town of Kensington
3710 Mitchell Street
Kensington, MD 20895

Kensington!

15/51-97A
Richard Hunt
16100 Oakhill Road
Spencerville, MD 20868

Roy Hunt, Jr.
16000 Oakhill Road
Silver Spring, MD 20905

Mrs. Swan
16001 Oakhill Road
Silver Spring, MD 20905

Mr. Richard Hunt
16300 Oakhill Road
Silver Spring, MD 20905

Mr. & Mrs. Al Harriger
1500 Paris Ridge Road
Spencerville, MD 20868

37/3-97VV
Adam & Debra Bodner
7125 Carroll Avenue
Takoma Park, MD 20912

Dennis J. & S. McCarthy
10206 Green Acres Drive
Silver Spring, MD 20901

Russell W. & K. Pittman
7105 Holly Avenue
Silver Spring, MD 20912

Guy Rene
7128 Carroll Avenue
Takoma Park, MD 20912

Thomas Anastasio
32 Columbia Avenue
Takoma Park, MD 20912

Emile Rutner
34 Columbia Avenue
Takoma Park, MD 20912

23/65-97F
Donald E. Lane
310 Market Street
Brookeville, MD 20833

Sidney I. Rotter
301 Market Street
Brookeville, MD 20833

Tracy Browne
2 High Street
Brookeville, MD 20833

Portman

Todd C. & M.E. Vangelder
306 Market Street
Brookeville, MD 20833

S. Deeds Wells, III
309 Market Street
Brookeville, MD 20833

Send staff report to:
Jim Minard
John Mease

Jim Minard
1103 East Capitol Street
Washington, DC 20003

John Mease
Quali-Tech, Inc.
10101 East Bacon Drive
Suite 212
Beltsville, MD 20705

Diane Teague
c/o Miche Booz, Architect
208 Market Street
Brookeville, MD 20833
(LAP)

Karen Montgomery
P.O. Box 68
Brookeville, MD 20833

37/3-97XX
Meriwether Jones
30 Hickory Avenue
Takoma Park, MD 20912

Dr. H. Tavafmotamen
Mrs. Kimberly Lankford
28 Hickory Avenue
Takoma Park, MD 20912

Donald Houc & Mark Stahr
29 Hickory Avenue
Takoma Park, MD 20912

Mr. John Choporis
416 Thayer Place
Silver Spring, MD 20910

Mr. John Pavlovsky
33 Hickory Avenue
Takoma Park, MD 20912

Dr. Carin Kleiman
25 Montgomery Avenue
Takoma Park, MD 20912

23/65-97E
Michael G. Murphy
9 High Street
Brookeville, MD 20833

Paul Howes Plumbing Shop
15 High Street
Brookeville, MD 20833

Orndorff Memorial Hall
c/o Salem UMC
10 High Street
Brookeville, MD 20833

The following 4 people should
received all Kensington Info, per
Robin...

✓ Frank O. Donnell, Vice President
Kensington Historical Society
10407 Fawcett Street
Kensington, MD 20895

✓ Barbara Wagner
Kensington LAP
3915 Baltimore Street
Kensington, MD 20895

Sean Scanlon
Kensington Town Council
3710 Mitchel Street
Kensington, MD 20895

Bob Ritzmann
Kensington Town Council
3710 Mitchell Street
Kensington, MD 20895

Louise Meyer

Louise Meyer

✓ Helen Wilkes, Executive Director
Kensington Land Trust
3923 Prospect Street
Kensington, MD 20895

* PLEASE NOTE: When Montgomery County Schools are closed due to *
* the weather, Board of Appeals hearings will not be held. When *
* Montgomery County Schools announce a late opening, Board of *
* Appeals hearing will also be delayed. Please call to confirm. *

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(301)217-6600

Case No. A-4771

APPEAL OF CAREY L. HOOBLER AND JEANIE AHEARN

NOTICE OF CHANGE OF DATE OF HEARING

Notice is hereby given that a public hearing will be held by the Board of Appeals for Montgomery County, Maryland, in the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, in the Second Floor Davidson Memorial Hearing Room, on the 11th day of March, 1998, at 1:30 p.m., or as soon thereafter as this matter can be heard, on the application filed pursuant to Section 2-112 of the Montgomery County Code.

The appellants charge administrative error on the part of the Historic Preservation Commission in its denial of a Historic Area Work Permit leading to the denial of a building permit, dated May 8, 1997, contending that Section 24A of the Montgomery County Code 1994, as amended, was misinterpreted. In accordance with Chapter 2A, Administrative Procedures Act, a copy of the "charging document" (appeal) is attached to this notice.

The subject property is Lot 25, Block 11, Kensington Park Subdivision, located at 3922 Baltimore Avenue, Kensington, Maryland, in the R-60 Zone.

Notices of change of date and time of hearing forwarded this 11th day of December, 1997 to:

Carey L. Hoobler
Jeanie Ahearn
Larry Gordon, Esquire
Charles W. Thompson, Jr., Esquire, County Attorney
A. Katherine Hart, Esquire, Senior Assistant County Attorney
Christopher Hitchens, Esq., Assistant County Attorney
George Kousoulas, Chairperson, Montgomery County
Historic Preservation Commission
Gwen Wright, Coordinator, Montgomery County HPC
Louise F. Shipley, Environmental Protection Manager,
Department of Permitting Services
Members, Board of Appeals
Rock Creek Coalition
Town of Kensington
Town of Kensington Citizens Association

County Board of Appeals

by: Tedi S. Osias
Tedi S. Osias
Executive Secretary to the Board

APPEAL CHARGING ERROR
IN ADMINISTRATIVE RULING OR ACTION
Please note instructions on reverse side.
Attach additional sheets if required for answers.

Appeal is hereby made pursuant to Section 2-112 of the Montgomery County Code 1984, as amended, from the decision or other action of an official or agency of Montgomery County specified below which Appellant contends was erroneous.

Official or agency from whose ruling or action this appeal is made is the Historic Preservation Commission

Brief description of ruling or action from which this appeal is made (attach duplicate copy of ruling or document indicating such action): denial of building permit

Date of that ruling or action: 5/8/97

Brief description of what, in appellant's view, the ruling or action should have been: Granting of building permit.

Number of section, and subsection if any, of the Montgomery County Code 1994, as amended, or citation or other statutory provision, which appellant contends was misinterpreted: Chapter 24 A

Error of fact, if any, involved in the ruling or action from which this appeal is made: Errant and misleading dimensions of structures, their condition, appurtenances & setting.

Error of law, if any, involved in the ruling or action from which this appeal is made: _____

Effectively take property use from owner without due process or compensation.

Question(s) of fact, if any, presented to the Board by this appeal: Use of statistics by

H.P.C. comparing aggregate land sizes to single lots & likewise coverage

Question(s) of law, if any, presented to the Board by this appeal: Does H.P.C. have right to deny use of lot to one owner and not another. Can criteria from sources other (*

Description of real property, if any, involved in this appeal: Lot 25, Block 11

Parcel _____, Subdivision Kensington Park, Street and Number 3922 Baltimore

Street _____, Town Kensington, Zone 20895

Appellant's present legal interest in above property, if any: 1 Owner (including joint ownership). _____ Lessee. _____ Contract to lease or rent. 2 Contract to purchase. _____ Other (describe)

Statement of appellant's interest, i.e., manner in which appellant is aggrieved by the ruling or action complained of (as property owner or otherwise): _____

(1) Loss of value of property and loss of right to use for its zoned use, i.e. best use

Further comments, if any: (2) loss of right to use lot as zoned and loss of opportunity to improve lot and gain compensation

**than Master Plan be used to deny permit.

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Signature of Attorney

(D) Daniellican

(1) C. Hobler
Signature of Appellant(s)

Address of Attorney

Signature of Apl
3920 Baltimore St

President of Ellison Corp.
10907 Jarboe Ave, SS 20901

Telephone Number

Kensington MD
Address of Apl.

Address of Appellant(s)

(301) 949-6357

(301) 681-1411

Telephone Number

Telephone Number

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* the weather, Board of Appeals hearings will not be held. When *
* Montgomery County Schools announce a late opening, Board of *
* Appeals hearing will also be delayed. Please call to confirm. *

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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The appellants charge administrative error on the part of the Historic Preservation Commission in its denial of a Historic Area Work Permit leading to the denial of a building permit, dated May 8, 1997, contending that Section 24A of the Montgomery County Code 1994, as amended, was misinterpreted. In accordance with Chapter 2A, Administrative Procedures Act, a copy of the "charging document" (appeal) is attached to this notice.

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Jeanie Ahearn
Larry Gordon, Esquire
Charles W. Thompson, Jr., Esquire, County Attorney
A. Katherine Hart, Esquire, Senior Assistant County Attorney
Christopher Hitchens, Esq., Assistant County Attorney
George Kousoulas, Chairperson, Montgomery County
Historic Preservation Commission
Gwen Wright, Coordinator, Montgomery County HPC
Louise F. Shipley, Environmental Protection Manager,
Department of Permitting Services
Members, Board of Appeals
Rock Creek Coalition
Town of Kensington
Town of Kensington Citizens Association

County Board of Appeals

by: Tedi S. Osias
Tedi S. Osias
Executive Secretary to the Board

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Date of that ruling or action: 5/8/97

Brief description of what, in appellant's view, the ruling or action should have been: Granting of building permit.

Number of section, and subsection if any, of the Montgomery County Code 1994, as amended, or citation or other statutory provision, which appellant contends was misinterpreted: _____

Chapter 24 A

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H.P.C. comparing aggregate land sizes to single lots & likewise coverage

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Further comments, if any: (2) loss of right to use lot as zoned and loss of opportunity to improve lot and gain compensation

**than Master Plan be used to deny permit.

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Signature of Attorney	<u>(1) [Signature]</u>	Signature of Appellant(s)	<u>(1) [Signature]</u>
Address of Attorney	<u>3920 Baltimore St</u>	Address of Appellant(s)	<u>10907 Jarboe Ave, SS 20901</u>
Telephone Number	<u>Kensington MD</u>	Telephone Number	<u>(301) 681-1411</u>
	<u>Address of Apl.</u>		
	<u>(301) 949-6357</u>		

WILKES, ARTIS, HEDRICK & LANE

CHARTERED

ATTORNEYS AT LAW

SUITE 800

3 BETHESDA METRO CENTER

BETHESDA, MARYLAND 20814-5329

(301) 654-7800

ANNAPOLIS, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND
WASHINGTON, D.C.

CABLE ADDRESS: WILAN
FAX: 301-656-3978

LARRY A. GORDON
(301) 215-6621

December 5, 1997

HAND DELIVERED

Ms. Susan Turnbull, Chairperson
Board of Appeals for Montgomery County
111 Maryland Avenue
Rockville, Maryland 20850

Re: Request for Further Continuance of Hearing in Appeal of Cary L. Hoobler and Jeanie Ahearn, Case No. A-4771

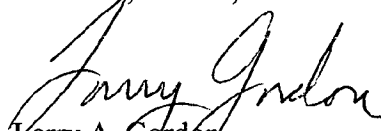
Dear Ms. Turnbull:

This letter is submitted at the request of Mr. Cary Hoobler, and with the consent of the County Attorney's office, to request a further continuance in the presently scheduled December 17, 1997 Board of Appeals hearing in this matter. Mr. Hoobler has been meeting with Historic Preservation Commission staff and the Commission itself in an attempt to resolve this matter. To date, no resolution has been reached. Accordingly, it is requested that the Board of Appeals hearing be rescheduled in approximately two months (i.e. early February 1998), to allow for these efforts to run their course and, if necessary, to provide all parties with an adequate opportunity to prepare for the Board of Appeals hearing should resolution not be reached.

Thank you for your attention to this request for continuance.

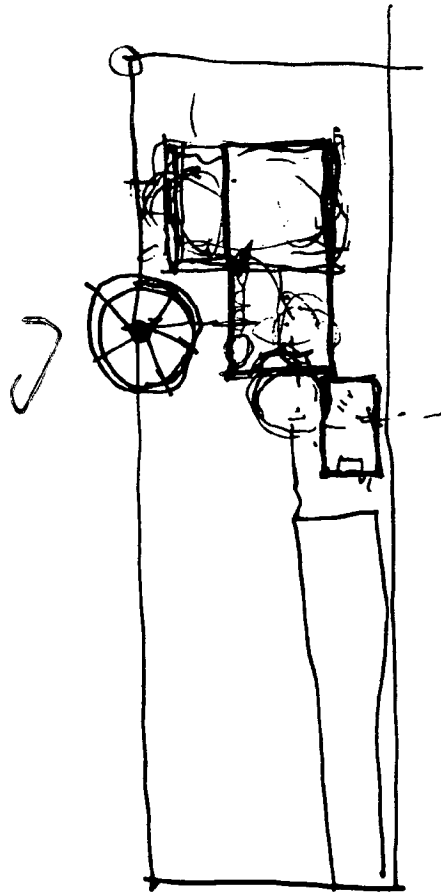
Very truly yours,

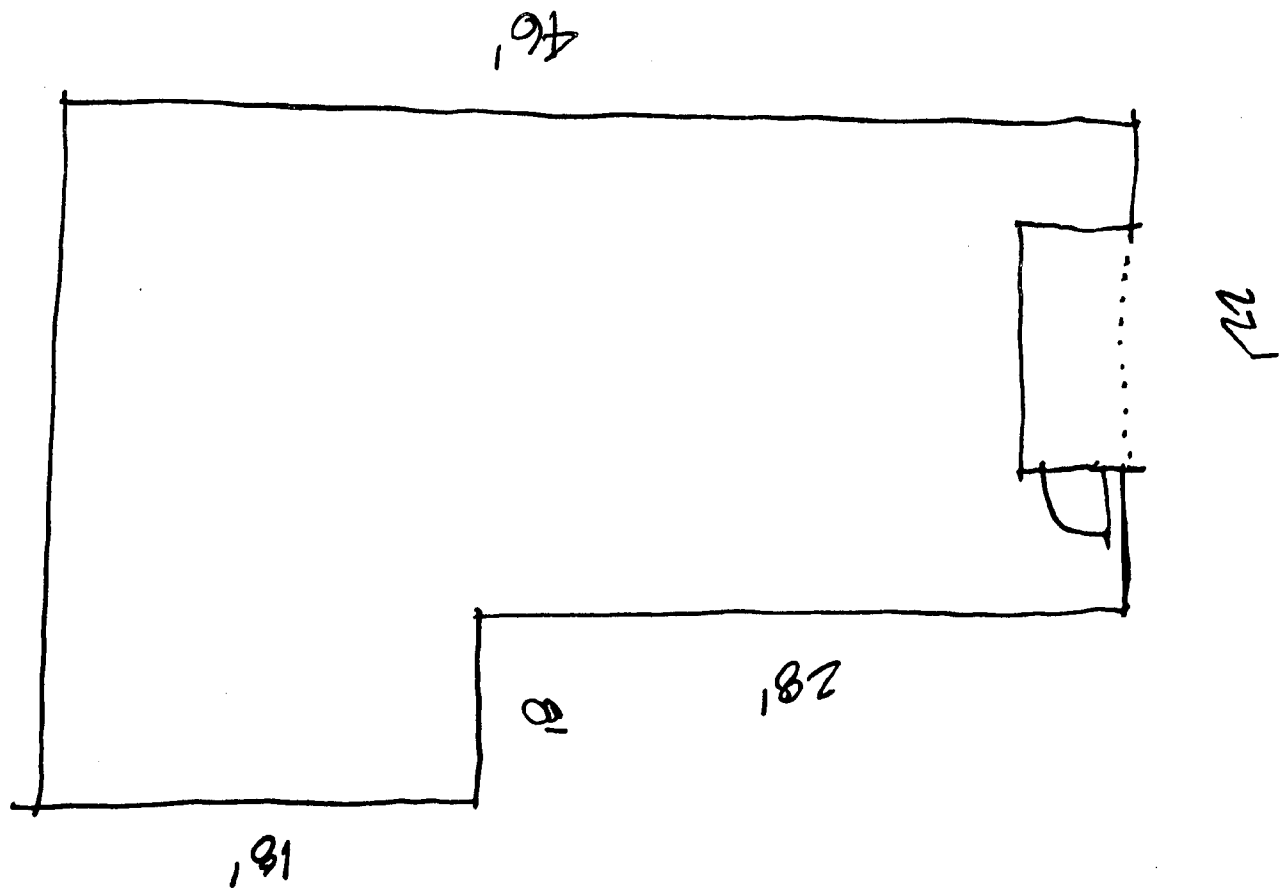
WILKES, ARTIS, HEDRICK & LANE

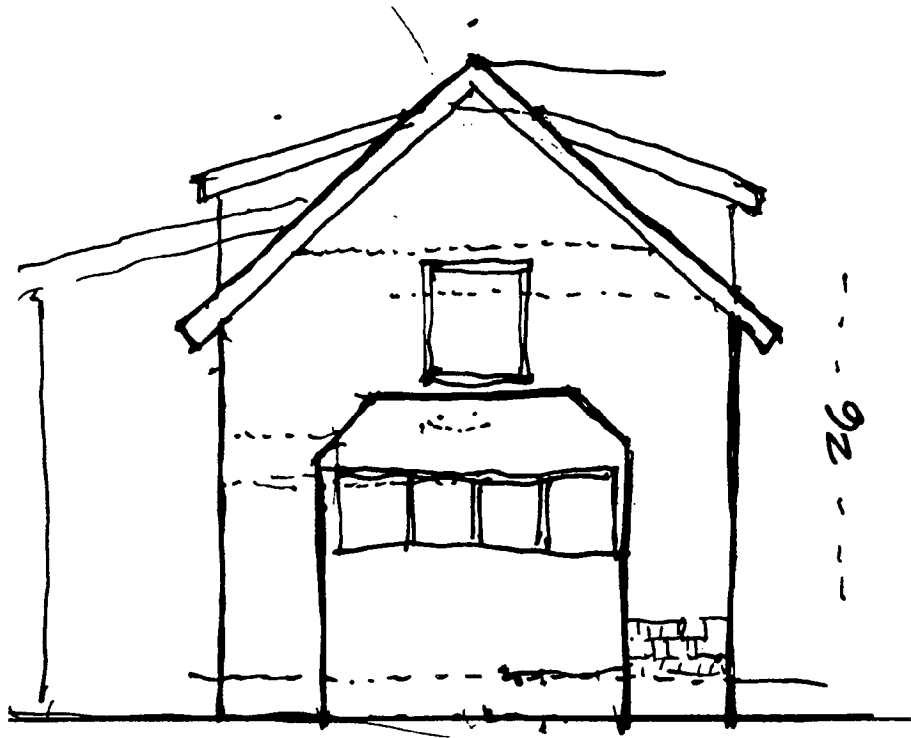

Larry A. Gordon
Attorneys for Cary L. Hoobler

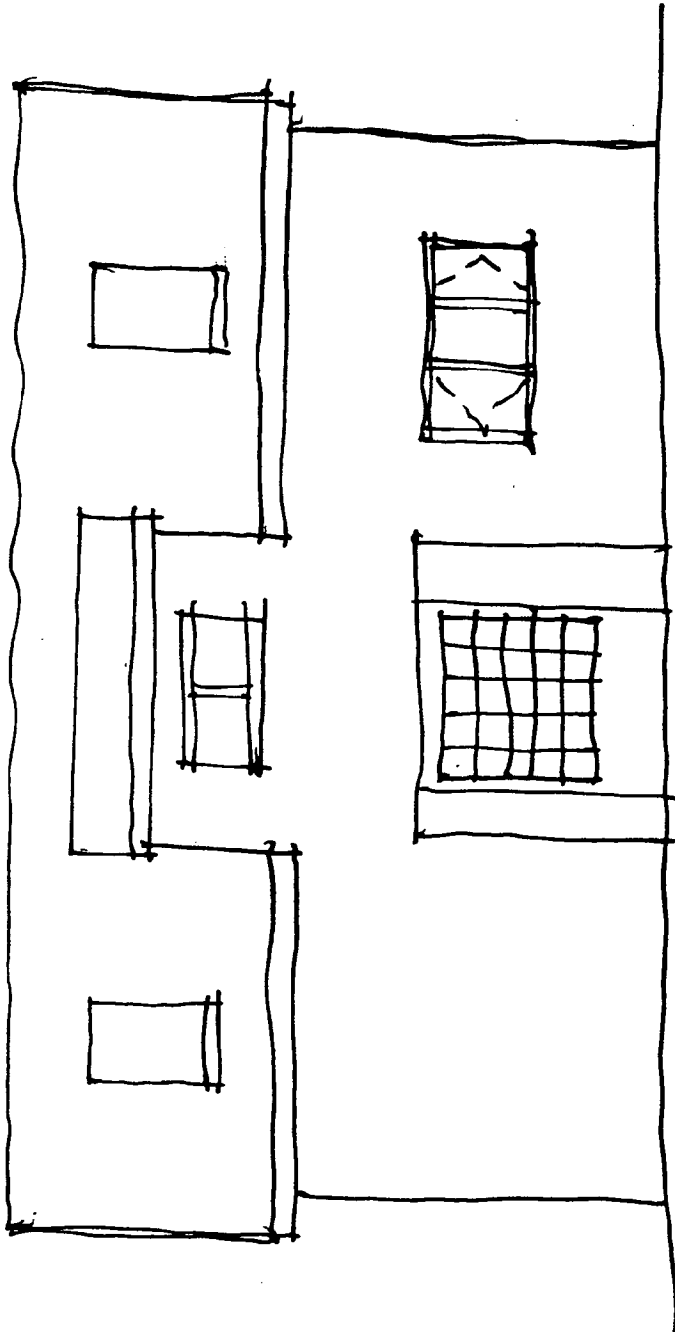
LAG:cs

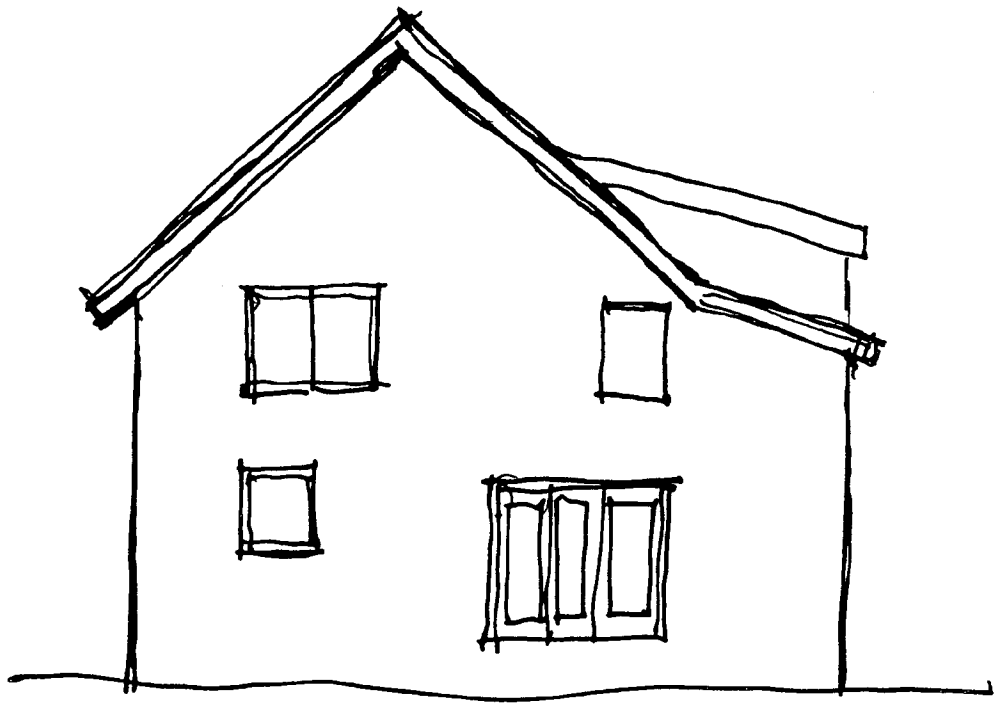
cc: Ms. Irene Gurman
Christopher Hitchens, Esquire
Ms. Robin Ziek
Mr. Cary Hoobler
Ms. Jeanie Ahearn
Patricia Harris, Esquire

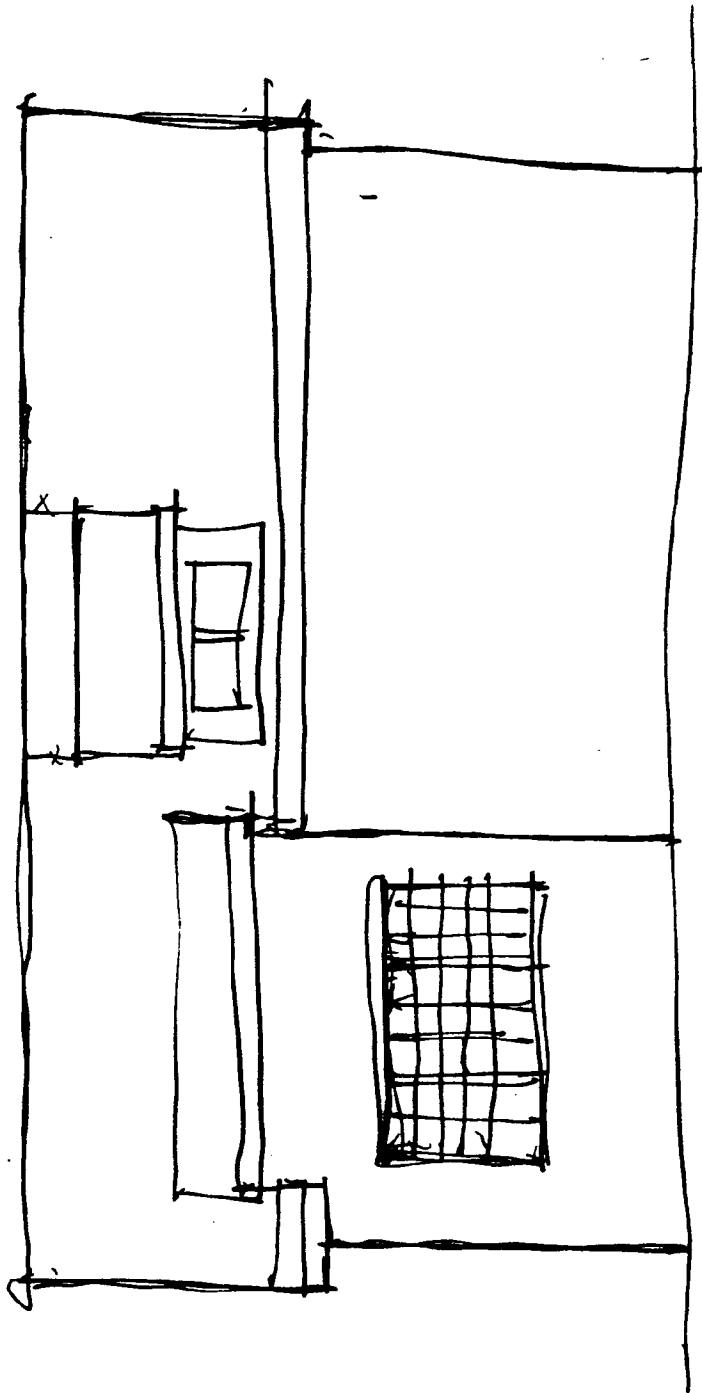












**HISTORIC PRESERVATION COMMISSION
SPEAKER'S FORM**

If you wish to speak on an agenda item, please fill out this form and give it to a Historic Preservation staff person sitting at the left end of the table in the front of the auditorium prior to consideration of that item. The Historic Preservation Commission welcomes public testimony on most agenda items.

Please print using ink, and provide your full name, complete address, and name of person/organization that you officially represent (yourself, an adjacent property owner, citizens association, government agency, etc.). This provides a complete record and assists with future notification on this case. **This meeting is being recorded. For audio identification, please state your name and affiliation for the record the first time you speak on any item.**

DATE: 11/26/97

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: 3922 Balt St

NAME: Caren Hoobler

COMPLETE MAILING ADDRESS: 10907 Jarboe Ave SS MD 20901

REPRESENTING (INDIVIDUAL/ORGANIZATION): self

The Montgomery County Historic Preservation Commission observes the following time guidelines for testimony at regular meetings and hearings:

- HAWP applicant's presentation..... 7 minutes
- Comment by affected property owners on Master Plan designation..... 3 minutes
- Comment by adjacent owners/interested parties..... 3 minutes
- Comment by citizens association/interested groups..... 5 minutes
- Comment by elected officials/government representatives..... 7 minutes

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DATE: NOVEMBER 20, 1997

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: III-B

CAREY HOOBLER

NAME: COUNCIL MEMBER ROBERT W. RITZMAN

COMPLETE MAILING ADDRESS: 3710 MITCHELL ST

KENSINGTON, MD 20895

REPRESENTING (INDIVIDUAL/ORGANIZATION): TOWN OF KENSINGTON

The Montgomery County Historic Preservation Commission observes the following time guidelines for testimony at regular meetings and hearings:

- | | |
|---|-----------|
| HAWP applicant's presentation..... | 7 minutes |
| Comment by affected property owners on Master Plan designation..... | 3 minutes |
| Comment by adjacent owners/interested parties..... | 3 minutes |
| Comment by citizens association/interested groups..... | 5 minutes |
| Comment by elected officials/government representatives..... | 7 minutes |

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DATE: 11-26-97

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: III-B
3922 BALTIMORE ST-KEN.

NAME: BARRY PEOPLES

COMPLETE MAILING ADDRESS: 10030 KENSINGTON PKWY
KENSINGTON, MD 20895

REPRESENTING (INDIVIDUAL/ORGANIZATION): KEN HIST. SOC. - Pres.

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**HISTORIC PRESERVATION COMMISSION
SPEAKER'S FORM**

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DATE: 11/26/97

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: III-B
HOEBLER/BALT. ST./
KENSINGTON

NAME: HELEN WILKES

COMPLETE MAILING ADDRESS: 3923 PROSPECT ST.,
KENSINGTON 20895

REPRESENTING (INDIVIDUAL/ORGANIZATION): KENSINGTON
LAND TRUST

The Montgomery County Historic Preservation Commission observes the following time guidelines for testimony at regular meetings and hearings:

- HAWP applicant's presentation..... 7 minutes
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- Comment by adjacent owners/interested parties..... 3 minutes
- Comment by citizens association/interested groups..... 5 minutes
- Comment by elected officials/government representatives..... 7 minutes

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DATE: 11/26/97

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: Belvin B. Carey
Hooker

NAME: Julie O'Malley

COMPLETE MAILING ADDRESS: 10019 Frederick Ave, Kensington

REPRESENTING (INDIVIDUAL/ORGANIZATION): Preservation
Committee, KHS

The Montgomery County Historic Preservation Commission observes the following time guidelines for testimony at regular meetings and hearings:

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DATE: 11/26/97

AGENDA ITEM ON WHICH YOU WISH TO SPEAK: Preliminary Consultation B

NAME: Barbara Wagner

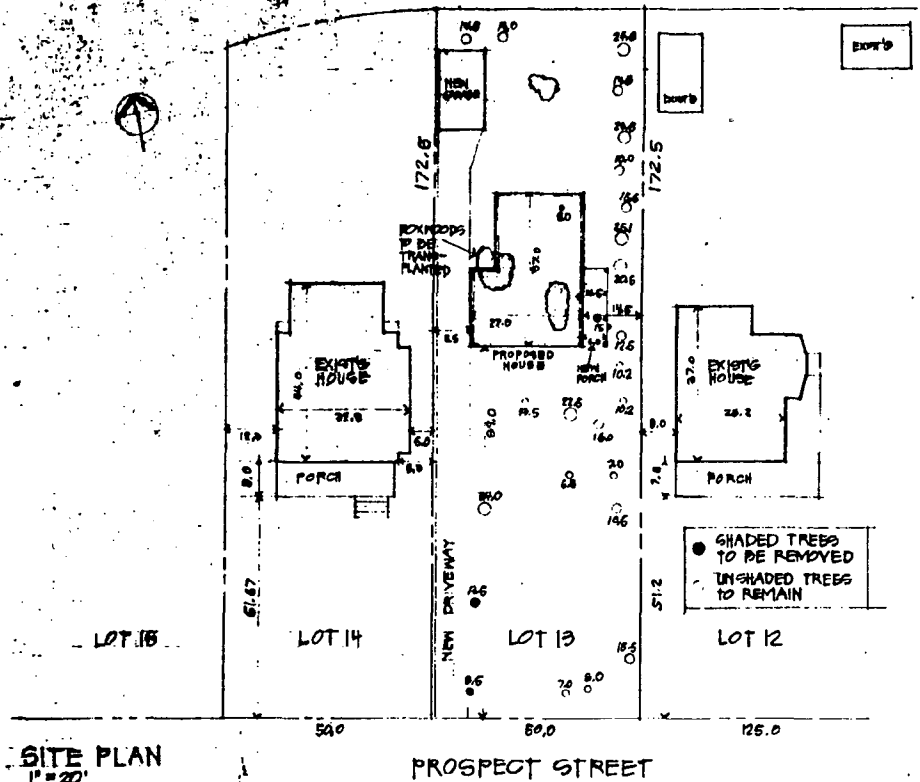
COMPLETE MAILING ADDRESS: 3915 Baltimore St.
Kensington MD 20815

REPRESENTING (INDIVIDUAL/ORGANIZATION): LAP

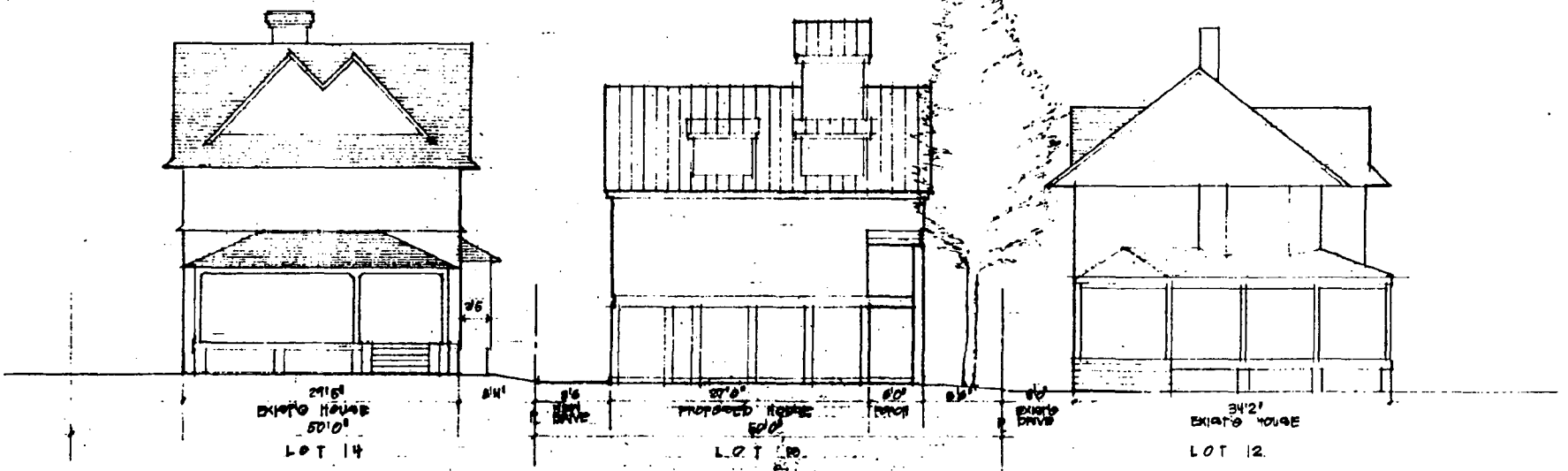
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- Comment by adjacent owners/interested parties..... 3 minutes
- Comment by citizens association/interested groups..... 5 minutes
- Comment by elected officials/government representatives..... 7 minutes

18A

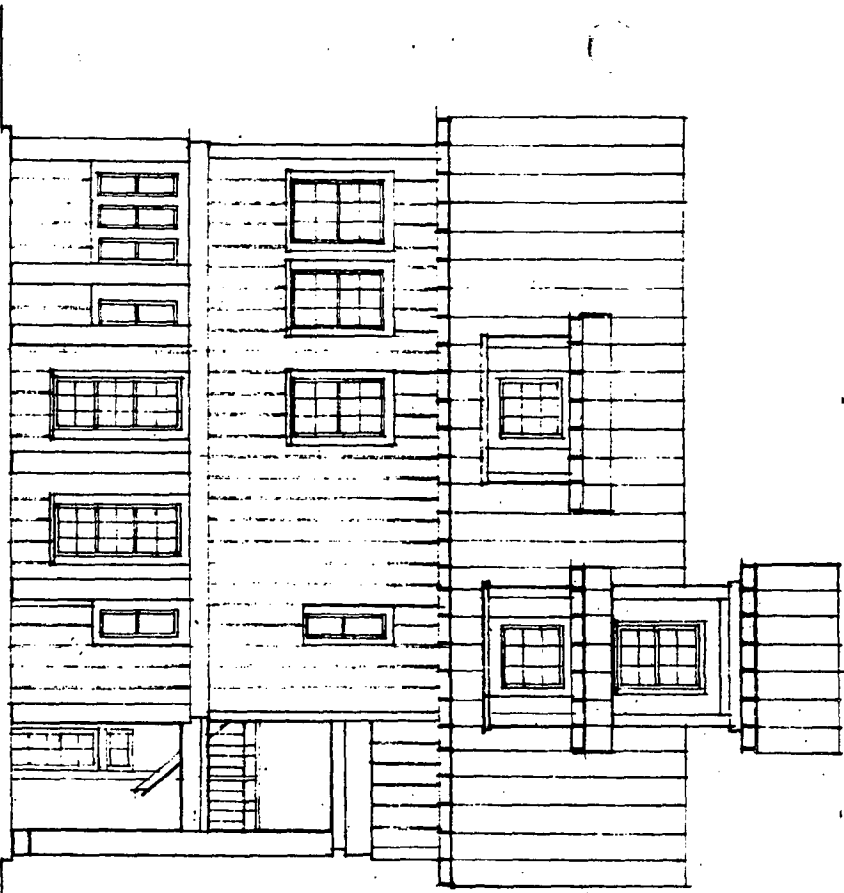


PROSPECT ST. ELEVATION STUDY
1/8" = 1' 0"

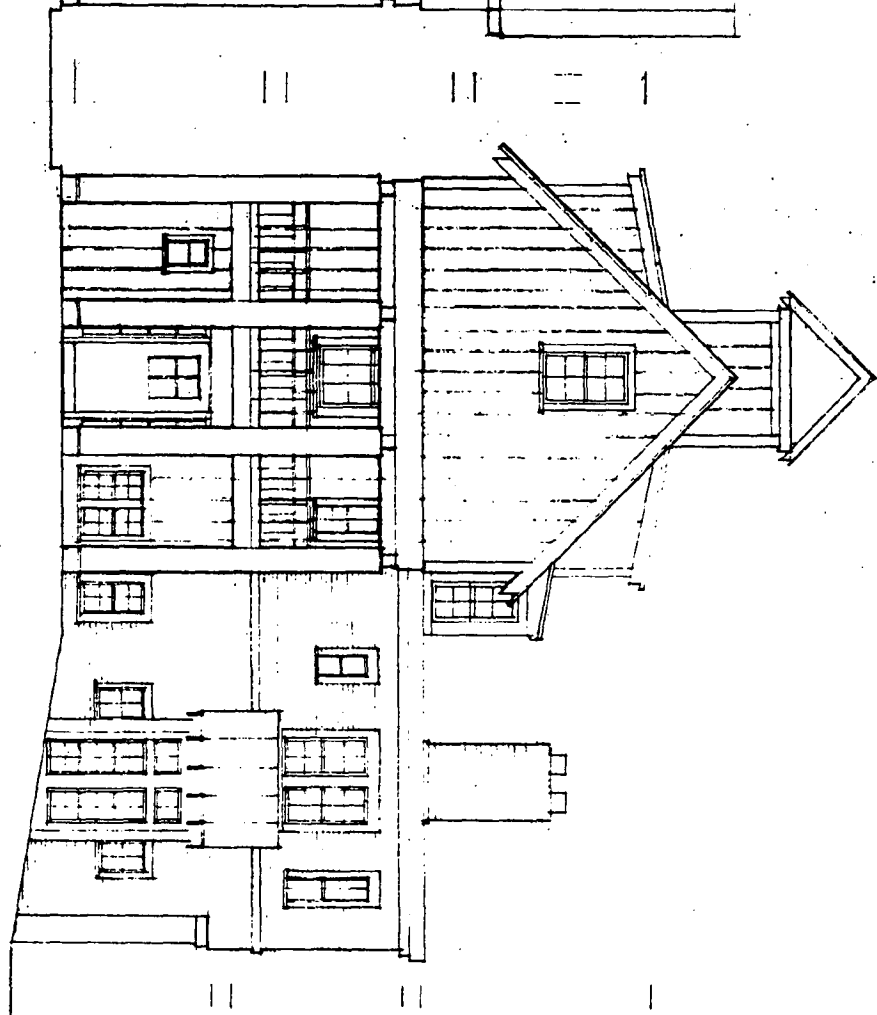


PROPOSAL FOR LOT 13 PROSPECT ST.
KENSINGTON, MD
MURRAY AND ASSOC.

1/4" = 110'
SOUTH ELEVATION (PROSPECT ST.)



1/4" = 110'
EAST ELEVATION

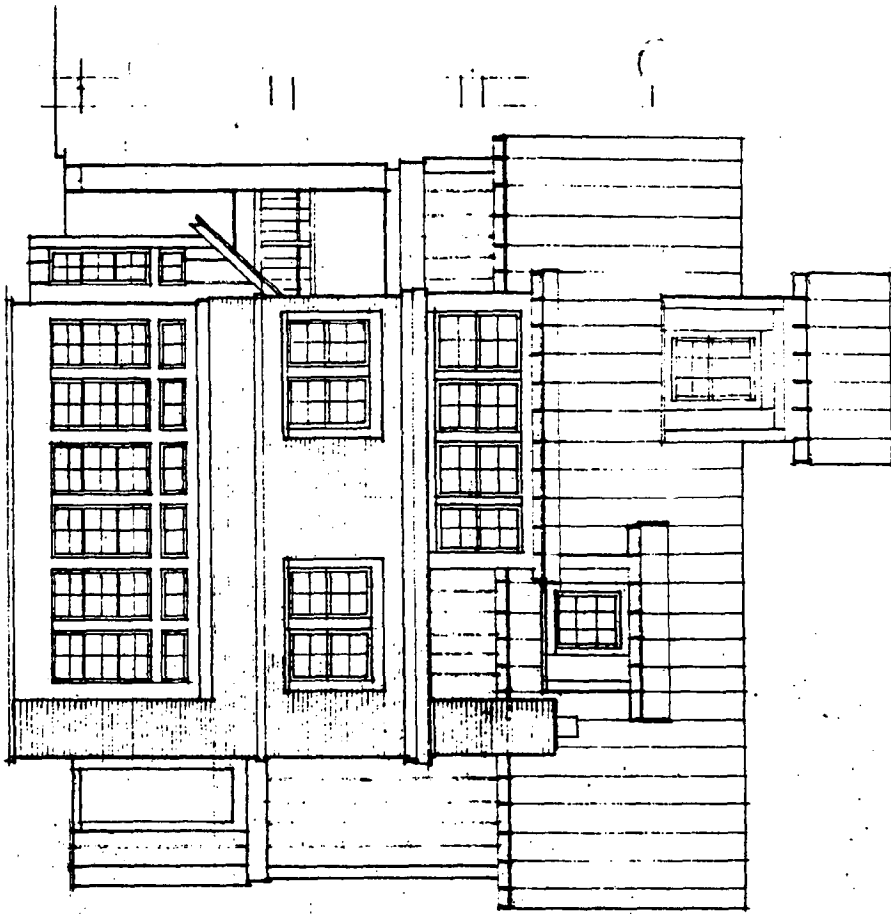


PROPOSAL FOR LOT 13 PROSPECT ST.
KENNEDYTON, MD.
MURRAY AND ASSOC.

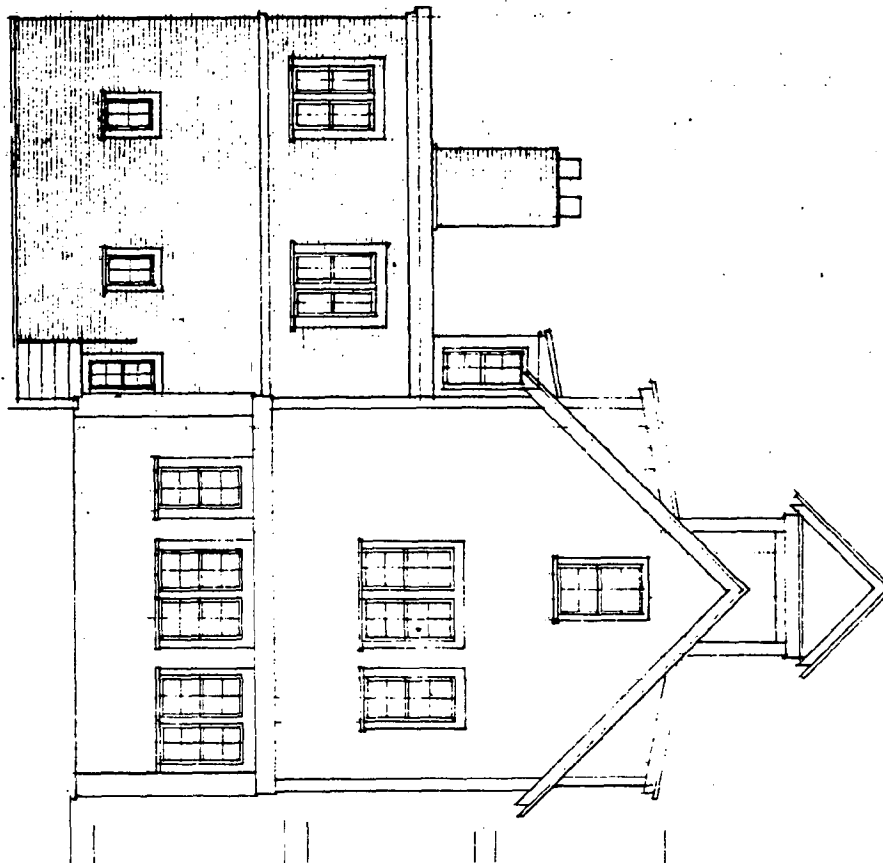
THOMAS PUCCI
301 9TH ST SE, WASH, DC 20003
202 547 6080 202 642 2069 FAX

10.21.91

NORTH ELEVATION
1/4" = 10'



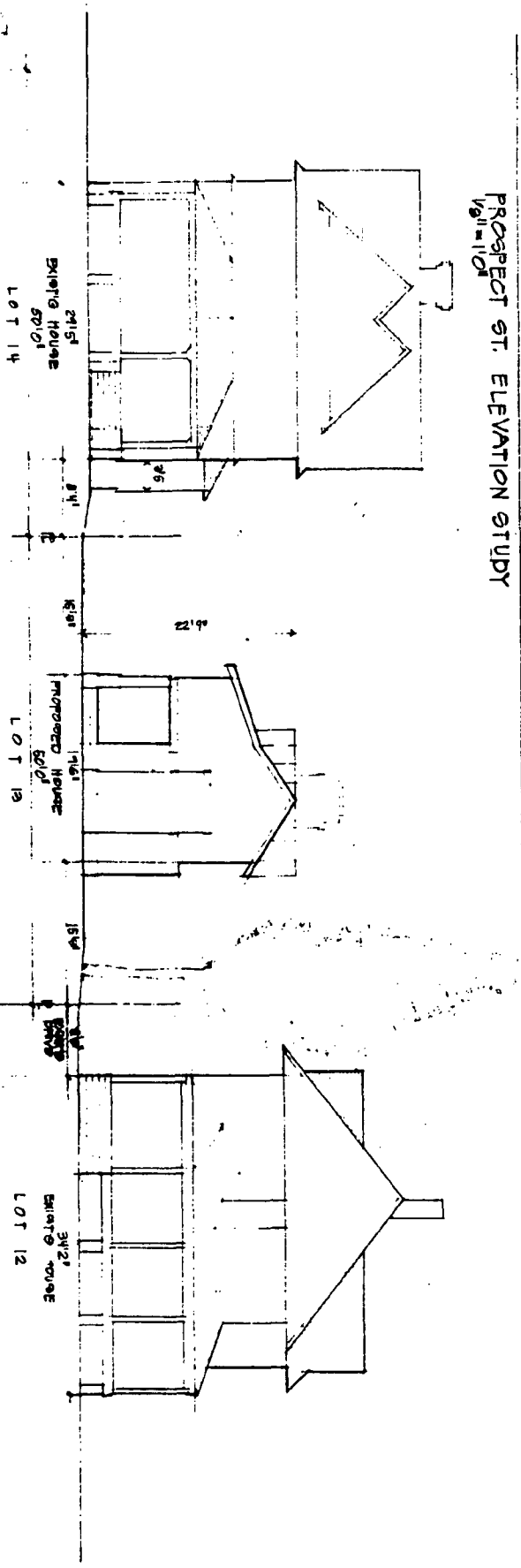
WEST ELEVATION
1/4" = 10'



PROPOSAL FOR LOT 18 PROSPECT ST,
KENNIGHTON, MD
MURRAY AND ASSOC.

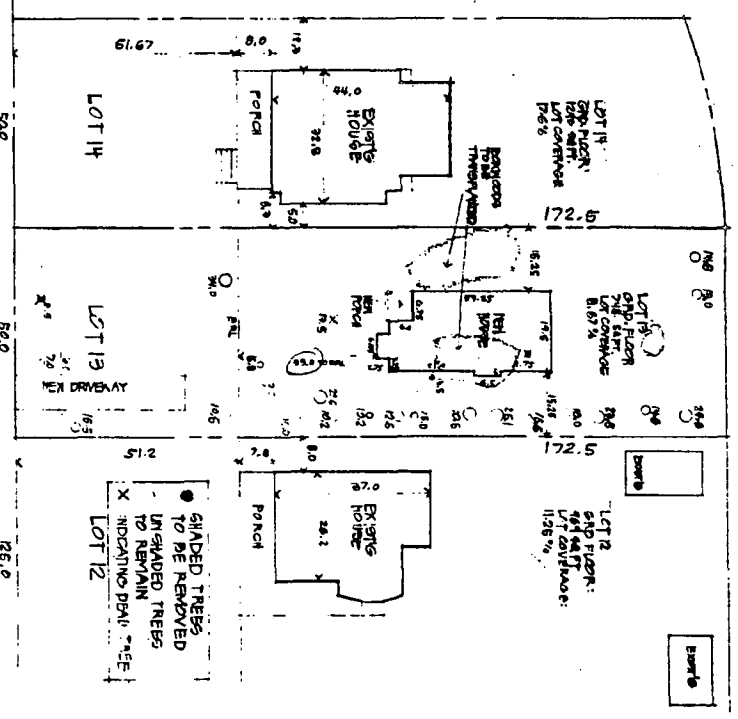
THOMAS BUCCI
301 9TH ST SE, WASH. DC 20003
202 547 6080 202 543 9069 FAX

10-31-91



PROSPECT ST. ELEVATION STUDY
1/21/10

SITE PLAN
1/22/10

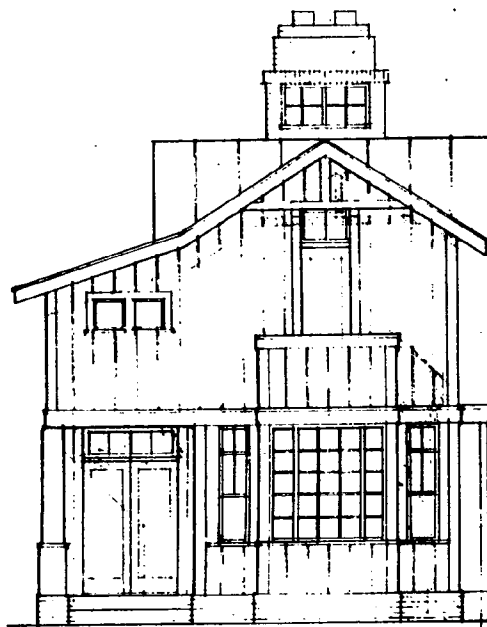


PROSPECT STREET

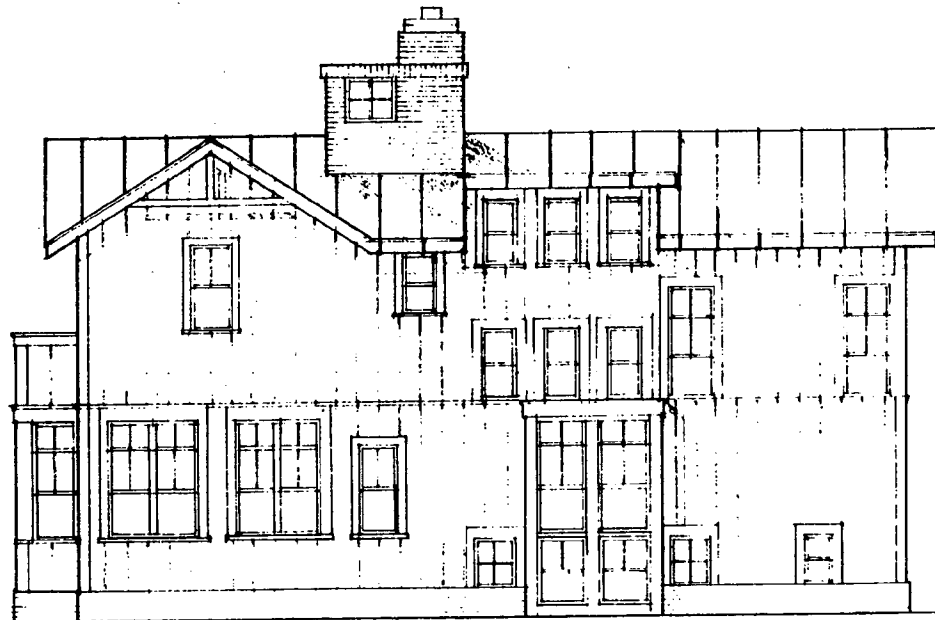
MURRAY AND ASSOC.
PROPOSAL FOR LOT 13 PROSPECT ST
KENSINGTON, MD

10.21.09
77
101
101
101

SITE PLAN
PROSPECT ST. ELEVATION



1 SOUTH ELEVATION
1/4" = 110"



2 EAST ELEVATION
1/4" = 110"

Thomas A. Adams, Inc.
201 W. Main St. #200
Chesapeake, VA 23041
(757) 537-1000

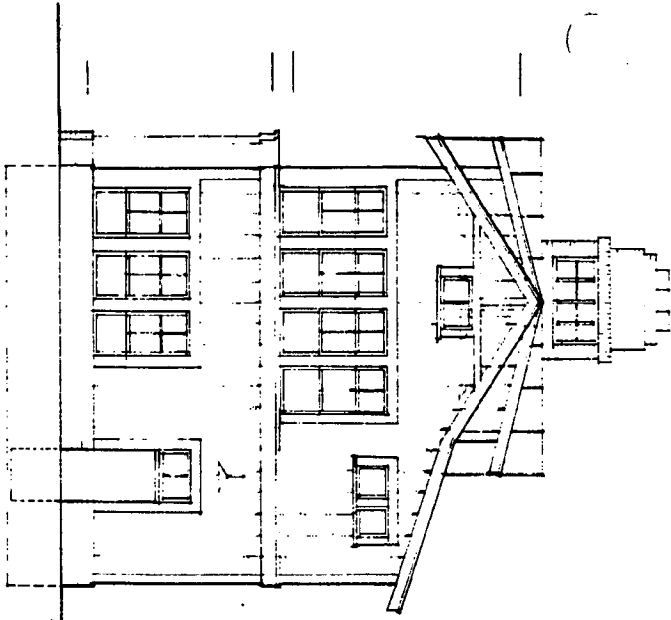
12-27-91

MURRAY & ASSOC.
PROPOSAL FOR LOT 13 PROSPECT ST
KENSINGTON, MD

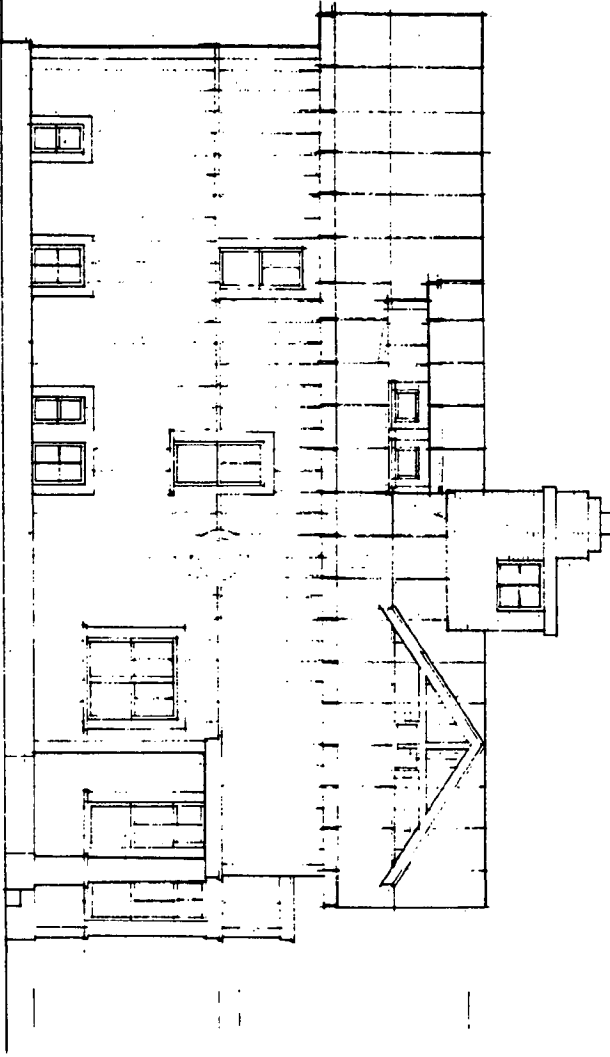
ELEVATIONS

SHEET
2

1 NORTH ELEVATION
1/4" = 11'0"



2 WEST ELEVATION
1/4" = 11'0"



Lot Coverage Patterns

Lot coverage is the ratio of the building footprint area to the overall lot area, and it reflects the density of development on a given parcel of land. Lot coverage was identified using planimeter take-offs of the building footprint area from the County's topography maps and compared with lot areas to determine percent of coverage as given in the table Kensington Historic District Lot Characteristics. Analysis of lot coverage in Kensington reveals that the density of development is greater for the overall district than in the areas where the primary resources are located. This is related to the inclusion of the commercial district for the calculation, as well as the use of fewer lots per dwelling for post-1930s' construction. The lower lot coverage figures for primary resources reflects the pattern of using multiple lots for the older primary resource dwellings.

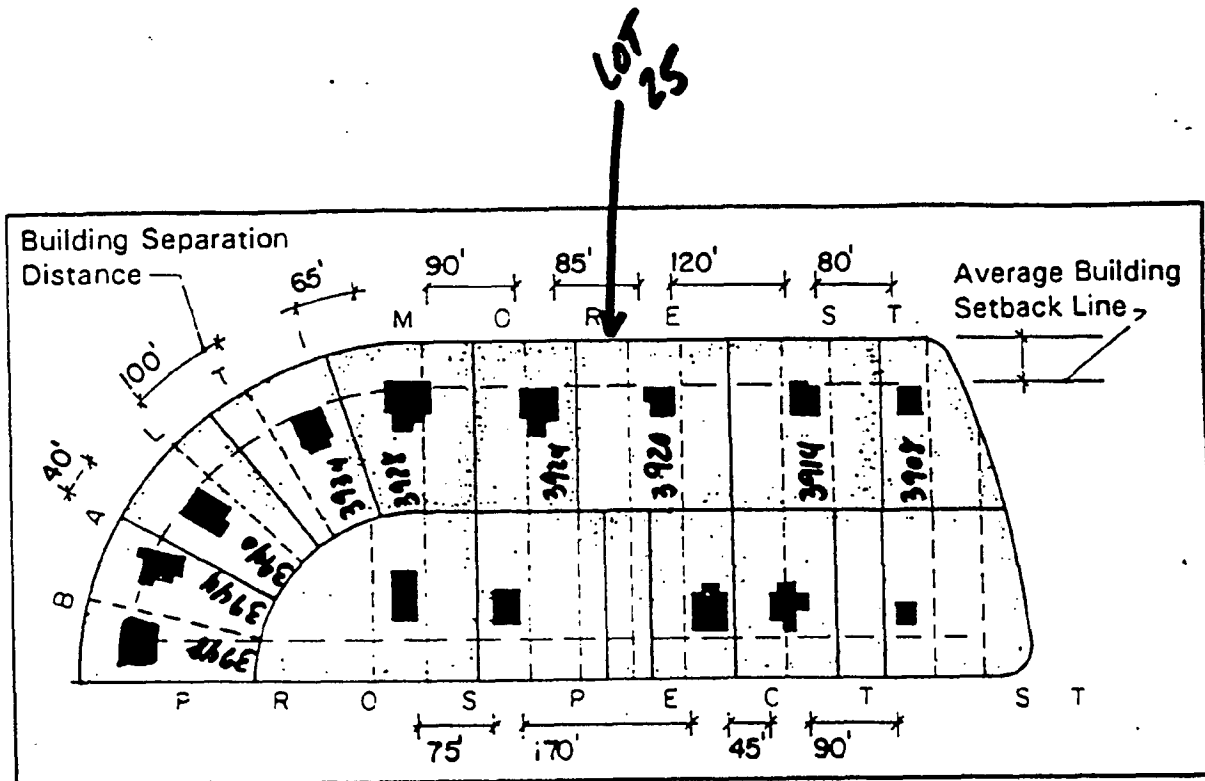


Kensington Historic District Lot Characteristics				
Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
	Average	0.40 acres	0.38 acres	0.42 acres ←
	Minimum	0.15 acres	0.15 acres	0.18 acres
Lot Coverage	Maximum	25%	25%	25%
	Average	15%	10%	9% ←
	Minimum	5%	5%	5%
Front Yard Setback	Maximum	65 ft	65 ft	65 ft
	Average	33 ft	35 ft	38 ft ←
	Minimum	0 ft	20 ft	20 ft
Building Separation	Maximum	170 ft	170 ft	170 ft
	Average	40 ft	55 ft	75 ft ←
	Minimum	15 ft	20 ft	50 ft

14 28

Relationships of Front Yard Setback and Building Separation

The front yard "setback" is the distance a building is set away or back from the property line on the street or road which it fronts. The front yard setback determines how prominent a building is in the streetscape of a community. When many buildings are involved, a pattern can be established which helps to define the character of the streetscape through the width of sidewalks, the amount of green space (lawn or vegetation area) between street and building, the apparent scale of the buildings in relation to pedestrians, and other subtle qualities of the community. In combination with setbacks, building separation distances establish the openness or visual porosity of the streetscape. Buildings which are separated allow for view and landscape elements in the interstitial space. These relationships are illustrated in the map titled Kensington Historic District Vacant Land and Open Space (Figure 34).



Pattern of Building Setbacks and Separation Distances for Block #11

13 27

Lot Coverage Patterns

Lot coverage is the ratio of the building footprint area to the overall lot area, and it reflects the density of development on a given parcel of land. Lot coverage was identified using planimeter take-offs of the building footprint area from the County's topography maps and compared with lot areas to determine percent of coverage as given in the table Kensington Historic District Lot Characteristics. Analysis of lot coverage in Kensington reveals that the density of development is greater for the overall district than in the areas where the primary resources are located. This is related to the inclusion of the commercial district for the calculation, as well as the use of fewer lots per dwelling for post-1930s' construction. The lower lot coverage figures for primary resources reflects the pattern of using multiple lots for the older primary resource dwellings.



Kensington Historic District Lot Characteristics

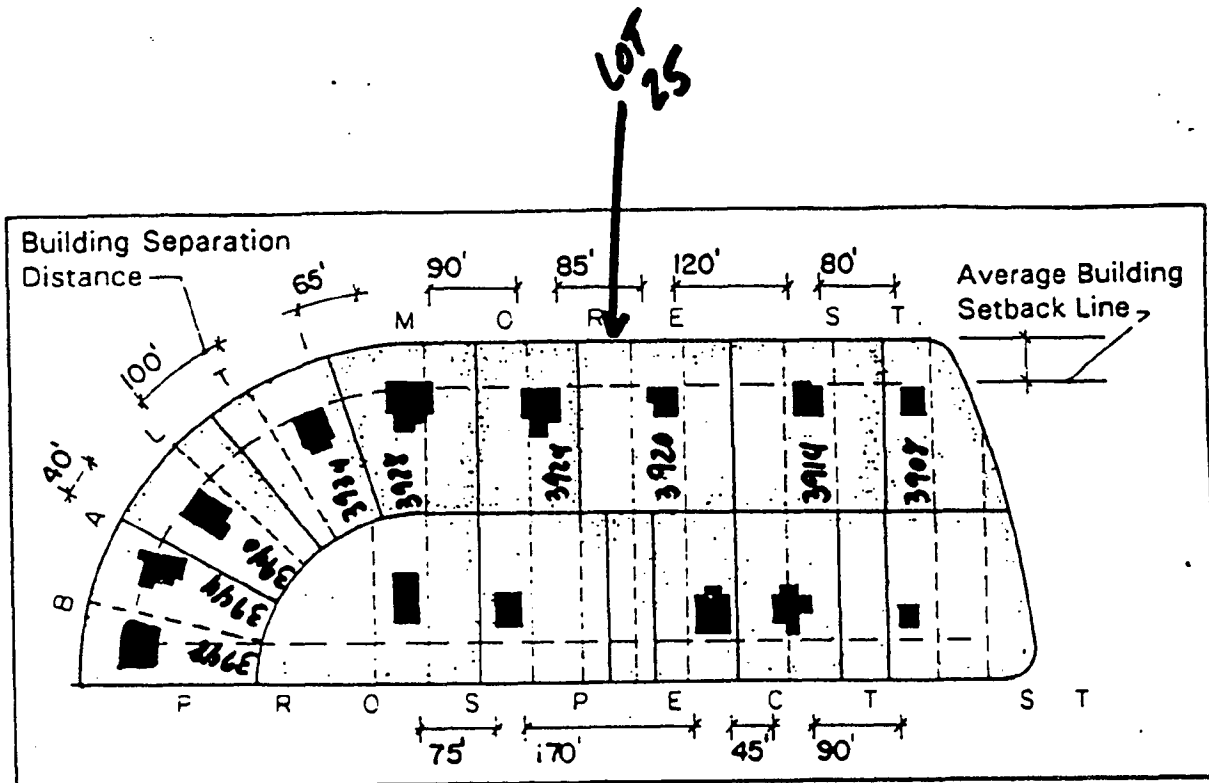
Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
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	Average	15%	10%	9% ←
	Minimum	5%	5%	5%
Front Yard Setback	Maximum	65 ft	65 ft	65 ft
	Average	33 ft	35 ft	38 ft ←
	Minimum	0 ft	20 ft	20 ft
Building Separation	Maximum	170 ft	170 ft	170 ft
	Average	40 ft	55 ft	75 ft ←
	Minimum	15 ft	20 ft	50 ft

14

28

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Kensington Historic District Lot Characteristics

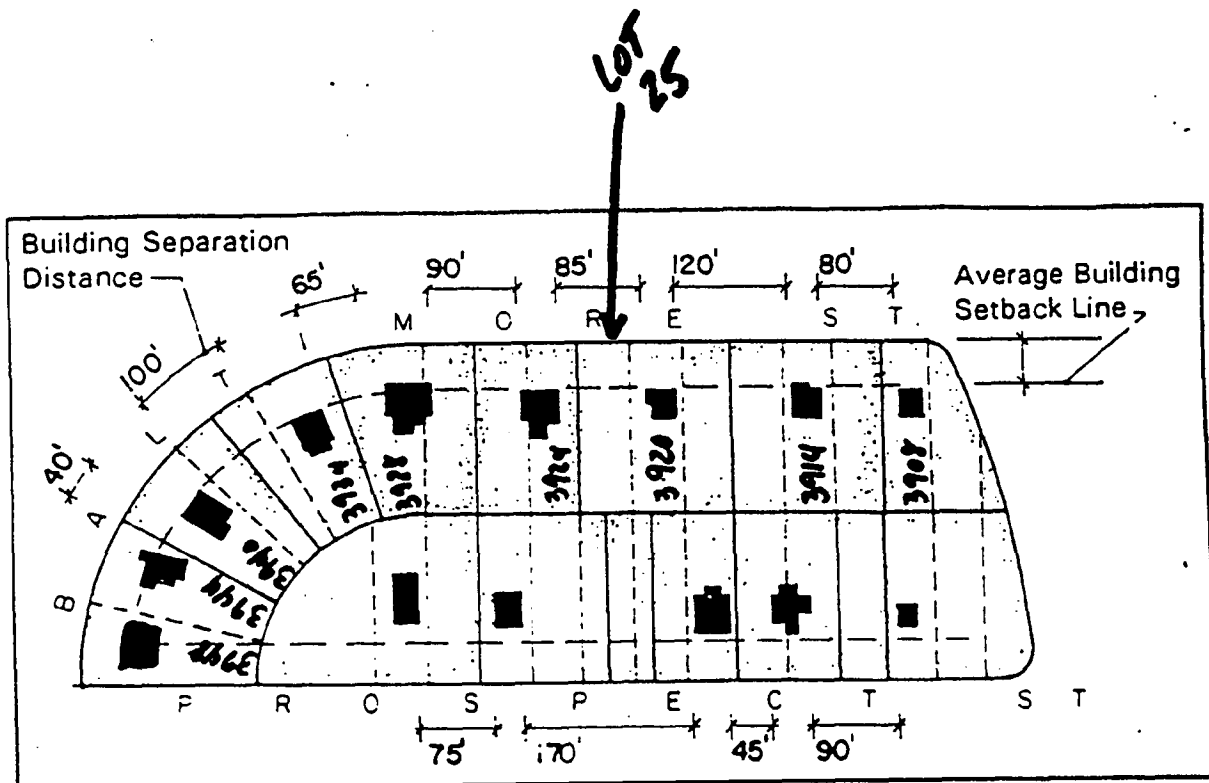
Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
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14

28

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Pattern of Building Setbacks and Separation Distances for Block #11

13 27

HAWKINS LANE HISTORIC DISTRICT
CHEVY CHASE, MD 20815

Topo Map
(enlarged)



Legend:



8812 Building footprint with street address.

DDDD

Driveway Location



Carport



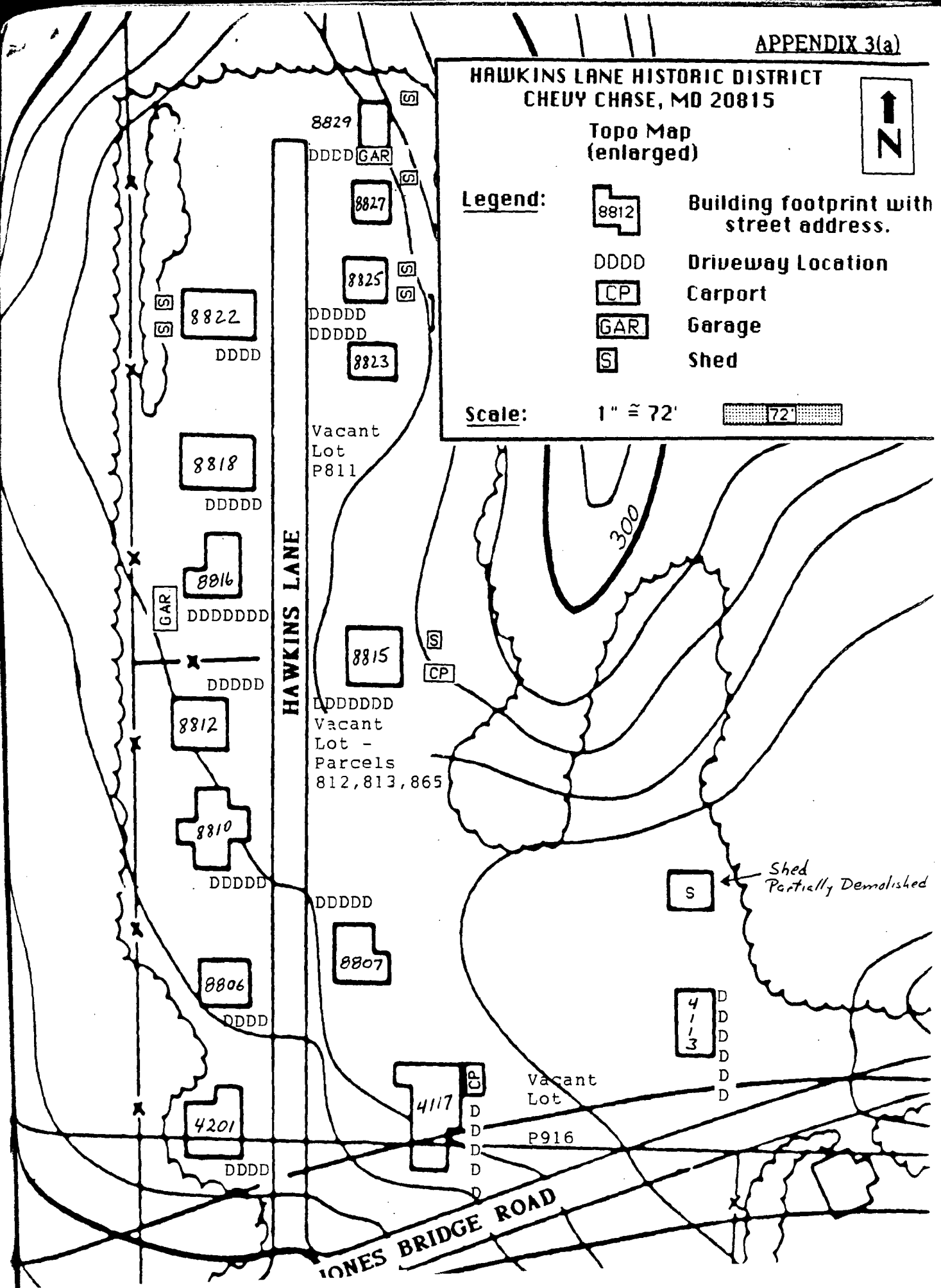
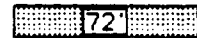
Garage



Shed

Scale:

1" = 72'



Building and Site Data

(all footage is approximate)

House & Parcel Number	Set-back (feet)	Drive-way width (feet)	Bldg. height (feet)	No. of floors	Est. Square Footage	Lot Size (sq. ft.)
<u>Hawkins Lane</u>						
8806 (P892)	12	10	25	2	1400	4636
8807 (P866)	15	10	40	2	2200*	9969
8810 (P891)	24	20	20	1	2770*	5607
vac. (P865)						9969
8812 (P890)	30	20	20	1	1050	5739
8815 (P864)	20	18	20	1	950	9969
8816 (P838)	15	12	24	1	1730*	6398
8818 (P837)	20	15	20	1	900	7175
vac. (P811)						8548
8822 (P784)	20	15	20	1	1800*	7134
8823 (N810)	25	10	25	3	1350	4575
8825 (N809)	25	10	25	2	900	4753
vac. (P783)						7342
8827 (N808)	25	none	25	2	900	4670
8829 (N757)	25	12	25	2	1300	4734

Jones Bridge Road

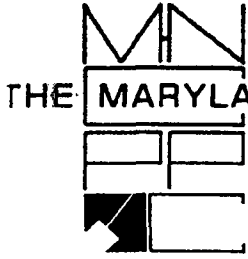
4201 (P945)	40	8	25	2	1770*	8176
4117 (P919)	25	8	40	2	3000*	12864
vac. (P916)						12225
4113 (P863)	40	12	20	2	1600	31589

* includes full basement

Approximate distance between structures at:

4201 and 8806	47'	4113 and 4117	134'
8806 and 8810	54'	4117 and 8807	47'
8810 and 8812	23'	8807 and 8815	140'
8812 and 8816	60'	8815 and 8823	150'
8816 and 8818	37'	8823 and 8825	34'
8818 and 8822	56'	8825 and 8827	22'
		8827 and 8829	13'

Total Acreage in Historic District: 3.81 ac.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

FAX TRANSMITTAL SHEET

**Historic Preservation Section
Department of Park & Planning**

Telephone Number: (301) 495-4570

Fax Number: (301) 495-1307

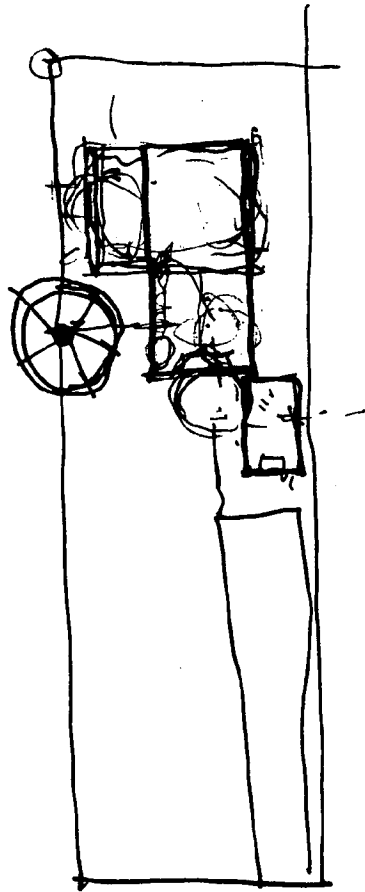
TO: George FAX NUMBER: _____

FROM: _____ PHONE NUMBER: _____

DATE: Nov. 20th

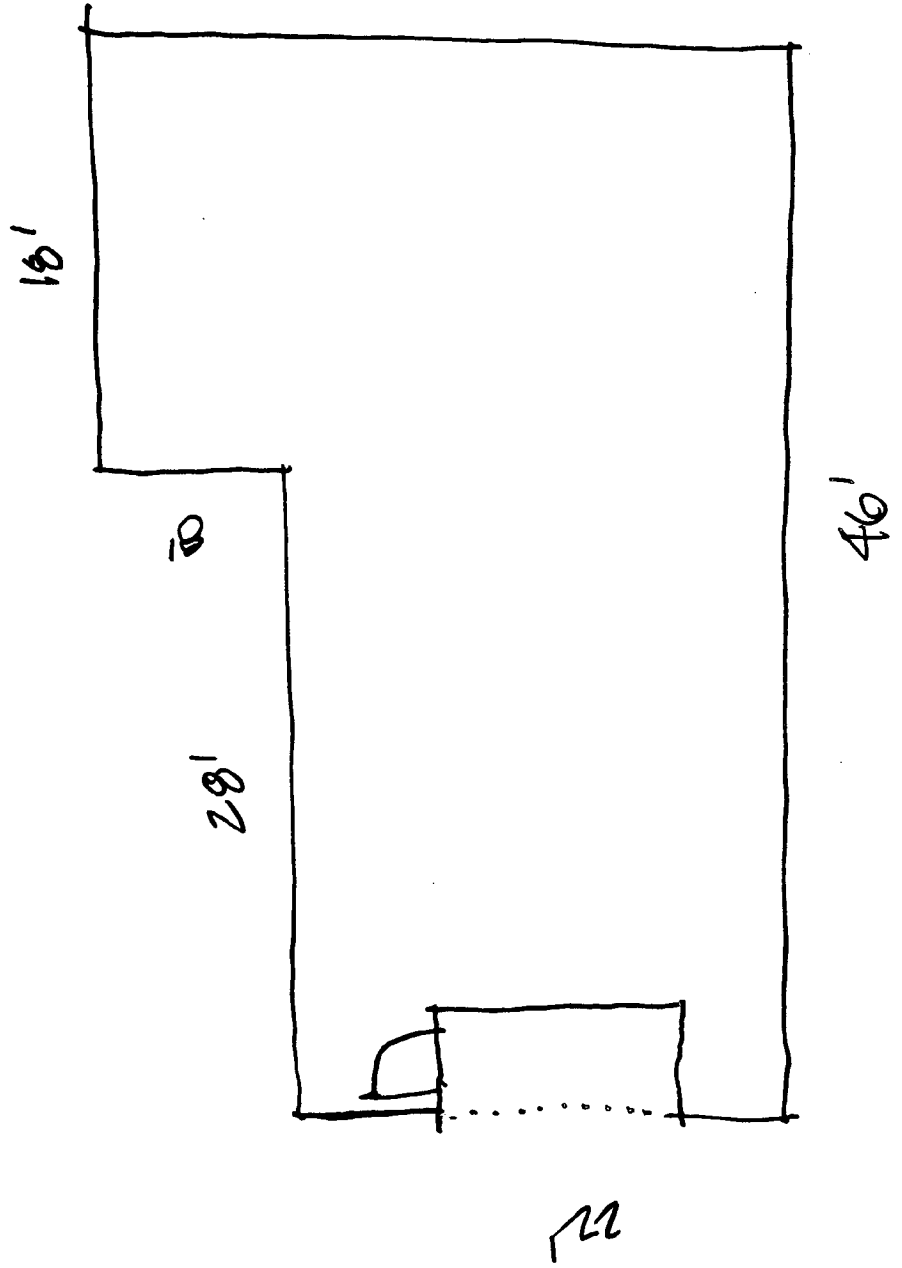
NUMBER OF PAGES INCLUDING THIS TRANSMITTAL SHEET: _____

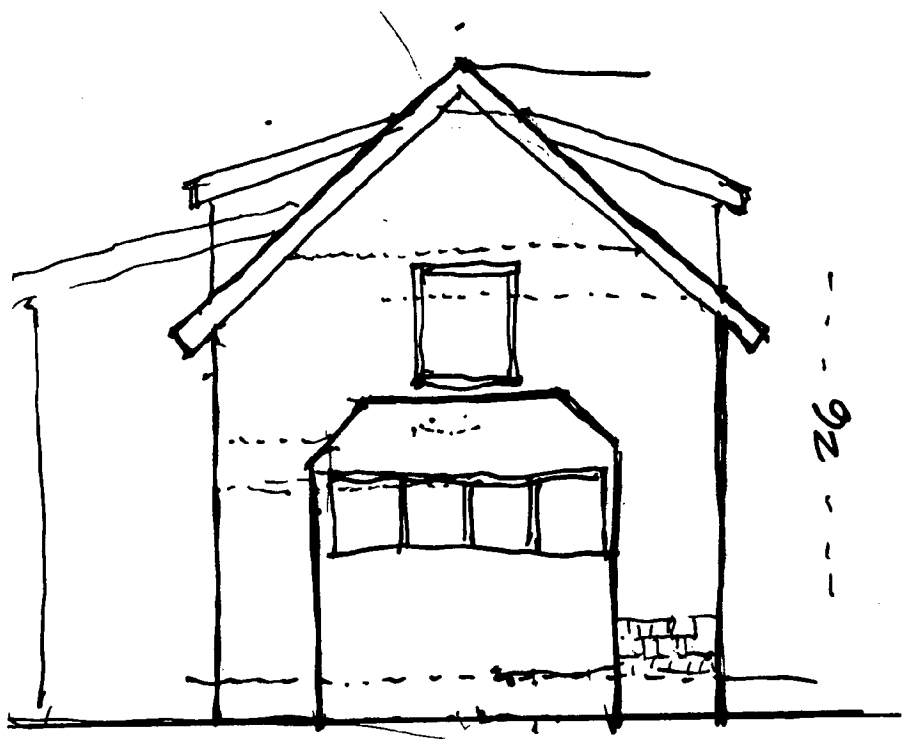
NOTE: Here's the latest option, taking into
account our discussion
THIS a.m.
ABM

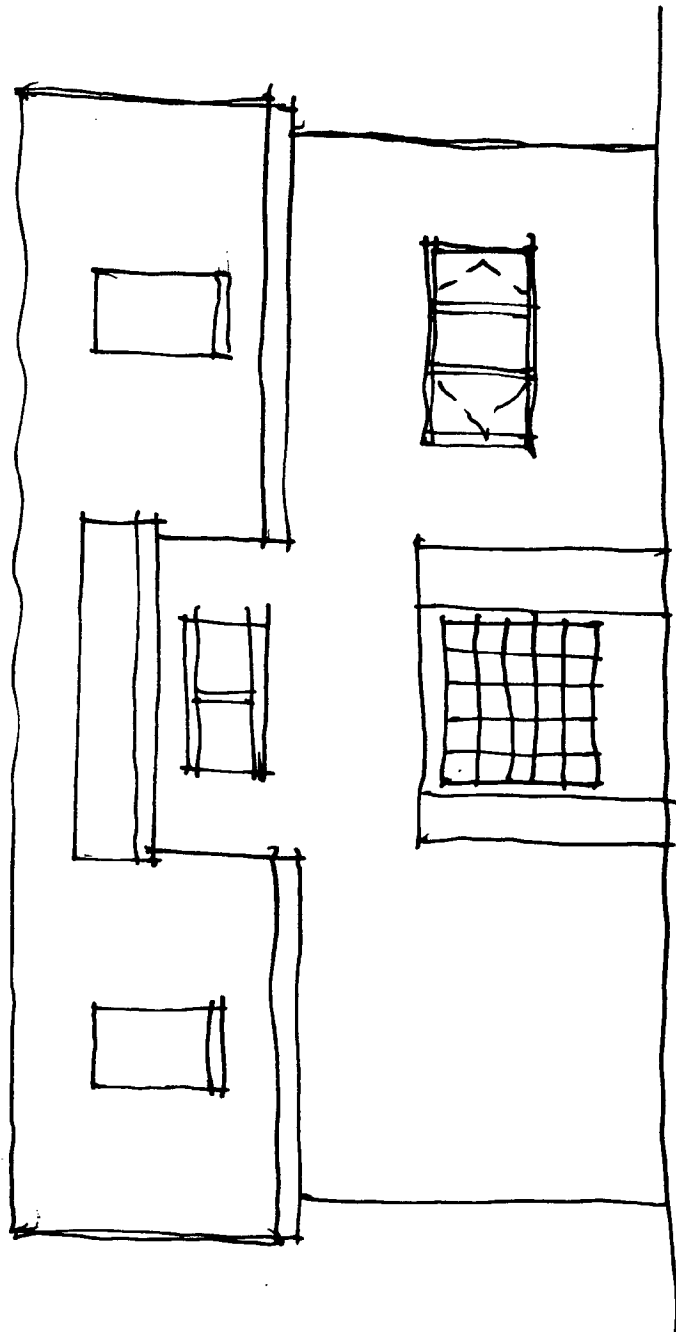


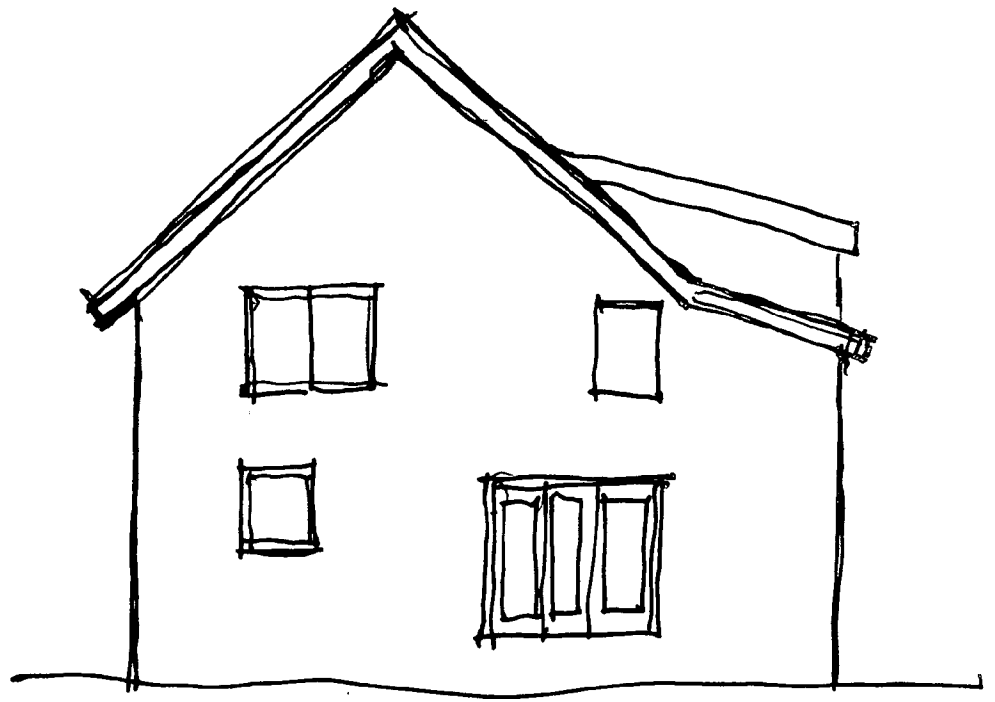
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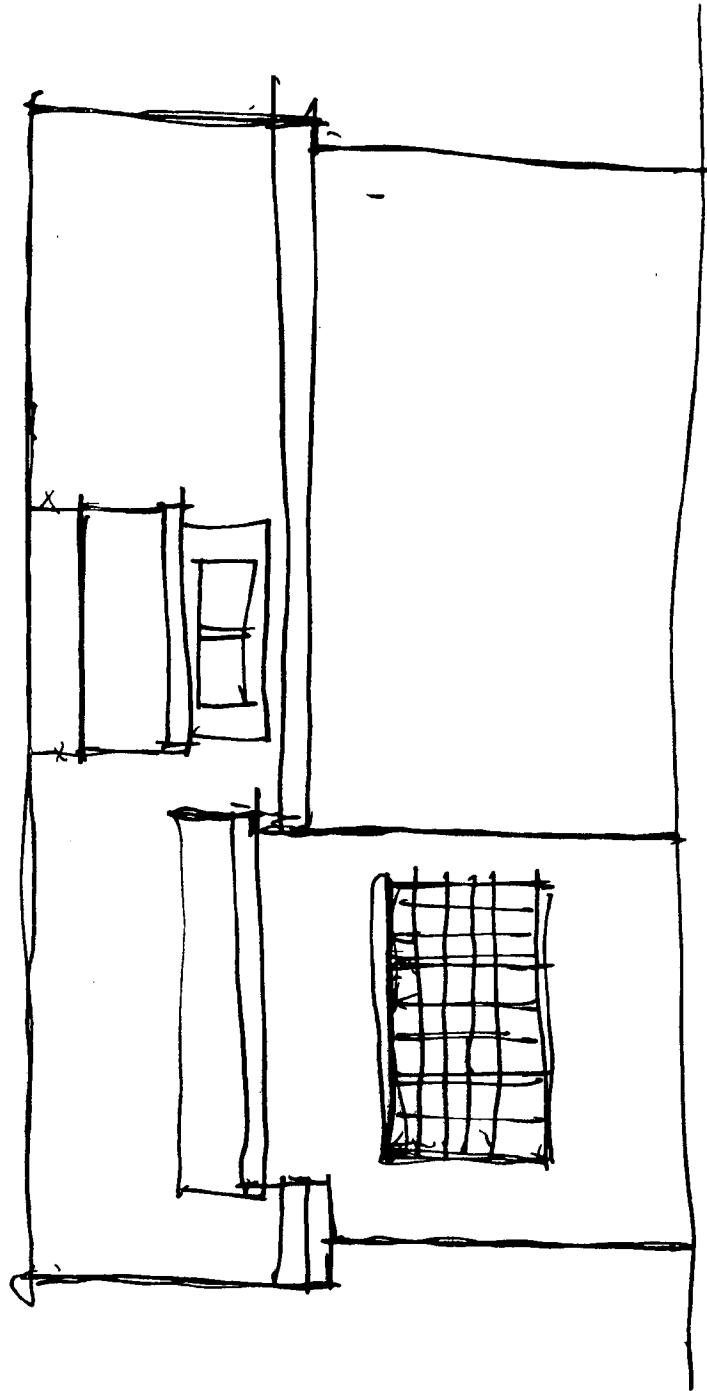
4











3915 Baltimore Street
Kensington, MD 20895
November 11, 1997

George Kousoulas, Chairperson
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Chairman Kousoulas:

The Local Advisory Panel (LAP) met Saturday morning to review the plans submitted by Carey Hoobler for a preliminary consultation for new construction at 3922 Baltimore Street, Kensington. During the meeting, the LAP discussed Plan A and Plan B. They noted that Mr. Hoobler had changed the design and lowered the height, but little else had changed since his application on April 23, 1997.

The LAP compared the proposed lot coverage under plans A and B with that of the average for the south side of Baltimore Street and the north side of Prospect street. For plan A lot coverage is almost 100% greater without the garage and 145 % greater with the garage. Plan B is almost 75% greater without the garage and 133% greater with the garage. Even more striking is what happens to the distance between houses with the construction of either A or B. The average distance goes from the average of 87.3 to 10 feet and this happens two times once on each side! The distance between houses is 400 percent less than the minimum distance between the houses in that area of the historic district.

In addition to discussing the irreversible damage to the district posed by these plans, the LAP reviewed a letter from Mr. Mark Edwards, Deputy State Historic Preservation Officer of the Maryland Historical Trust (MHT) to Mr. Steven Karr, a former Chairman of the Montgomery County Historic Preservation Commission on November 17, 1988. It was written with respect to proposed construction on the side yard of 10234 Carroll Place, a Queen Anne house which is one of only a few buildings identified as "individually significant," either historically or architecturally, in the National Register nomination for the Kensington Historic District. The property at 3924 Baltimore Street, adjacent to Hoobler's proposed construction, like Carroll Place was identified in the National Register nomination as "individually significant."

Mr. Edwards wrote in 1988 that although his office could not offer an informed opinion at that time on the design details of the proposed development, "We do, however, have a sufficient understanding of the concept of the development to be able to assess its general effect within the context of the district listing on the National Register of Historic Places.

It is now almost exactly nine years since Mr. Edwards wrote to the HPC, but his comments apply equally well tonight and I will quote the remainder of the letter:

In this location, there are Queen Anne and Foursquare houses with large yards and lawns set back from the street in a wooded, open setting. There is uniformity among the houses, a quality of openness and a rhythm to the streetscape, and a defined sense of time and place. These are the factors which were cited as the basis for significance in the National Register nomination for the district:

The district is significant primarily for the collection of late 19th and early 20th century houses which stand in a turn-of-the-century garden-like setting of curving streets, tall trees, and mature shrubbery. The houses, which exhibit the influence of Queen Anne, Shingle, Eastlake, and Colonial Revival styles, have a uniformity of scale, design, and construction materials, that combine with their juxtaposition and placement upon the gently sloping terrain to create a significant urban neighborhood which still retains much of its early 20th century environment.

It appears that any new construction on the two lots in question would have some degree of adverse effect on the qualities from which the district derives its historic significance. The setting of the house at 10234 Carroll Place, with its large yard and extensive shrubbery by the proximity of new buildings on either side. The historic streetscape of large wooded lots and the sense of time and place conveyed by this district would be changed by the introduction of greater density.

The Kensington Historic District previously has experienced some development that is incompatible with the characteristics that qualified the district for listing in the National Register. However, that development has not been of sufficient magnitude to jeopardize continued listing. We are not in a position to judge whether the proposed development would alter that situation, but a significant trend in its direction certainly would.

In addition to the careful review afforded by your Commission, we encourage continued efforts to secure the donation of historic preservation easements within the district to Montgomery County or the Maryland Historical Trust.

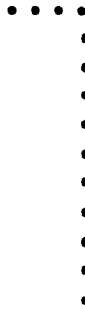
We hope that our comments will be useful to the Commission in your important deliberations.

The LAP urges the Historic Preservation Commission to inform the applicant that the plans for this lot would not only irretrievably alter the "uniformity of the houses, the openness and rhythm of the streetscape and the sense of time and place, but may also jeopardize Kensington's continued listing as a National Register Historic District.

Thank you for the opportunity to share our concerns.

Sincerely,

Barbara H. Wagner, Chair
Kensington Local Advisory Panel



To: Gwen Marcus Wright
Company:
Fax number: (301) 495-1307
Business phone:

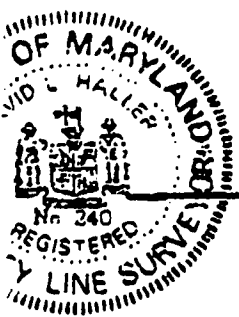
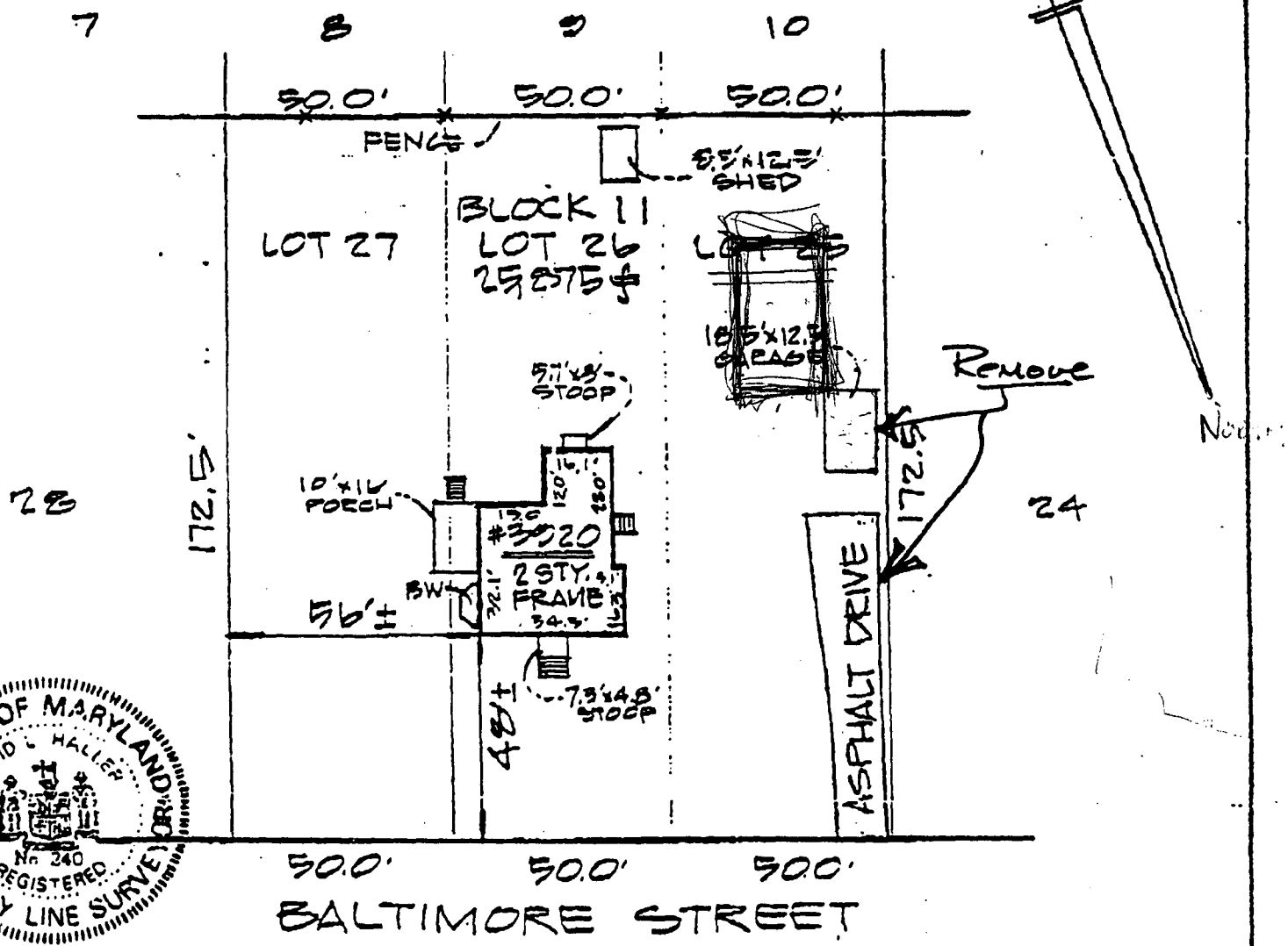
From: Barbara Wagner
Fax number: +1 (301) 949 5016
Business phone:
Home phone:

Date & Time: 11/11/97 9:40:06 PM
Pages: 4
Re: Baltimore Street Preliminary Consultation

Please share the LAP testimony with the Commission.

NOTE: This location for title purposes only — not to be used for determining property lines. Property corners not guaranteed by this location

HOUSE LOCATION
LOTS 25, 26 & 27 BLOCK 11
KENSINGTON PARK
MONTGOMERY COUNTY, MD.



CERTIFICATE I CERTIFY THAT THE POSITION OF ALL THE IMPROVEMENTS ON THE ABOVE DESCRIBED HAS BEEN CAREFULLY ESTABLISHED BY A PLAT SURVEY AND UNLESS OTHERWISE SHOWN THERE ARE NO ENCROACHMENTS	REFERENCED PLAT BK B PLAT NO 4	ALLEN ASSOCIATES P.O. BOX 8263 SILVER SPRING, MARYLAND 20906 301-471-2134	
	LIBER POLIO	DATE OF SURVEY WALL CHECK NEB LOC 6-25-80 BOUNDARY	SCALE 1" = 40' DRAWN BY BA JOB NO. 851188

on for title purposes only - not to be used for determining property lines. Property corner markers not shown. Information, if shown, was obtained from M.N.C.P. & P.C.

9 (23)

Nov 5, 6, 7

PRG website www.prg.inc.
COM

Pro. Trade network
In '11 Trade work

Goodman -
Comments ASAP

(Oct 3rd was deadline)

Revised plans:

Sept 16, 1997

(Perry)

Do draft

Draft letter about garage demolition
to substantive alteration -
To be reviewed by Boyles

Melissa House
for meeting
Rick Allen
participates

Call Julia Miller @ Nat'l Trust.
202.588.6180

we are following up on woodbox
- Kensington

Take grants off



ELLISON CORPORATION
BUILDERS

10907 JARBOE AVENUE
SILVER SPRING, MD 20901

TELEPHONE 301-681-1411
TELEFAX 301-593-1930

23 Oct 97

FAX TO: Robin Zick 495-1307

FAX FR: Carey Hoobler

RE: 3922 Baltimore St. Kews.

Dear Robin,

These arrived to late to me yesterday to turn around to you at 4:30 + I had to be in Bethesda late pm as well + couldn't get them to you. So I've faxed them to you this am.

We've tried hard to incorporate some of the ideas you suggested into these plans. Both are a reduction of what I showed you last. I'll try to get the actual heights to you today. Pls call with your thoughts.

Thanks.

Carey Hoobler

ELLISON CORPORATION

BUILDERS

10907 JARBOE AVENUE
SILVER SPRING, MD 20901TELEPHONE 301-681-1411
TELEFAX 301-593-1930

27 OCT 97

FAX TO: ROBIN ZIEK 495-1307

FAX FR: CAREY HOOBLER

RE: 3922 Balt St Kens - Heights

Dear Robin,

The plan I submitted for a HAWP last March was 32'± from first floor to ridge. The plan I showed you a couple of months (1½) ago was 28'± ff→r. I am faxing the 2 elevations I have of that to you to include in the consultation w/ the H.P.C. (site plan is same as Design Proposal "A" mentioned below)

The 2 plans you rec'd last Thursday AM are 25'± ff→r for Design Proposal "A", and 24'± ff→r for "B".

The garage "auto house" is proposed for relocation onto a spot on 3920 or its adjacent lot. The structure does not appear adequate to "house" an auto very comfortably today, but certainly any structural improvement would be an aesthetic one and a move onto a new foundation couldn't hurt.

Thank you.

Sincerely,
Carey
Carey Hoobler

ELLISON CORPORATION

BUILDERS

10907 JARBOE AVENUE
SILVER SPRING, MD 20901

TELEPHONE 301-681-1411
TELEFAX 301-593-1930

27 Oct 97

FAX TO: Robin Zick 495 1307

FAX FR: Carey Hoobler

RE: 3922 Balt St Kews - Heights amendment

Dear Robin,

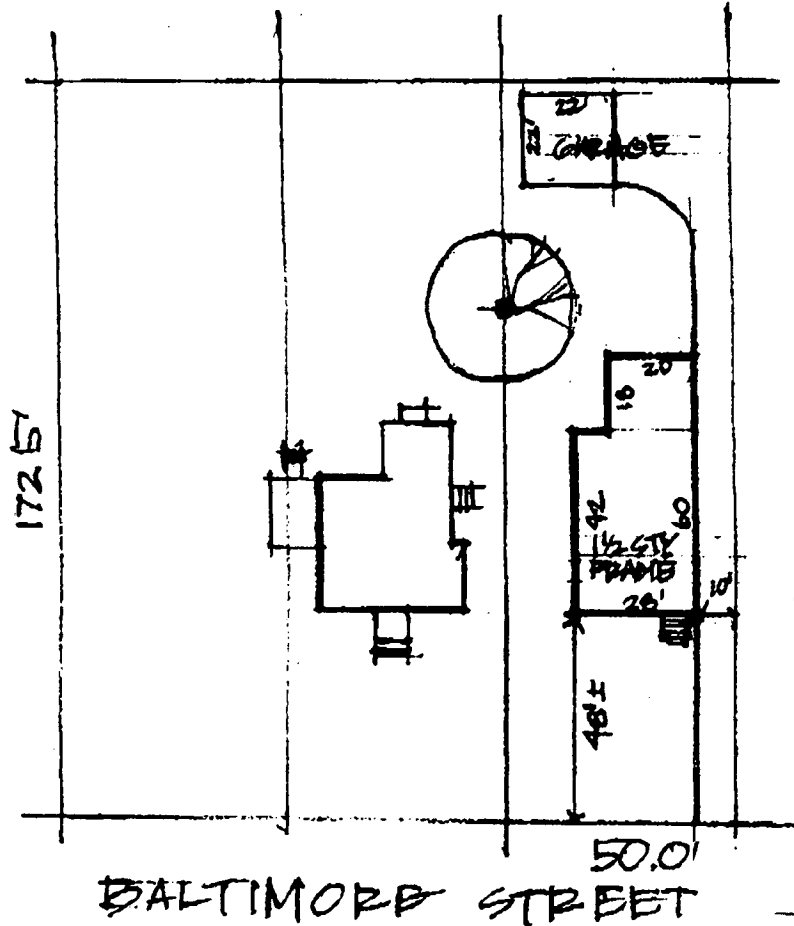
I had only scaled the info I gave you earlier today. I
came across my notes from Chas Poor of Studio Partnership Architects
and should tell you that the "A" model is 24'6"± and
the "B" model is 22'6"±. These are less than I had
told ^{you} earlier.

Thanks again,

Carey Hoobler

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997



(house) $28 \times 42 = 1176$
 $18 \times 20 = 360$
 Total = 1536

(garage) $22 \times 22 = 484$
 Total = 2020 sf

property coverage: 23.4%
for house + garage

House alone = 17.8%

DESIGN PROPOSAL 'A' @ 1" = 40'

3922 BALTIMORE KENSINGTON, MD.

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'A'
ELLISON CORPORATION



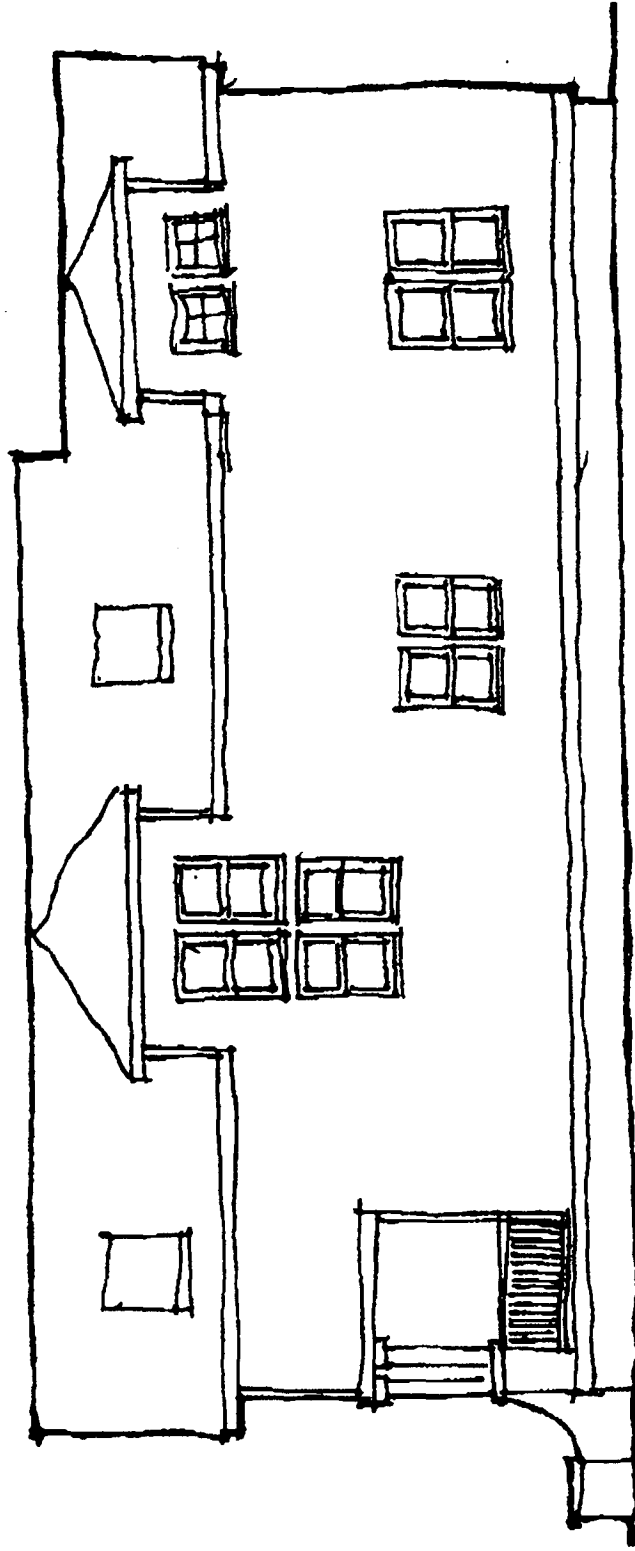
FRONT ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE KENSINGTON, MD.

DESIGN PROPOSAL A
ELLISON CORPORATION

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997



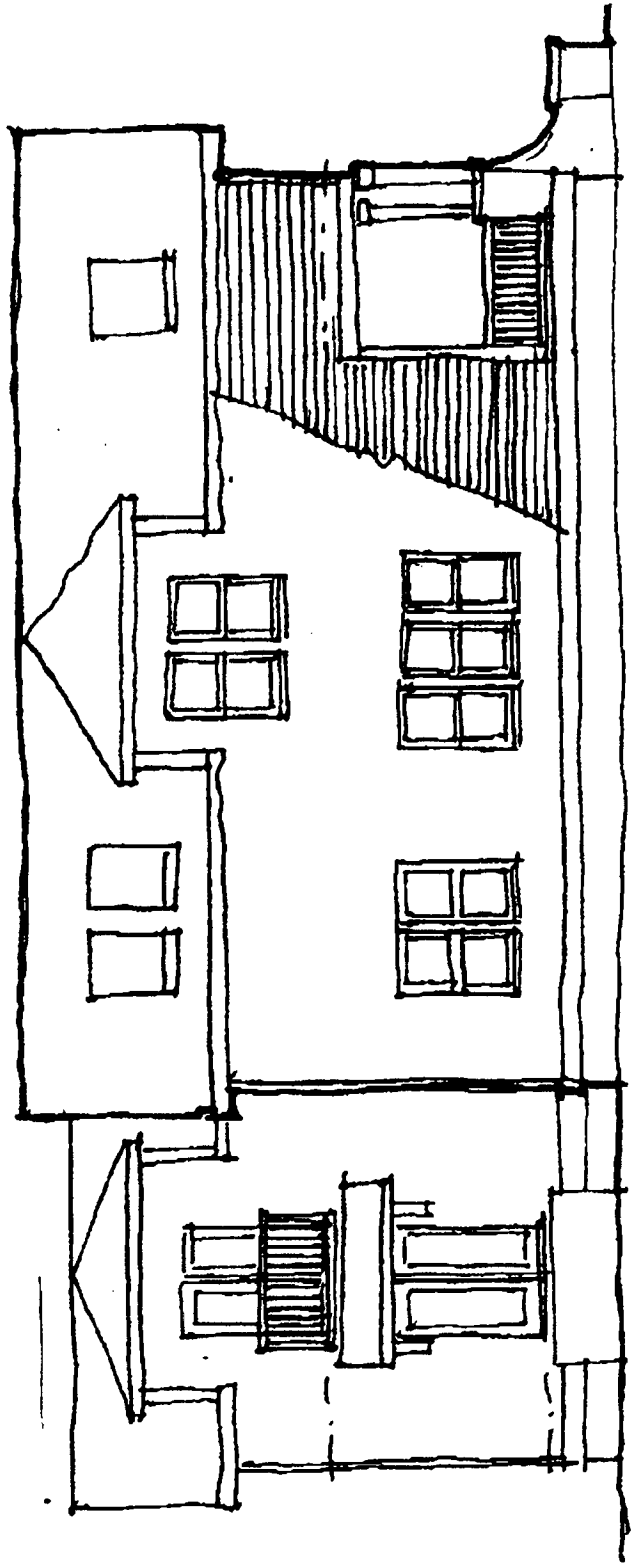
SIDE ELEVATION @ 1/8" = 1'-0"
4922 BALTIMORE KENSINGTON, MD.

© 1997

DESIGN PROPOSAL
ELLISON CORPORATION

STUDIO PARTNERSHIP ARCHITECTS
26 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997



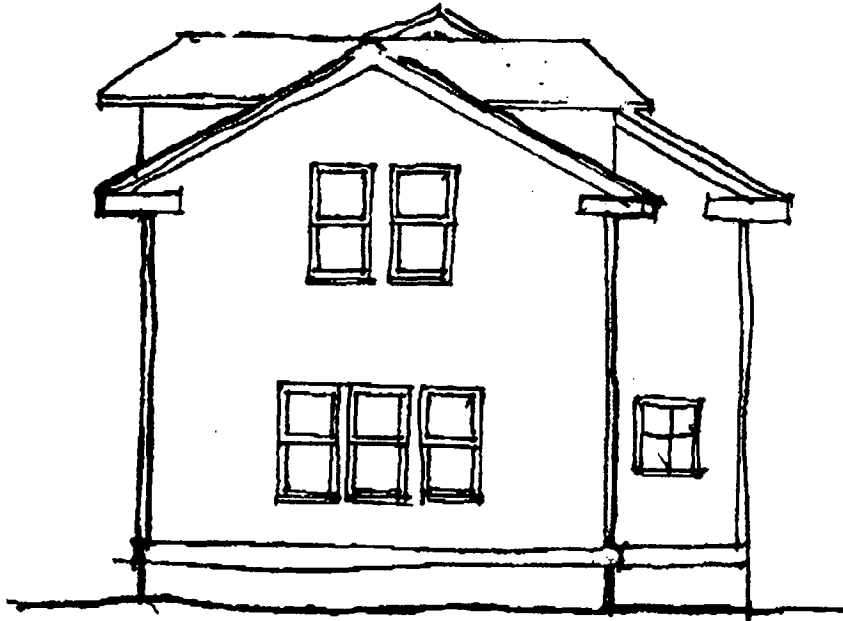
SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE KENSINGTON, MD.

© 1997

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'A'
ELLISON CORPORATION

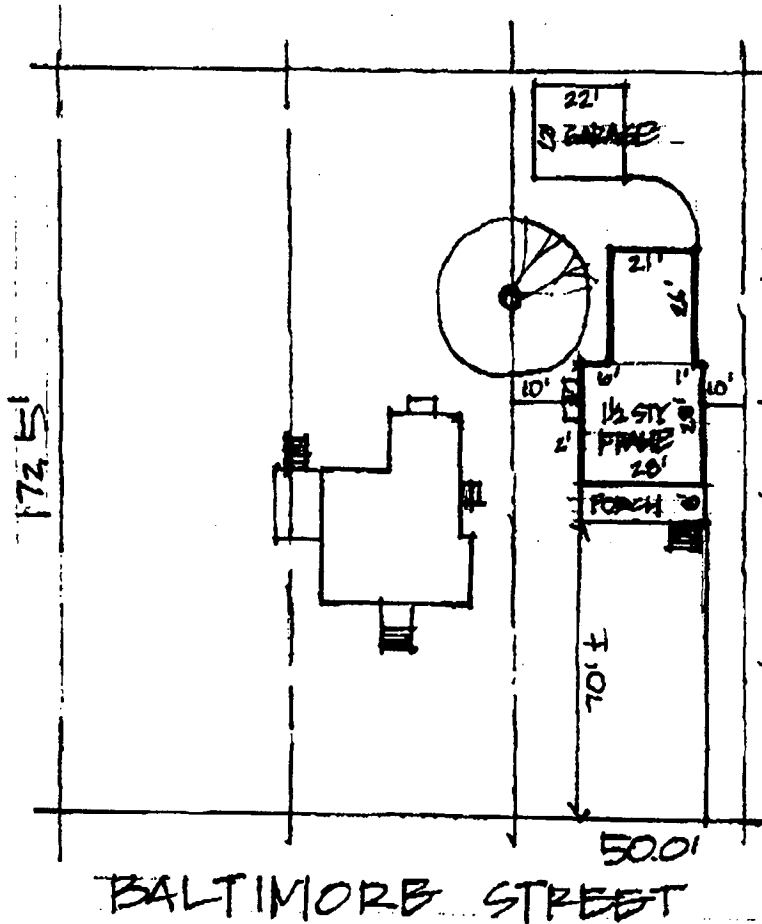


REAR ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE KENSINGTON, MD

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0992 Fax

OCT 22 1997



$$\begin{aligned}
 & \left. \begin{array}{l} 26 \times 21 = 546 \\ 28 \times 28 = 784 \\ 8 \times 5 = 40 \end{array} \right\} \text{house} \\
 & \hline
 & 1370 \text{ sf.}
 \end{aligned}$$

$$\begin{aligned}
 & \text{garage} \\
 & 22 \times 22 = 484
 \end{aligned}$$

$$\begin{aligned}
 & \text{Total lot coverage:} \\
 & 1854 \text{ or} \\
 & 21.5\%
 \end{aligned}$$

$$\text{House alone} = 15.9\%$$

DESIGN PROPOSAL 'B' @ 1" = 40'

3922 BALTIMORE KENSINGTON, MD.

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'B'
ELLISON CORPORATION



FRONT ELEVATION @ 1/8" = 1'-0"

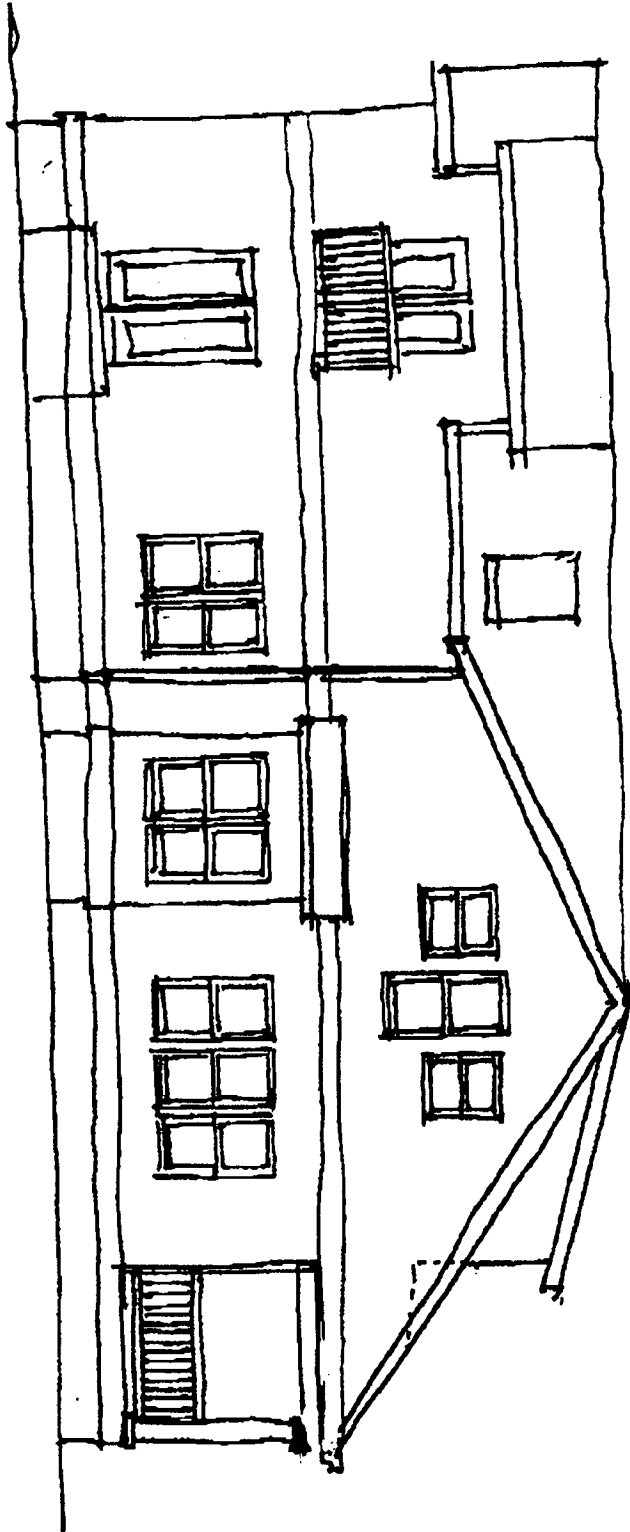
3922 BALTIMORE

KENSINGTON, MD.

STUDIO PARTNERSHIP
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL
ELLISON CORPORATION

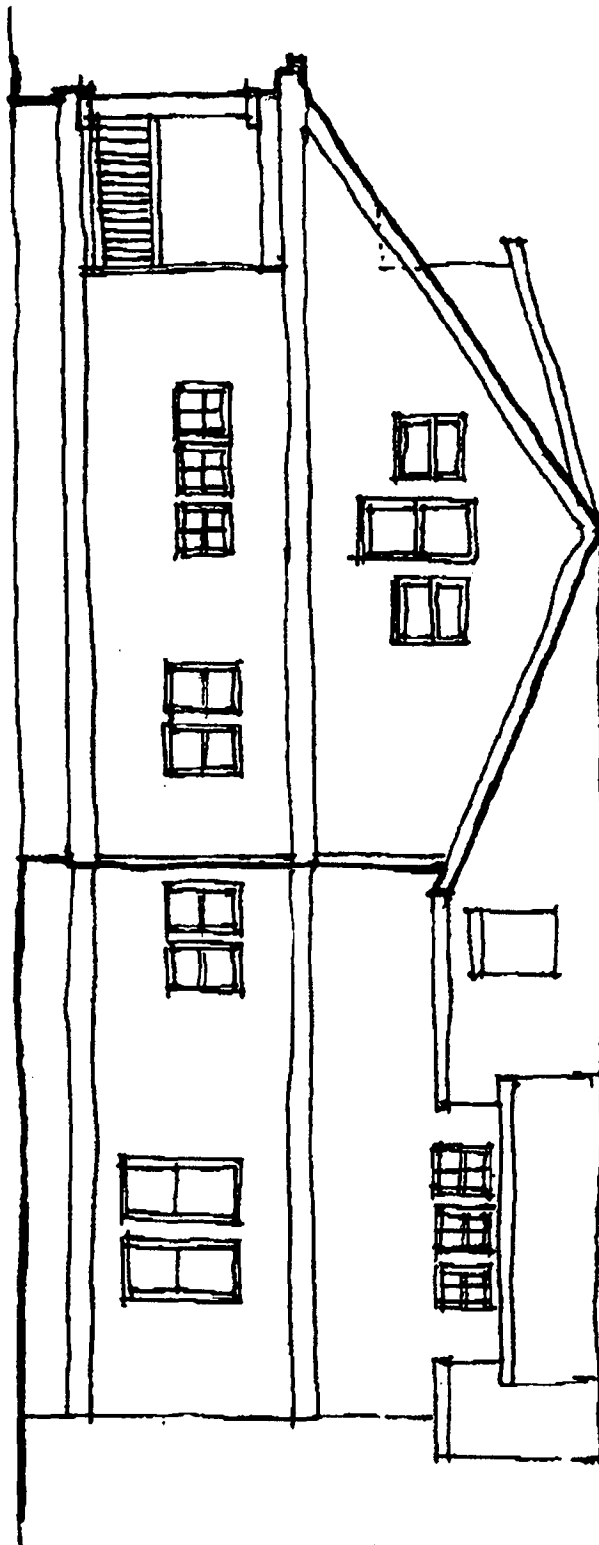


SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE KENSINGTON, MD.

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0890 301.270.0882 FAX

OCT 22 1997

DESIGN PROJECT #
ELLISON CORPORATION

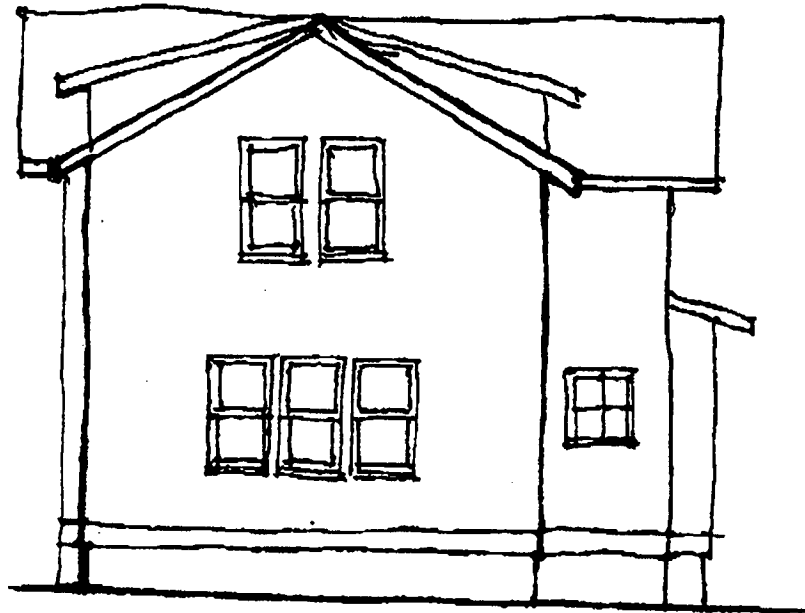


SIDE ELEVATION @ 1/8" = 1'-0"
3922 BALTIMORE KENSINGTON, MD

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

OCT 22 1997

DESIGN PROPOSAL 'B'
ELLISON CORPORATION



REAR ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE

KENSINGTON, MD.

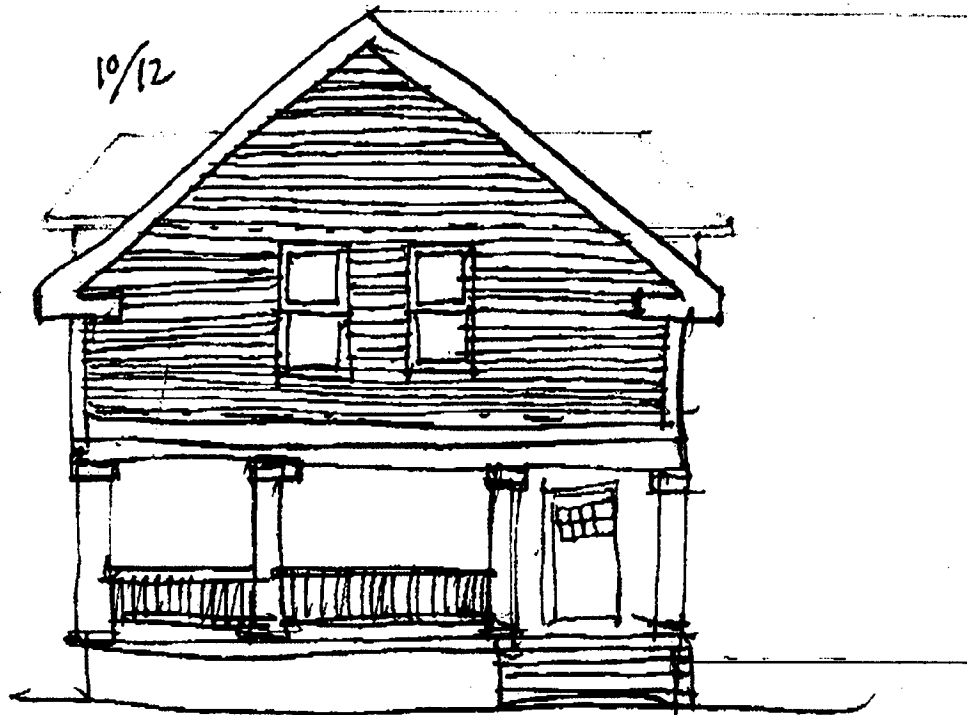
STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0990 301.270.0092 Fax

DESIGN PROPOSAL

ELLISON CORPORATION.

SEP 18 1997

*Redone in
OCTOBER*



FRONT ELEVATION @ 1/8" = 1'-0"

3922 BALTIMORE AVE., KENSINGTON, MD.

STUDIO PARTNERSHIP ARCHITECTS
25 PINE AVENUE
TAKOMA PARK, MARYLAND 20912
301.270.0092 FAX
301.270.0090

DESIGN PROPOSAL
ELLYSON CORP.

SEP 18 1997



EAST ELEVATION (SIDE) @ 1/8" = 1'-0"
3922 BALTIMORE AVE., KENSINGTON, MD

Use Hoobler
names for - Oct
HPC mail out

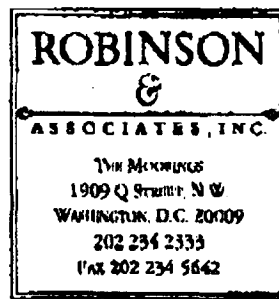
You 26^m

Can Hoobler for HAWP for

Re-do on Bret. Ave.

(Based on Preliminary on Nov. 12)

—————



November 11, 1997

Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: 3922 Baltimore Street (Lot 25, Block 11), Kensington Historic District

Dear Commissioners:

I have been asked to review development plans for the site at 3922 Baltimore Street in the Kensington Historic District and to evaluate their potential impact on the architectural and historical significance of the historic district. In making these comments, I draw on over 20 years of professional experience in the fields of architectural history and historic preservation. This assessment has included on-site study of the site (its spatial relationship and visual character), as well as a review of key historic designation and planning documents.

I came away from the study of development plans for this site with a clear view that the Historic Preservation Commission's denial (4/23/97) of the applicant's request to build a new house and garage is a correct finding. I also strongly concur with the current staff report (11/12/97), evaluating subsequent revisions to the development plan, that those revisions still fail to merit approval. It would be inappropriate and detrimental to the character of the historic district to allow the use of this narrow lot for new construction of this size and scale -- encroaching on the two adjacent primary historic resources by a mere 20-foot distance. It would seriously erode the historic streetscape in this notable section of the historic district.

The significance of the Kensington Historic District is defined in four key planning documents: the Maryland Historic Sites Inventory Form, the National Register of Historic Places Nomination Form, the Montgomery County Planning Board's historic district recommendation, and the Master Plan Amendment. The basis for the Kensington Historic District is clearly laid out in these documents. Several key phrases from the Planning Board document and the Master Plan Amendment identify critical characteristics of the historic district and define its significance. These include: 1) large lots, 2) uniformity of scale, 3) cohesiveness of streetscapes, and 4) park-like setting. Each of these justifications for the designation of Kensington as a historic district on the Master Plan would be violated by the current development plans.

I urge you to deny approval for this proposed construction, which would be inappropriate and inconsistent with the preservation, enhancement, and ultimate protection of the historic district.

Sincerely yours,

Judith Helm Robinson
Principal

Helen Crettier Wilkes Architects
3923 Prospect Street
Kensington, Maryland 20895-3917

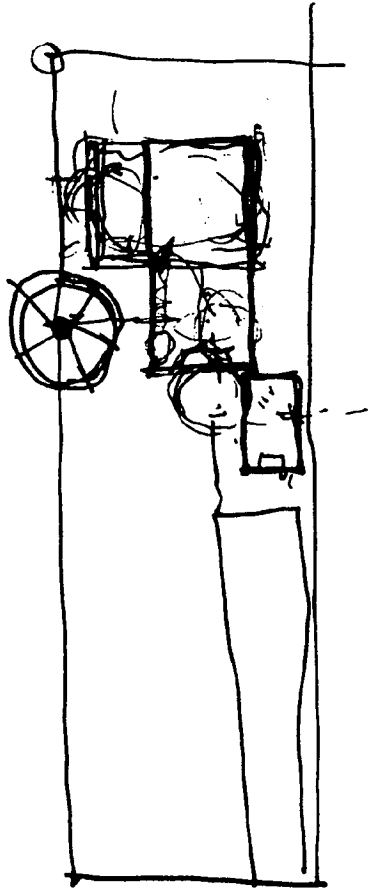
FAX

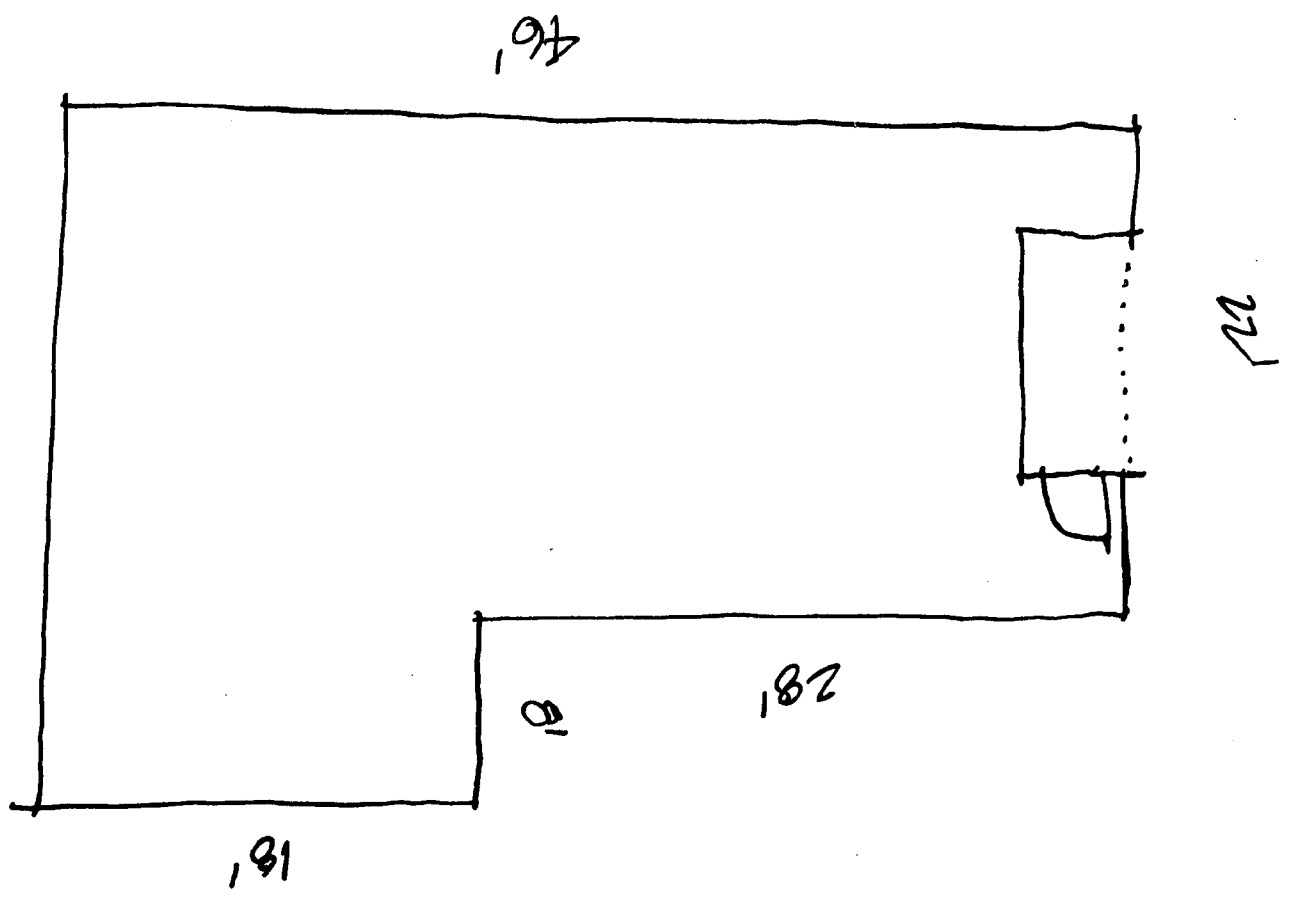
<p>To:</p> <p>ROBIN ZIEK 301.495.1807</p>	<p>From:</p> <p>HELEN WILKES</p>	<p>Date: 11/12/97 Number of Pages: 2 Phone: 301.933.0859 Fax: 301.933.8756</p>
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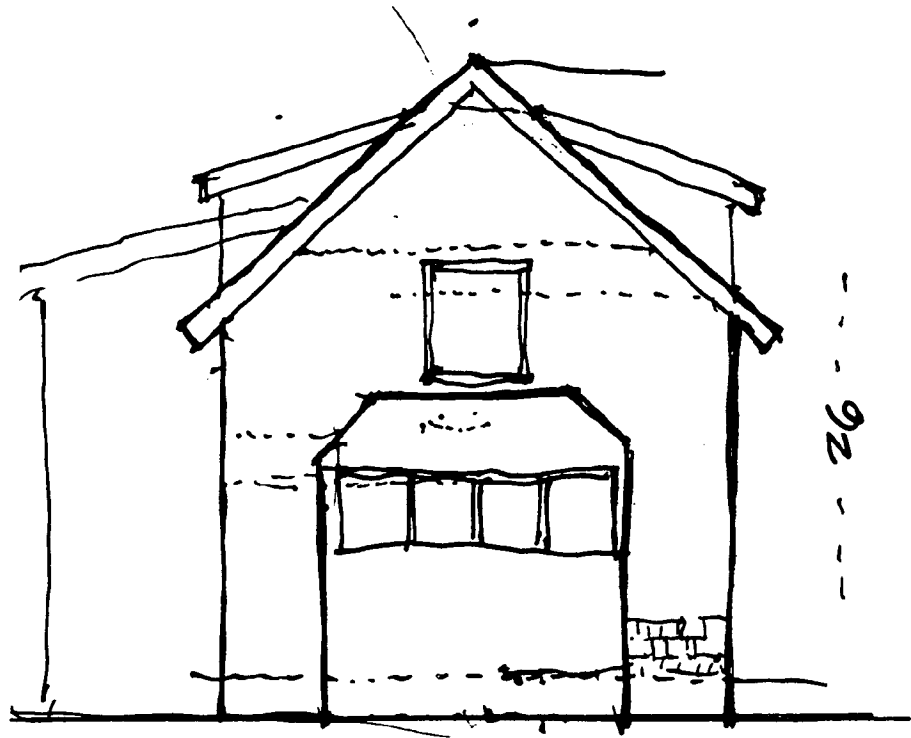
Remarks:

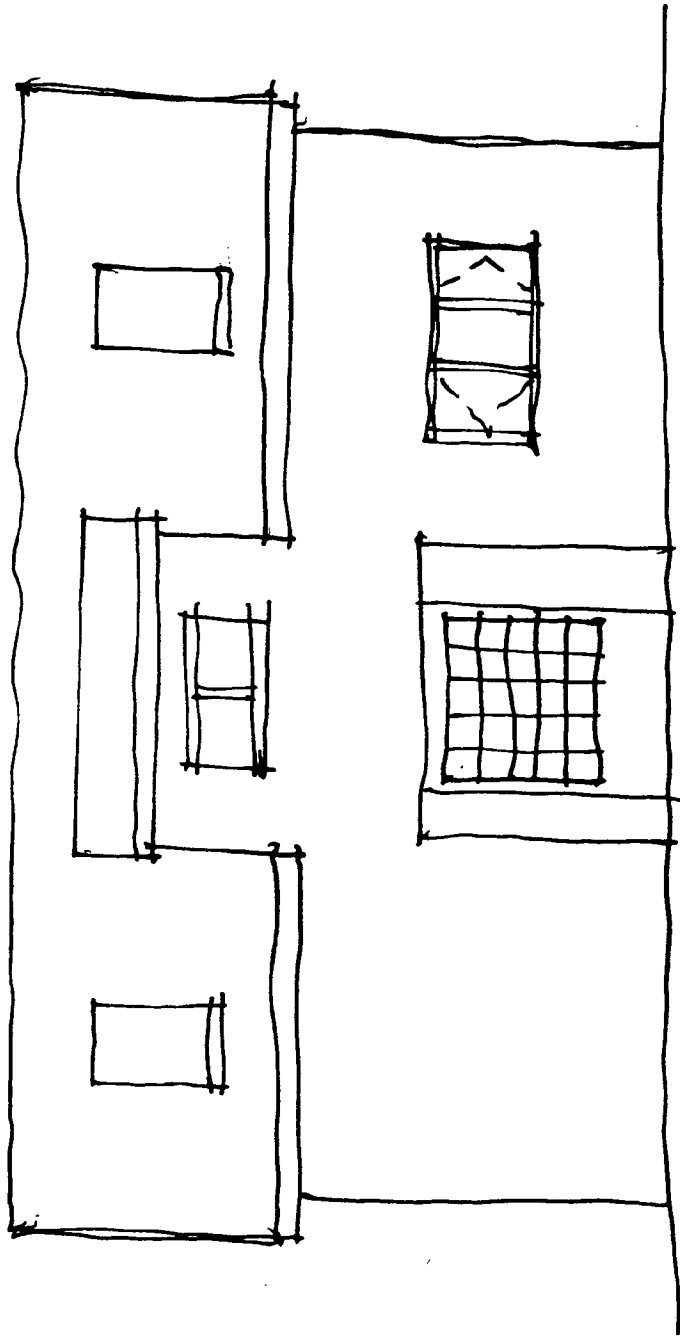
Hi Robin,
This is the letter from Judy Robinson.

Helen

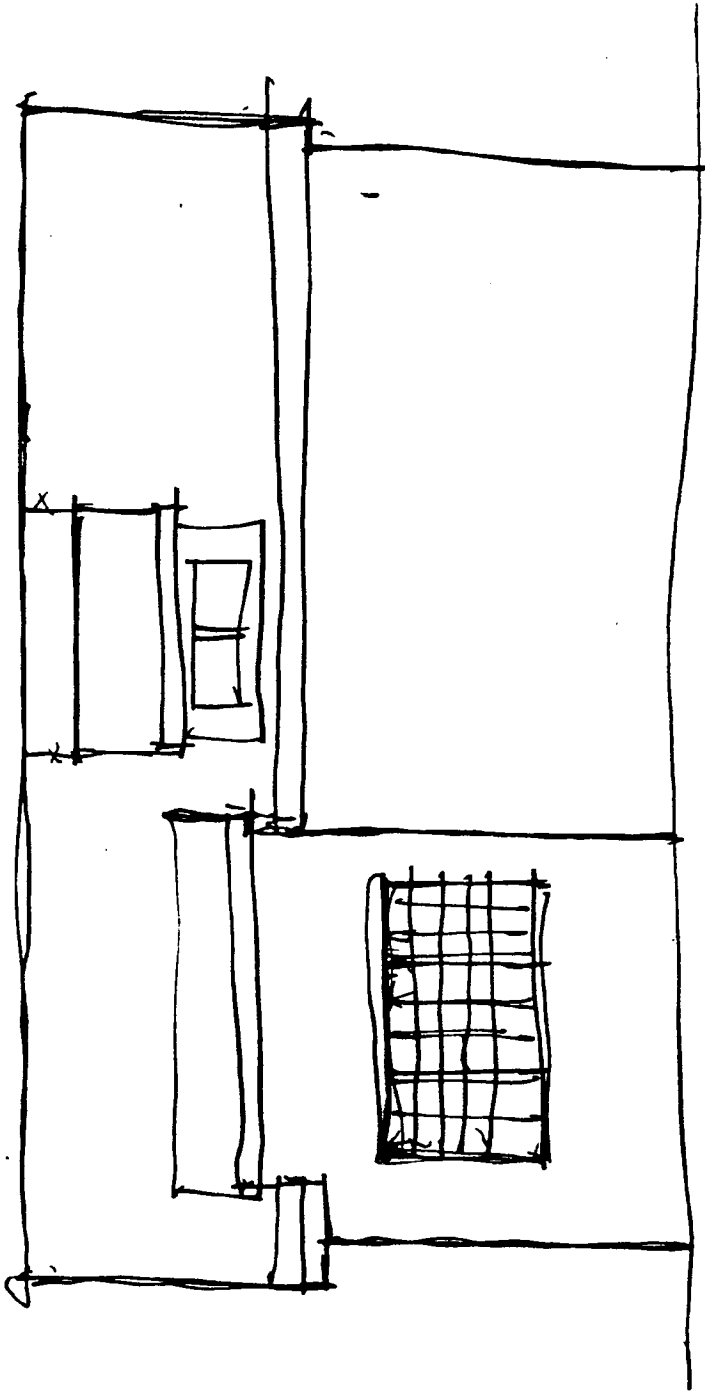












The Concept of the Carriage House

Throughout the "Battle for Carroll Place" there has been much talk about a "carriage house type" of structure as an appropriate design for infill development. It seems worthwhile to undertake some research into the history, style and frequency of carriage houses in historic Kensington.

Definitions

Forerunner of the automobile garage, with downstairs space for horse/s, carriage/s and the like and upstairs space for hay, tackle and perhaps accommodation for a groom or other staff.

Usually built at the greatest possible distance from the house for aesthetic reasons and to be close to a back alley for access.

Apart from doctors, tradespeople, farmers and people in isolated areas, probably only the "gentry" would have kept private carriages (note the term "carriage trade" used to refer to up-market customers.)

Kensington

Local historian Edith Saul says that very few Kensington families "kept horses" because of the easy accessibility of excellent public transportation - trolley and train. Because of the close proximity of Ken-Gar, then a poor black community, few if any of the large houses employed live-in servants. In other parts of the country, the secondary structure would often have served as staff quarters.

For the doctor who lived at 10308 Montgomery Avenue, horse and buggy were essential, and a back alley, no longer there, gave him access to Howard Avenue.

The family who lived at 10226 Carroll Place wintered in the District and probably took their horses and carriages with them.

Survey

In the immediate Carroll Place area, there are only 3 true carriage houses (4 if the smaller "transitional" carriage house/garage at 10225 Montgomery Avenue is counted)

2 properties have garages

8 properties have no secondary structure.

In the historic district west of Connecticut Avenue, there is only 1 carriage house (at 3947 Baltimore Street)

In the entire historic district, there are no more than 5 carriage houses, representing 3.6% of the properties.

It is significant that, in this age of the automobile, 42 of the historic houses with side lots have never built so much as a shed! Clearly, this is a garden suburb.

Specifics (attached analysis)

There is a direct correlation between property size, house size and carriage house size. Circle Manor, by far the biggest property has by far the biggest carriage house.

The proposed "carriage house" on Lot 17 is almost the same length as the Sharp house, not counting its porch.

The proposed "carriage house" on Lot 17 is almost exactly the same size as the Circle Manor carriage house.

The footprint of the Shulman house at 10221 Montgomery Ave,

excluding porches, is a little smaller than the proposed "carriage house."

Size of footprint can be misleading: the Hanks Penn house has a bigger footprint than the King house at 10300 Fawcett St although it is a much smaller house, because almost half of the dimensions of the Hanks Penn house is porch. The King house appears much bigger because it is on a much smaller piece of property (2 lots rather than 3) has no tall trees and has a minimal porch. The proposed house has a footprint almost as big as the King house, excluding porch, will have no tall trees and will be on only 1 lot! Thus it will appear bigger.

With the exception of the Circle Manor carriage house, which is really more like a barn, all the other carriage houses are only one and a half stories high.

The Circle Manor carriage house is 114 feet away from the house; the other carriage houses are at an average of 78 feet from their main houses.

From Morris
5.9.90



CARRIAGE HSE. @ CIRCLE MANOR
50' x 30' x 32' HT.



CARRIAGE HSE. @ 10226 CARROLL PL.
30' x 28' x 21' HT.

PRESERVATION LAW REPORTER

VOLUME 15 • NUMBER 9 • SEPTEMBER 1996



Economic Hardship

PRESERVATION LAW REPORTER editor Julia Hatch Miller, in the first part of a three-part article, provides an overview of the use of economic hardship administrative review procedures in connection with local historic preservation ordinances. (PAGE 1129)

Nonprofit Corporations

Andrea C. Ferster, a lawyer who practices in both preservation and nonprofit tax law, discusses new tax rules relating to nonprofit organizations, as enacted by Congress this past summer. (PAGE 1141)



National Trust for Historic Preservation

PRESERVATION LAW REPORTER

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Providing for Economic Hardship Relief in the Regulation of Historic Properties

by Julia H. Miller*

This article is the first in a three-part series on the issue of economic hardship. Part 1, published below, provides an overview on the economic hardship review process, highlighting basic questions such as why should economic hardship provisions be included in a historic preservation ordinance, and what does "economic hardship" mean. Part 2, to be published early next year, will discuss alternative standards for measuring economic hardship and offer guidance on how to evaluate those standards, with particular emphasis on the constitutional standard for a regulatory taking. Finally, Part 3, to be published in mid-1997, will focus on the process for considering economic hardship claims. It will explore fundamental issues such as who should consider economic hardship claims, the importance of building a record, and who has the burden of proof.

PART 1. Administrative Relief From Economic Hardship: An Overview

Preservation of historic resources, whether an individual building, historic neighborhood, or archaeological site, has come to be viewed as an important community objective. In an era marked by rapid change, the need to protect familiar buildings and other visual links to the past has never been more apparent. Historical, architectural, cultural and archaeological structures and sites play a key role in helping a community define what it is, and what it would like to be.

While alternative forms of preservation may exist, protection of historic resources is primarily achieved by regulating privately-owned property through local ordinances. These laws generally provide for the identification or designation of important resources, accompanied by specific controls limiting how those properties may be changed. Permission to alter or demolish designated resources is generally conferred by a historic preservation commission or other review board in the form of a

*B.A. 1978, Columbia University; J.D. 1983, University of Wisconsin School of Law. Ms. Miller is the editor of the PRESERVATION LAW REPORTER.

"certificate of appropriateness."¹

Protecting historic resources has consistently been upheld as a legitimate use of governmental authority, commonly referred to as "the police power."² In *Penn Central Transportation Co. v. City of New York*, the U.S. Supreme Court observed that protection of historic, architectural, and culturally significant structures and areas through historic preservation controls is "an entirely permissible governmental goal."³ Numerous studies have shown that the regulation of historic properties through local ordinances often benefits individual communities through increased property values, tourism, and overall economic stability.⁴

On the other hand, historic preservation laws, as with other forms of land use regulation, directly affect individual property owners. Historic preservation laws generally impose restrictions on changes to property, which can result in increased expenditures or foregone opportunities. While many historic property owners benefit from local preservation laws, in some cases the impact of a specific action may be so severe that administrative relief should be provided. This is especially true when a constitutional "taking" might otherwise result.⁵

This article focuses on the situation where the impact of historic preservation controls on a particular piece of property is unfairly burdensome. It attempts to explain how local communities can address hardship claims, and at what point relief from historic preservation controls should be made available. It explores a range of issues such as: how to assess the economic impact of the regulation on the property; when does economic impact result in "economic hardship," how should "economic hardship" be defined; how and when should economic hardship claims be considered; who has the burden of proving hardship; and what opportunities should be made available to the community to alleviate hardship once established.

¹See, generally, Tersh Boasberg, Thomas A. Coughlin and Julia H. Miller, *Historic Preservation Law and Taxation*, Ch. 7 (Matthew Bender 1986); Richard A. Roddewig, "Preparing a Historic Preservation Ordinance," *PAS Report No. 374* (American Planning Ass'n 1983).

²A survey of state court decisions in this area is set out at 10 PLR 1117 (1991).

³438 U.S. 104, 129 (1978).

⁴See, generally, Donovan D. Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide* (National Trust for Historic Preservation 1994); Government Finance Research Center, *Government Finance Research Center, The Economic Benefits of Preserving Community Character: Case Studies from Fredericksburg, Virginia and Galveston, Texas* (National Trust for Historic Preservation 1991); and *Virginia's Economy and Historic Preservation: The Impact of Preservation on Jobs, Business and Community* (Preservation Alliance of Virginia 1995).

⁵Note, however, that the U.S. Supreme Court stated in *Penn Central* that the fact that a landmarks law may have "a more severe impact on some landowners than others" does not mean, "in itself . . . that the law effects a 'taking.'" 438 U.S. at 133.

I. Affording Administrative Relief

All property owners are protected from overly burdensome regulations through the Fifth Amendment to the U.S. Constitution, made applicable to the states under the Fourteenth Amendment (and through corresponding state provisions). The Fifth Amendment prohibits the taking of private property for public use without just compensation.⁶ Commonly referred to as the "takings clause" or the "just compensation clause," this provision has been interpreted by the U.S. Supreme Court to require compensation when a regulation goes so far as to deny an owner the "economically viable use of his property."⁷

So why should relief from "economic hardship" be provided at the administrative level? Despite the protection afforded individual property owners through the federal and state constitutions, a steadily increasing number of jurisdictions are opting to incorporate "economic hardship procedures" into individual laws, including historic preservation ordinances. The reasons for this are fairly straightforward.

First, administrative proceedings addressing economic hardship concerns help to avoid litigation. They offer an opportunity for communities and property owners to hammer out the issues and resolve any differences in a less formal and inherently less expensive forum that is not hindered by rules of evidence and procedural limitations. Economic hardship provisions enable communities to address fundamental issues of fairness on an individual basis.

A second and related reason is that economic hardship review helps to assuage concerns expressed by property owners over the potentially adverse impact of historic preservation regulation. Economic hardship provisions provide assurance to property owners that relief is available in situations where the impact of a particular action proves to be especially harsh.

Economic hardship review also provides communities with the opportunity to put alternative plans together. In the event that a property owner is able to demonstrate economic hardship, a community can explore alternative actions to alleviate that hardship. A community may be able to provide relief through tax incentives, zoning variances, and other means. Demolition would proceed only if an acceptable alternative could not be

⁶The Fifth Amendment states: "[N]or shall private property be taken for public use, without just compensation."

⁷*Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *First English Evangelical Lutheran Church v. County of Los Angeles*, 107 S. Ct. 2378, 2388 (1987). For a detailed discussion of the takings standard articulated by the U.S. Supreme Court, see J. Kayden, "Historic Preservation and the New Takings Cases; Landmarks Preserved," 14 PLR 1235 (1995).

Economic hardship provisions provide assurance to property owners that relief is available in situations where the impact of a particular action proves to be especially harsh.

developed.⁸

Fourth, consideration of hardship concerns at the administrative level can enhance a local community's ability to protect individual properties if challenged in court. Courts generally afford review boards considerable deference in reviewing administrative decisions. Under most administrative review acts, judicial review is limited to the record made at the administrative hearing, and a decision must be upheld if supported by "substantial evidence."⁹ If there is a reasonable basis in the record for the decision then it must be permitted to stand.¹⁰

Correspondingly, economic hardship review helps to limit the number of cases ultimately decided under constitutional grounds. The general rule of thumb is that takings claims may not be considered until a decision is final.¹¹ Thus, a property owner is required to utilize the economic hardship process before challenging the constitutionality of a particular action in court.¹²

This is important for at least two reasons. First, economic hardship

⁸In Chicago, for example, a finding of economic hardship must be accompanied by a plan to relieve economic hardship. Sections 21-88 through 92 of the Chicago Municipal ordinance provides that the plan—

may include, but is not limited to, property tax relief, loans or grants from the City of Chicago or other public or private sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations including a transfer of development rights, or relaxation of provisions of this ordinance sufficient to allow reasonable beneficial use or return from the property.

If the economic hardship relief plan developed by the Chicago Landmarks Commission, and reviewed and modified, as necessary, by the Finance Committee of the City Council, is not approved within 30 days, the plan will be deemed denied and the applicant's permit will be approved.

⁹Most jurisdictions require either the application of a "rational basis" or "substantial evidence" standard of review. However, in practice, the distinction between the two standards are often blurred.

¹⁰See, e.g. *International College of Surgeons v. City of College*, No. 91 C 1587 (N.D. Ill. Dec. 30, 1994)[14 PLR 1087 (1995)], in which a federal district court, addressing both a takings claim and economic hardship claim, reviewed the takings claim under a *de novo* standard of review and reviewed the economic hardship claim in accordance with the standard of review set forth under the Illinois Administrative Review Act. This standard asks whether the contested action was "arbitrary or capricious" or "against the manifest weight of the evidence." See, also, *Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. App. 1995)[substantial evidence supported the local agency's determination that the owner had failed to establish "unreasonable economic hardship."]

¹¹As applied" takings claims are not ripe for review until all avenues of administrative relief have been pursued. See, e.g., *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) and *MacDonald, Sommer and Frates v. County of Yolo*, 477 U.S. 340 (1986).

¹²Economic hardship provisions can also help to obviate facial challenges since a permit must be granted under the ordinance if the owner would be denied any viable economic use for his or her property.

review at the administrative level can help to avoid the payment of compensation, assuming that a taking would otherwise have been found if the issue had been litigated in court. Second, it allows reviewing courts to resolve challenged actions on statutory rather than constitutional grounds, thereby limiting the impact of potentially damaging decisions.¹³

II. Assessing Economic Impact

Assuming that a process for considering economic hardship should be made available, the question then becomes: at what point do the economic impacts of local preservation laws rise to the level of economic hardship? The first and most critical step in answering this question is to understand fully what is meant by "economic impact." In other words, how does one measure the true impact of a particular action on a particular piece of property in objective terms?

Economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return.

Experts in this area most frequently look at the individual factors addressed by real estate developers, appraisers, and lenders in valuing property or a particular investment. Consideration of expenditures alone will not provide a complete or accurate picture of the overall impact of a specific course of action. Revenue, vacancy rates, operating expenses, financing, tax incentives and other issues are all relevant considerations.¹⁴

Economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return.¹⁵ Alternative courses of action are then evaluated by comparing anticipated "rates of return." This methodology allows the administrative review body to focus on the "bottom line" of a proposed transaction rather than individual expenditures. It also provides a useful gauge for measuring the appropriateness of a particular action by comparing the expected rate of return with long-term investment rates, such as the going rate for U.S.

¹³In *BSW Development Group v. Dayton Board of Zoning Appeals*, No. 13218 (Ohio Ct. App. May 7, 1993)[12 PLR 1065], the Ohio Court of Appeals elected to resolve a challenge to the denial of permission to demolish a historic warehouse on administrative rather than constitutional grounds, stating that "it is well established that a court is not permitted to pass upon the constitutionality of a statute unless such a determination is necessary to its decision."

¹⁴For a detailed discussion on the factors which are typically considered in evaluating real estate opportunities, see Donovan Rypkema, "The Economics of Rehabilitation," *Information Series* No. 53 (National Trust for Historic Preservation 1991).

¹⁵Property value is derived from four sources: cash (net proceeds from rents after expenses), appreciation (ability to sell property for amount greater than paid), amortization (reduction of debt/increased equity in property), and tax savings (through mortgage deductions, depreciation, deferred income, tax credits and other incentives available to historic property owners). *Id.* at 1.

Treasury bonds.¹⁶

"Reasonable" or "beneficial" use is also a critical factor. Historically, economic impact has been measured in such situations by looking at the owner's ability to continue and carry out the traditional use of the property¹⁷ or whether a "viable use" for the property remains.¹⁸ Thus, for example, it may be difficult to establish economic hardship in situations where a house may continue to serve as a personal residence, or be converted into office space.¹⁹

A number of other factors frequently are taken into consideration in addressing the issue of economic impact in the context of historic property regulation. It may be appropriate to consider what efforts have been undertaken to sell or rent the property at issue or the feasibility of alternative uses.²⁰ The owner's prior knowledge of the restrictions²¹ (actual or constructive) are sometimes factored in along with the reason-

ableness of the owner's "investment-backed expectations."²² The fact that the hardship alleged has been "self-created" may also be deemed relevant.²³

Special considerations also come into play in assessing the impact of a particular regulatory action on non-profit organizations. Because these entities serve charitable rather than commercial purposes, it becomes appropriate to look at beneficial use rather than reasonable return and to take into consideration the individual circumstances of the property owner. For example, a hardship analysis will generally entail looking at a distinct set of factors such as: what is the organization's charitable purpose, does landmark designation interfere with the organization's ability to carry out that purpose, what is the condition of the building and the need and cost for repairs, and finally, can the organization afford to pay for the repairs, if required.²⁴ Note, however, that while consideration of the financial impact of a particular action on a non-profit organization may be appropriate, a non-profit organization is not entitled to relief simply on the basis that it would otherwise earn more money.²⁵

Economic hardship is not synonymous with economic impact.

III. Defining Economic Hardship

Once the nature and degree of the impact is understood, the next step is to determine whether that impact is so severe that it amounts to "economic hardship." Economic hardship is not synonymous with economic impact. The term economic hardship is purely legal. Its meaning is derived from statutes and cases interpreting those statutes. In some jurisdictions the term "economic hardship" may be the equivalent of the

¹⁶Richard J. Roddewig, "Responding to the Takings Challenge," *PAS Report* No. 416 (National Trust for Historic Preservation/American Planning Ass'n 1989), pp. 16-17.

¹⁷In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 136 (1978), the fact that the owner could continue to use the property as a railroad terminal weighed heavily in the court's analysis on the issue of whether New York's denial of permission to construct an office tower on the landmarked building resulted in an unlawful taking.

¹⁸See, e.g., *Shubert Organization, Inc. v. Landmarks Preservation Commission*, 570 N.Y.S.2d 504 (1991), *appeal dismissed*, 78 N.Y.2d 1006 (1991), *cert. denied*, 112 S.Ct. 2289 (1992)[11 PLR 1071]"no prohibition against [the owners] receiving economic benefit from continuing use of the buildings as theaters."

¹⁹The issue can become more complicated, for example, in situations where the condition of the property is so poor that extensive renovations are required to make the property habitable. In such instances, it may be necessary to consider both "economic feasibility" and "viable use" in evaluating a hardship claim. For example, in *City of Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1086], the owners (albeit unsuccessfully) had sought to overturn a commission decision denying permission to demolish a historic house on the grounds that the cost of renovation would exceed the fair market value of the house.

Note also that some communities have been successful in alleviating potential economic hardship concerns by rezoning historic residential property to allow limited office use or by preventing property from falling into disrepair through "demolition by neglect" provisions. For further discussion on this issue, see "Oliver Pollard, "Minimum Maintenance Provisions: Preventing Demolition by Neglect," 8 PLR 2001 (1989).

²⁰See, e.g., *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975); *Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1086].

²¹*Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1080]; *Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 (D.C. App. 1995)[14 PLR 1197].

²²*Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

²³*Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996)[15 PLR 1085](owner paid more than fair market value for property and failed to obtain estimate for renovation costs prior to purchase.)

²⁴Section 25-309a(2)(c) of New York City's landmark preservation ordinance, for example, provides that hardship may be established by demonstrating, among other things, that the structure at issue "has ceased to be adequate, suitable, or appropriate for use for carrying out both (1) the purposes to which it had been devoted and (2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes." The judicial equivalent of this statutory standard was upheld by the U.S. District Court for the Southern District of New York in *Rector, Wardens, and Members of the Vestry of St. Bartholomew's Church v. City of New York*, 728 F. Supp. 958 (S.D.N.Y.), *aff'd*, 914 F.2d 348 (2nd Cir. 1990), *cert. denied*, 111 S.Ct. 1103 (1991).

²⁵See, e.g. *Rector, Warden, and Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2nd Cir. 1990)[10 PLR 1041].

constitutional standard for a regulatory taking.²⁶ In other jurisdictions, the term may mean something entirely different.²⁷ In a few jurisdictions, a term other than "economic hardship" may be used,²⁸ but in all situations it is important to understand that economic hardship applies to the property not the property owner.²⁹ The particular circumstances of the owner independent of the property in question should be irrelevant to the question of whether the property at issue can realize a reasonable return on investment, or whether a viable use of the property remains.³⁰

The term "economic hardship," or its equivalent, can mean whatever a local jurisdiction has prescribed it to mean, subject to state enabling law.³¹ As a general rule, however, a high showing of hardship is required

²⁶In Chicago, for example, an applicant may apply for an economic hardship exception on the basis that the denial of the permit to construct, alter or demolish property protected under the ordinance will result in "the loss of all reasonable and beneficial use of or return from the property." Chicago, Ill. Municipal Code § 21-68.

²⁷In New York City, the term "reasonable return" is defined as "a net annual return of six per centum of the valuation of an improvement parcel" where "net annual return" includes "the amount by which the earned income yielded by the improvement parcel during a test year exceeds the operating expenses of such parcel during such year." Mortgage interest and amortization is specifically excluded from the calculation, but a 2 percent allowance for depreciation of the assessed value of the property may be included, unless the property in question has already been fully depreciated. The test year is generally the most recent full calendar or fiscal year. See generally, New York City Landmarks Preservation Ordinance § 25-302v.

²⁸For example, Portland, Maine, provides relief from "economic hardship" (Portland City Code, ch. 14, art. IX § 14-660), while St. Louis, Missouri, affords protection against "unreasonable beneficial use or return." St. Louis, Mo. Ordinance § 24.12.440.

²⁹Note, however, that with respect to non-profit organizations, an alternative standard may apply, making it appropriate to look at the special circumstances of the property owner.

³⁰Local jurisdictions may provide alternative forms of relief, unrelated to "economic hardship" claims, to assist property owners in individual cases where maintenance of historic properties imposes exceptional burdens on a property owner with special needs or economic circumstances. Relief, for example, may be provided through direct financial aid, "in kind" assistance, or income or property tax abatement. For example, it may be appropriate to provide an elderly historic homeowner with assistance in painting or otherwise maintaining his or her property.

³¹The enabling statute for local landmark ordinances in Illinois provides, for example:

The denial of an application for a building demolition permit by reason of the operation of this Division, or the denial of an application for a building permit to add to, modify, or remove a portion of any building by reason of the operation of this Division, or the imposition of any regulation solely by reason of the provisions of this Division . . . shall not constitute a taking or damage for a public use of such property for which just compensation shall be ascertained and paid, unless the denial of a permit application or imposition of a regulation, as the case may be, deprives the owner of all reasonable beneficial use or return. 24 Ill. Rev. Stat. § 11-

to justify overriding a commission determination. The impact must be substantial.³² Otherwise, the application of the historic preservation ordinance could become administratively infeasible, and the underlying objectives of the preservation ordinance—to save historic resources—would not be met.

As a result, hardship claims generally arise only when permission for major alterations or the demolition of historic property has been denied.³³ While lesser alterations may have an economic impact on a property owner (aluminum siding, rear addition, re-roofing), it is unlikely that the resulting impact will rise to the level of a legally cognizable economic hardship.

IV. Other Miscellaneous Issues

A number of other issues relate to the question of economic hardship, apart from the issue of what constitutes economic hardship. For example, when should economic hardship claims be considered and upon which party should the burden of proof lie? Set forth below is a brief overview of some of the concerns raised in addressing these issues. Further discussion will follow under Part 3 of this article, to be published in 1997.

Timing. Economic hardship claims may arise at any time, but when should they be considered? While property owners often raise economic issues at the time of designation, communities should resist the temptation to consider economic hardship at that time. The reasons for this are readily apparent. The economic impact of

While property owners often raise economic issues at the time of designation, communities should resist the temptation to consider economic hardship at that time.

48.2-5.

³²The D.C. Court of Appeals reiterated the high burden of proof placed on property owners to establish economic hardship in *Kalorama Heights Limited Partnership v. District of Columbia Department of Consumer and Regulatory Affairs*, 655 A.2d 865 [D.C. App. 1995][14 PLR 1197]. Quoting from *900 G Street Assocs. v. Department of Housing & Community Dev.*, 430 A.2d 344 [D.C. 1982][1 PLR 3001], the court explained economic hardship as follows:

[I]f there is a *reasonable* alternative economic use for the property after the imposition of the restriction on that property, there is no taking, and hence no unreasonable economic hardship to the owners, no matter how diminished the property may be in cash value and no matter if "higher" or "more beneficial" uses of the property have been proscribed.

³³In the District of Columbia, economic hardship is considered only in the context of applications for demolition. Section 5-1005(f) of the District of Columbia's historic preservation law provides: "No permit [to demolish a historic landmark] shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner."

the regulation is purely speculative at this point. Economic hardship must be established by "dollar and cents" proof,³⁴ in the context of a specific proposal for alterations or demolition. Although it is occasionally argued that designation alone gives rise to immediate and real impacts, those impacts generally do not rise to the level of economic hardship under the applicable legal standards.³⁵

Consideration of economic claims at the designation stage also tends to cloud the issue at hand: whether the property meets the criteria for designation. Preservation commissions or other review boards must be careful to base their decisions on actual criteria in the ordinance.

The burden of establishing economic hardship generally rests on the property owner.

Moreover, it would be a waste of administrative resources to consider economic hardship claims at each stage of the administrative review process. As will be discussed in further detail under Parts 2 and 3 of this article, economic hardship review generally requires full consideration of the economic viability of the property in its present condition, along with various alternative proposals.

Many experts advise that the economic hardship issue should be addressed in a separate proceeding after a permit application has been denied on the merits. Where there is no clear differentiation of the two issues (appropriateness versus economic hardship), economic impacts that would not otherwise meet the criteria for "hardship" may improperly affect the outcome of the permit application.

Burden of Proof. The burden of establishing economic hardship

³⁴In consideration of a takings claim, the New York Court of Appeals stated in *De St. Aubin v. Flacke*, 68 N.Y.2d 66, 76-77, 496 N.E.2d 879, 885, 505 N.Y.S.2d 859, 865 (1986), "the property owner must show by 'dollar and cents' evidence that under no use permitted by the regulation under attack would the properties be capable of producing a reasonable return, the economic value, or all but a bare residue of the economic value, of the parcels must have been destroyed by the regulations at issue."

³⁵A number of courts have ruled that historic designation does not result in an unconstitutional taking. See, e.g., *Estate of Tippett v. City of Miami*, 645 So.2d 533 (Fla. App. 1994) [takings claim at designation stage is premature] [13 PLR 1179]; *Canisius College v. City of Buffalo*, 629 N.Y.S.2d 886 (App. Div. 1995) ["failed to present evidence that the designation physically or financially prevents or seriously interferes with the carrying out of its charitable purpose"]; *Shubert Organization, Inc. v. Landmarks Preservation Commission*, 570 N.Y.S.2d 504 (App. Div. 1991), appeal dismissed, 78 N.Y.2d 1006 (1991), cert. denied, 112 S.Ct. 2289 (1992) [11 PLR 1071]. [Broadway theater owners failed to carry burden of proof that landmark designation denied them "essential use of their property"]; *Church of St. Paul and St. Andrew v. Barwick*, 67 N.Y.2d 510, cert. denied, 107 S.Ct. 574 (1986) [5 PLR 3017] [claim that historic designation effects unlawful taking not ripe for review]; *United Artists Theater Circuit, Inc. v. City of Philadelphia*, 635 A.2d 612 (Pa. 1993) [12 PLR 1165] [historic designation is not a taking requiring compensation].

generally rests on the property owner.³⁶ The owner must be able to demonstrate that denial of the requested action will result in "economic hardship" as defined under the prevailing statute. The evidence that must be provided in consideration of an economic hardship claim will vary from jurisdiction to jurisdiction. For example, a number of communities, such as Pittsburgh and Chicago, require a property owner to establish, among other things, that the property cannot be sold.³⁷ The general rule of thumb, however, is to require the submission of evidence sufficient for the reviewing body to analyze a hardship claim.³⁸

Note that, while the burden of proof rests on the applicant, a reviewing court will often look at the "record as a whole" to determine if substantial evidence supports the commission's determination, or whether the commission's decision was "arbitrary or capricious." Thus, it is important to ensure that a complete record is developed.³⁹ Economic hardship procedures should generally provide commissions with the opportunity to develop the record by hiring its own experts⁴⁰ and hearing evidence presented by both the property owner as well as interested organizations.

Providing Relief. As previously noted above, economic hardship provisions typically offer communities a second chance to save a building by allowing the local government to develop a relief package once hardship

³⁶See, e.g. West Palm Beach, Fla. Ordinance No. 2815-95 § 15(b). ("The applicant has the burden of proving by competent, substantial evidence, that the denial of a permit has caused or will cause an Unreasonable Economic Hardship to the owner of the property.")

³⁷Note that some courts have ruled that a property owner must demonstrate that the property could not be sold to establish a regulatory taking. See e.g. *Maier v. City of New Orleans*, 516 F.2d 1051 (5th Cir. 1975) and *City of Pittsburgh Historic Review Commission v. Weinberg*, 676 A.2d 207 (Pa. 1996) [15 PLR 1086].

³⁸This may require the submission of detailed information such as the price paid for the property, the value of the property before and after the proposed action, the amount of debt service/equity in the property; historical levels of income and expenses, the ownership structure and income tax position, the condition of the property and feasibility for renovation, and so forth. See, generally, Richard J. Roddewig, "Preparing a Historic Preservation Ordinance", *PAS Report No. 374* (American Planning Ass'n 1983), pp. 25-28.

³⁹In *Indianapolis Historic Partners v. Indianapolis Historic Preservation Commission*, No. 49D01-9107-CCP-0813 (Ind. Sup. Ct. Sept. 15, 1992) [11 PLR 1139], for example, the court ruled that the owner had established by "clear and convincing" evidence that an office building could not "be put to any reasonable economically beneficial use for which it is, or may be reasonably adapted without approval of demolition" where the evidence in the record almost entirely reflected the owner's position. In ruling against the commission in this case, the court found the owner's experts to be especially convincing where the commission had made no attempt to refute the evidence or offer any support for its position that alternative uses may be feasible.

⁴⁰See, e.g. section 15(a) of the West Palm Beach Ordinance authorizing its historic preservation board to solicit expert testimony or require that the applicant submit specific information.

has been established. The process and form of relief available to property owners upon demonstration of economic hardship will necessarily vary from property to property and from jurisdiction to jurisdiction.⁴¹ Examples range from substantial modification of a current proposal to property tax abatement to direct financial support through a combination of grant money and favorable loans so as to make renovation an economically viable option.

⁴¹New York City, for example, requires the formulation of a plan for relief upon a "preliminary" finding of hardship, while Chicago provides for the development of a plan after an actual finding of hardship has been made. Some experts suggest that the New York approach places a community in a stronger bargaining position and allows more time for development of an acceptable proposal for relief. An actual finding of hardship is made only upon a determination that adequate relief is not available. Both the New York and Chicago approach will be discussed in greater detail in Part 3 of this article.

Congress Acts to Curb Excess Benefits by Nonprofit Insiders

by Andrea C. Ferster

In July 1996, Congress passed new rules designed to protect the assets of both Section 501(c)(3) and Section 501(c)(4) organizations from persons who receive "excess benefits" as a result of their position of influence within such organizations.¹ The new law, entitled the "Taxpayer Bill of Rights 2," gives teeth to the existing ban against "private inurement" by granting the Internal Revenue Service (IRS) authority to impose stiff penalties on participants in improper transactions, and on board members who fail to take action to prevent such transactions. The law also broadens the requirement by making it apply, for the first time, to Section 501(c)(4) organizations. Finally, the law expands the present public disclosure and reporting obligations of tax exempt organizations, and increases the penalties for failure to comply with these requirements.

Historic preservation organizations and those serving as individual members of a Board of Directors should be aware of these changes. Under the new law, for example, organizations should prepare and be able to produce data relied upon in establishing compensation levels. Organizations should also be aware that copies of their Form 990 (annual informational returns for non-profit organizations) must now be provided upon request.

Excess Benefit Transactions

Congress enacted this latest round of rules in an effort to discourage "excess benefit transactions," which are, in essence, transactions involving excessive compensation or other financial arrangements with "disqualified persons" (i.e., nonprofit corporate insiders) that violate

*A.B., Sarah Lawrence College, 1981; J.D., George Washington University, 1984. Ms. Ferster is an attorney in Washington, D.C., whose practice focuses on land use, historic preservation, and tax exempt organizations. © 1996, Andrea C. Ferster.

¹Pub. L. 104-168, amending sections 4958, 6033, 6104, 6651, and 6658, and adding new sections 4958, 6116, and 6716 of the Internal Revenue Code.

MEMORANDUM

TO: File

FROM: Robin Ziek

SUBJECT: 3920 Baltimore Street, Kensington

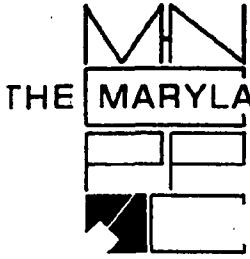
DATE: October 6, 1997

Steve Cary, M-NCPPC staff arborist, and I went to this site to look at the redbud which sits close to the property line between 3920 and the proposed new building lot at 3922 Baltimore. We met with Cary Hoobler.

The tree appears to be in good health. There is some deadwood on it, but Steve said this is to be expected with a tree of this age. We discussed pruning it, and Cary and Steve talked about pruning off the one limb which really overhangs the proposed new building lot.

There does not appear to be enough room at the far rear of the property to build a new house. Perhaps something in the range of 20 x 25 could be built here. The garage would have to be moved, and perhaps the new building could come forward towards the street on the west side of the lot, away from the redbud.

One possibility is building the new house in the middle of the lot, using the back end of the neighbor's porch and Ms. Ahearn's side door for a line of building. In this way, the new house would have a deed front yard, which could still read as open garden space, leaving a lot of room between the two existing structures. The garage would have to be moved. I suggested that the optimum location would be the rear of the new building lot, so the structure would stay in its approximate location and relation to the existing residence. It could serve as a garden shed for the new house. There would be no garage structure, and the driveway would have to be paved in something other than black asphalt. I suggested either a pea gravel, or the paving bricks. The front yard could be heavily landscaped as well.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

FAX TRANSMITTAL SHEET

**Historic Preservation Section
Department of Park & Planning**

Telephone Number: (301) 495-4570

Fax Number: (301) 495-1307

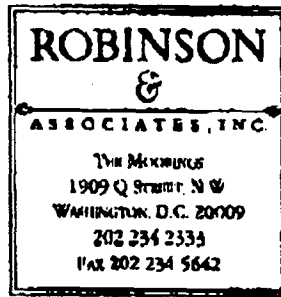
TO: CARY HOOBLER FAX NUMBER: 301-593-1930

FROM: ROBIN ZIEK PHONE NUMBER: _____

DATE: NOV. 13, 1997

NUMBER OF PAGES INCLUDING THIS TRANSMITTAL SHEET: X 5

NOTE: I understand we have a meeting Monday morning -
Thought you should have a copy of these letters which
we received for last night's [postponed] meeting.
Robin



November 11, 1997

Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: 3922 Baltimore Street (Lot 25, Block 11), Kensington Historic District

Dear Commissioners:

I have been asked to review development plans for the site at 3922 Baltimore Street in the Kensington Historic District and to evaluate their potential impact on the architectural and historical significance of the historic district. In making these comments, I draw on over 20 years of professional experience in the fields of architectural history and historic preservation. This assessment has included on-site study of the site (its spatial relationship and visual character), as well as a review of key historic designation and planning documents.

I came away from the study of development plans for this site with a clear view that the Historic Preservation Commission's denial (4/23/97) of the applicant's request to build a new house and garage is a correct finding. I also strongly concur with the current staff report (11/12/97), evaluating subsequent revisions to the development plan, that those revisions still fail to merit approval. It would be inappropriate and detrimental to the character of the historic district to allow the use of this narrow lot for new construction of this size and scale - encroaching on the two adjacent primary historic resources by a mere 20-foot distance. It would seriously erode the historic streetscape in this notable section of the historic district.

The significance of the Kensington Historic District is defined in four key planning documents: the Maryland Historic Sites Inventory Form, the National Register of Historic Places Nomination Form, the Montgomery County Planning Board's historic district recommendation, and the Master Plan Amendment. The basis for the Kensington Historic District is clearly laid out in these documents. Several key phrases from the Planning Board document and the Master Plan Amendment identify critical characteristics of the historic district and define its significance. These include: 1) large lots, 2) uniformity of scale, 3) cohesiveness of streetscapes, and 4) park-like setting. Each of these justifications for the designation of Kensington as a historic district on the Master Plan would be violated by the current development plans.

I urge you to deny approval for this proposed construction, which would be inappropriate and inconsistent with the preservation, enhancement, and ultimate protection of the historic district.

Sincerely yours,

Judith Helm Robinson
Principal

3915 Baltimore Street
Kensington, MD 20895
November 11, 1997

George Kousoulas, Chairperson
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Chairman Kousoulas:

The Local Advisory Panel (LAP) met Saturday morning to review the plans submitted by Carey Hoobler for a preliminary consultation for new construction at 3922 Baltimore Street, Kensington. During the meeting, the LAP discussed Plan A and Plan B. They noted that Mr. Hoobler had changed the design and lowered the height, but little else had changed since his application on April 23, 1997.

The LAP compared the proposed lot coverage under plans A and B with that of the average for the south side of Baltimore Street and the north side of Prospect street. For plan A lot coverage is almost 100% greater without the garage and 145 % greater with the garage. Plan B is almost 75% greater without the garage and 133% greater with the garage. Even more striking is what happens to the distance between houses with the construction of either A or B. The average distance goes from the average of 87.3 to 10 feet and this happens two times once on each side! The distance between houses is 400 percent less than the minimum distance between the houses in that area of the historic district.

In addition to discussing the irreversible damage to the district posed by these plans, the LAP reviewed a letter from Mr. Mark Edwards, Deputy State Historic Preservation Officer of the Maryland Historical Trust (MHT) to Mr. Steven Karr, a former Chairman of the Montgomery County Historic Preservation Commission on November 17, 1988. It was written with respect to proposed construction on the side yard of 10234 Carroll Place, a Queen Anne house which is one of only a few buildings identified as "individually significant," either historically or architecturally, in the National Register nomination for the Kensington Historic District. The property at 3924 Baltimore Street, adjacent to Hoobler's proposed construction, like Carroll Place was identified in the National Register nomination as "individually significant."

Mr. Edwards wrote in 1988 that although his office could not offer an informed opinion at that time on the design details of the proposed development, "We do, however, have a sufficient understanding of the concept of the development to be able to assess its general effect within the context of the district listing on the National Register of Historic Places.

It is now almost exactly nine years since Mr. Edwards wrote to the HPC, but his comments apply equally well tonight and I will quote the remainder of the letter:

In this location, there are Queen Anne and Foursquare houses with large yards and lawns set back from the street in a wooded, open setting. There is uniformity among the houses, a quality of openness and a rhythm to the streetscape, and a defined sense of time and place. These are the factors which were cited as the basis for significance in the National Register nomination for the district:

The district is significant primarily for the collection of late 19th and early 20th century houses which stand in a turn-of-the-century garden-like setting of curving streets, tall trees, and mature shrubbery. The houses, which exhibit the influence of Queen Anne, Shingle, Eastlake, and Colonial Revival styles, have a uniformity of scale, design, and construction materials, that combine with their juxtaposition and placement upon the gently sloping terrain to create a significant urban neighborhood which still retains much of its early 20th century environment.

It appears that any new construction on the two lots in question would have some degree of adverse effect on the qualities from which the district derives its historic significance. The setting of the house at 10234 Carroll Place, with its large yard and extensive shrubbery by the proximity of new buildings on either side. The historic streetscape of large wooded lots and the sense of time and place conveyed by this district would be changed by the introduction of greater density.

The Kensington Historic District previously has experienced some development that is incompatible with the characteristics that qualified the district for listing in the National Register. However, that development has not been of sufficient magnitude to jeopardize continued listing. We are not in a position to judge whether the proposed development would alter that situation, but a significant trend in its direction certainly would.

In addition to the careful review afforded by your Commission, we encourage continued efforts to secure the donation of historic preservation easements within the district to Montgomery County or the Maryland Historical Trust.

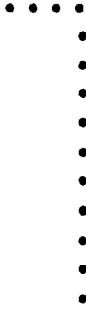
We hope that our comments will be useful to the Commission in your important deliberations.

The LAP urges the Historic Preservation Commission to inform the applicant that the plans for this lot would not only irretrievably alter the "uniformity of the houses, the openness and rhythm of the streetscape and the sense of time and place, but may also jeopardize Kensington's continued listing as a National Register Historic District.

Thank you for the opportunity to share our concerns.

Sincerely,

Barbara H. Wagner, Chair
Kensington Local Advisory Panel



To: Gwen Marcus Wright
Company:
Fax number: (301) 495-1307
Business phone:

From: Barbara Wagner
Fax number: +1 (301) 949 5016
Business phone:
Home phone:

Date & Time: 11/11/97 9:40:06 PM
Pages: 4
Re: Baltimore Street Preliminary Consultation

Please share the LAP testimony with the Commission.

3915 Baltimore Street
Kensington, MD 20895
November 11, 1997

George Kousoulas, Chairperson
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

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In addition to the careful review afforded by your Commission, we encourage continued efforts to secure the donation of historic preservation easements within the district to Montgomery County or the Maryland Historical Trust.

We hope that our comments will be useful to the Commission in your important deliberations.



To: Gwen Marcus Wright
Company:
Fax number: (301) 495-1307
Business phone:

From: Barbara Wagner
Fax number: +1 (301) 949 5016
Business phone:
Home phone:

Date & Time: 11/11/97 9:40:06 PM
Pages: 4
Re: Baltimore Street Preliminary Consultation

Please share the LAP testimony with the Commission.

3915 Baltimore Street
Kensington, MD 20895
November 8, 1997

Ms. Gwen Marcus Wright
Coordinator
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Ms. Marcus:

The Local Advisory Panel (LAP) met this morning to review the plans submitted by Carey Hoobler for a preliminary consultation for new construction at 3922 Baltimore Street, Kensington. During the meeting, they also reviewed the recently-approved Historic Preservation Commission Rules, Guidelines, and Procedures. During their review, the LAP noted the Hoobler preliminary consultation request did not meet the scheduling requirement established in the rules document in that plans were not filed with staff three (3) weeks prior to the meeting date for which it is scheduled.

The LAP also noted the plans are incomplete in that there are no plans for the garage shown as 22 feet x 22 feet which to us seems to be significantly larger than the existing historic auto house.

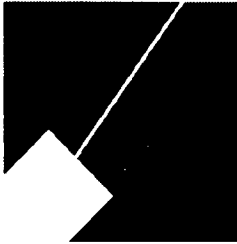
Although the effective date of the HPC rules' document is subsequent to the filing of the preliminary consultation, the LAP is asking the HPC to act in accordance with the new regulations and defer the Carey Hoobler preliminary consultation. Prior to re-scheduling the preliminary consultation, please ask the applicant to describe his plans for the 22 x 22 square foot garage.

Thank you for considering our request.

Sincerely,

Barbara H. Wagner, Chair
Kensington Local Advisory Panel

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

November 10, 1997

Ms. Barbara H. Wagner
Chair, Kensington Local Advisory Panel
3915 Baltimore Street
Kensington, MD 20895

Dear Barbara:

Thank you for your letter of November 8, 1997, with comments about Carey Hoobler's request for a Preliminary Consultation for new construction at 3922 Baltimore Street, and your review of the newly approved HPC regulations.

As you know, Carey Hoobler has been exploring the possibilities of new construction at 3922 Baltimore Street. The HPC comments in their denial of Mr. Hoobler's previous HAWP for this property have been useful in terms of clarifying the constraints at the site. Mr. Hoobler discussed various options with staff, including applying for a new HAWP to be reviewed at the November 12th HPC meeting. Staff recommended that the Preliminary Consultation format would provide a better opportunity for a discussion with the HPC, especially as Mr. Hoobler wished to provide two alternate proposals.

Staff made Mr. Hoobler aware of the deadline of October 22nd for the Preliminary Consultation request (3 weeks before November 12th), noting that all materials for the Preliminary Consultation should be provided directly to HPC staff. Mr. Hoobler received his architectural materials late, and faxed the request to our office on October 23rd. Staff always tries to allow all applicants a little flexibility, as long as submissions do not conflict with our schedule for public noticing, and research and preparation of the staff report on the proposal. Although technically one day late, we felt that Mr. Hoobler's submission could be accepted and scheduled for November 12th.

As per our regular procedures, this office provided a copy of all Kensington applications scheduled for November 12th directly to you via FAX, and we also provided 15 copies of all the Kensington applications to Louise Myers, of the Kensington Town staff. With all this in mind, we feel it is appropriate to proceed with the Preliminary Consultation for 3922 Baltimore Street on November 12th.

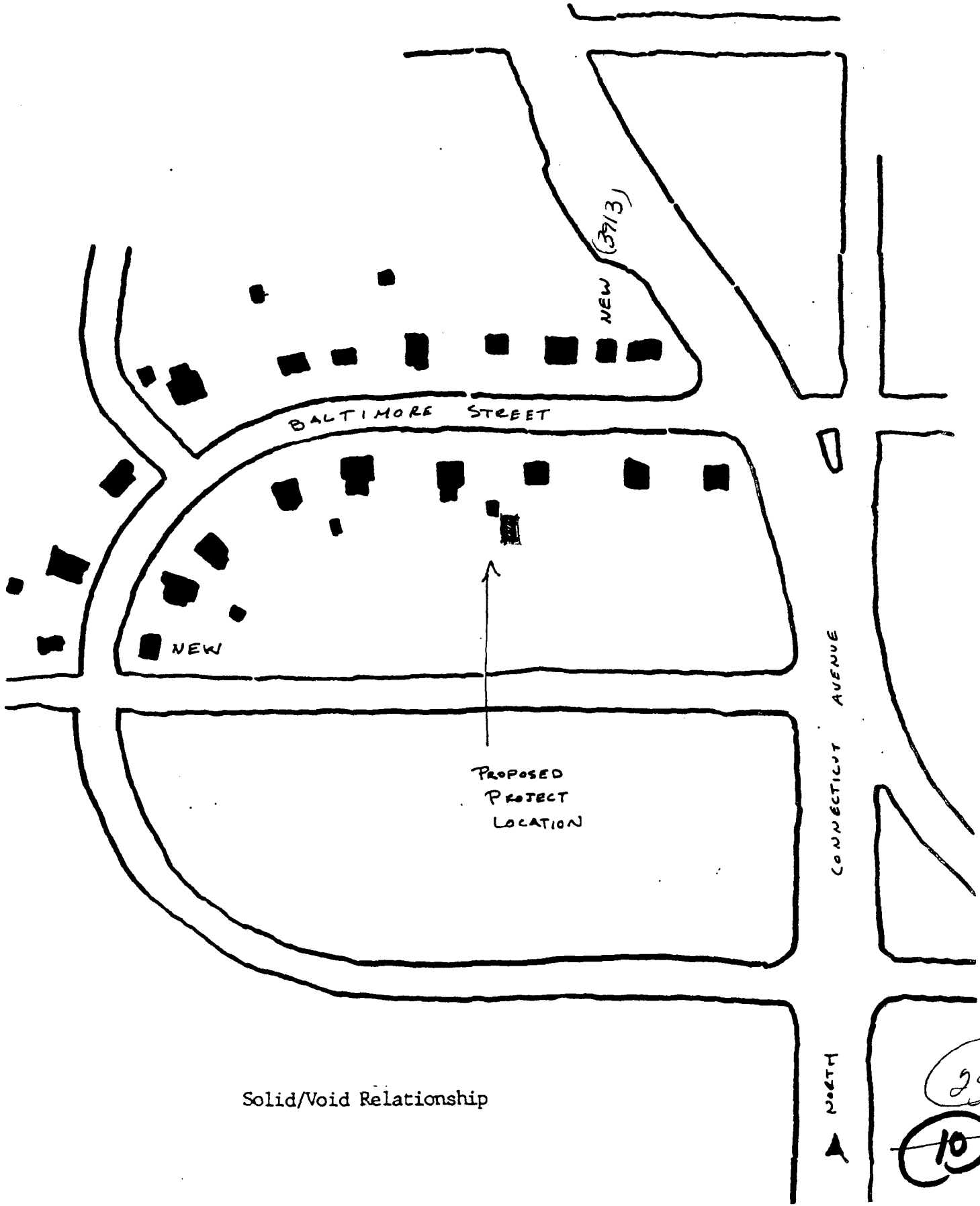
The level of detail provided in this Preliminary Consultation request is consistent with the less formal nature of such a proposal. Although drawings of the potential two-car garage were not included, staff felt that there was sufficient information to allow for staff review and comments on the overall proposal. Further drawings of the two-car garage were not required by staff. In fact, as noted on pages 6 and 7 of the staff report, staff feels that the concept of a two-car garage is inappropriate for this site and out of character with the historic district. Staff feels that a proposal that includes a two-car garage at the rear with extensive driveway could not be recommended at this location.

I hope this answers your questions regarding the intake on this Preliminary Consultation request. We hope the Kensington LAP will provide comments on the feasibility of the different design proposals that have been submitted to the HPC for their consideration, as local participation is very important to this process.

Sincerely,

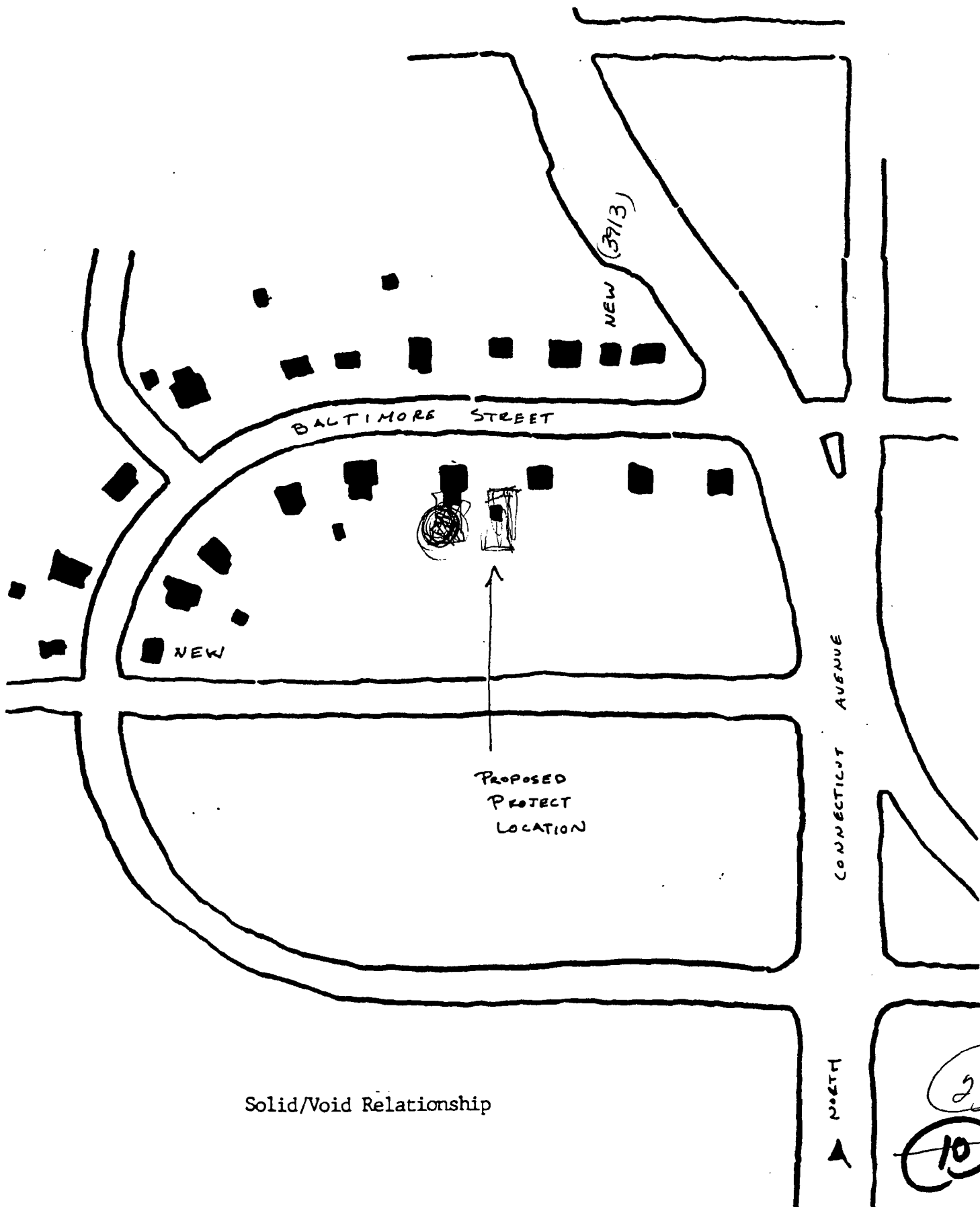
A handwritten signature in cursive script that reads "Gwen".

Gwen Wright
Historic Preservation
Coordinator



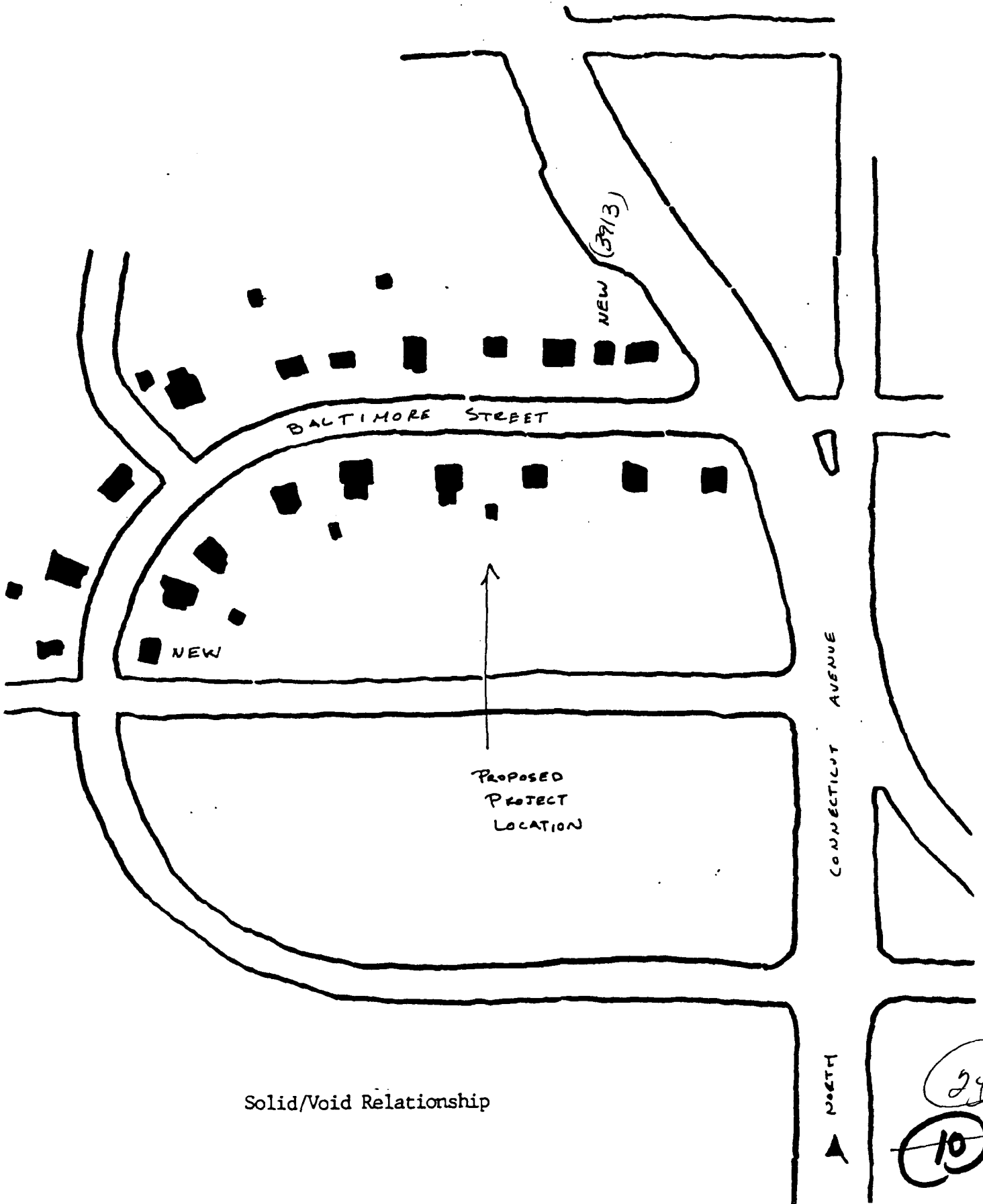
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3915 Baltimore Street
Kensington, MD 20895
November 11, 1997

George Kousoulas, Chairperson
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Chairman Kousoulas:

The Local Advisory Panel (LAP) met Saturday morning to review the plans submitted by Carey Hoobler for a preliminary consultation for new construction at 3922 Baltimore Street, Kensington. During the meeting, the LAP discussed Plan A and Plan B. They noted that Mr. Hoobler had changed the design and lowered the height, but little else had changed since his application on April 23, 1997.

The LAP compared the proposed lot coverage under plans A and B with that of the average for the south side of Baltimore Street and the north side of Prospect street. For plan A lot coverage is almost 100% greater without the garage and 145 % greater with the garage. Plan B is almost 75% greater without the garage and 133% greater with the garage. Even more striking is what happens to the distance between houses with the construction of either A or B. The average distance goes from the average of 87.3 to 10 feet and this happens two times once on each side! The distance between houses is 400 percent less than the minimum distance between the houses in that area of the historic district.

In addition to discussing the irreversible damage to the district posed by these plans, the LAP reviewed a letter from Mr. Mark Edwards, Deputy State Historic Preservation Officer of the Maryland Historical Trust (MHT) to Mr. Steven Karr, a former Chairman of the Montgomery County Historic Preservation Commission on November 17, 1988. It was written with respect to proposed construction on the side yard of 10234 Carroll Place, a Queen Anne house which is one of only a few buildings identified as "individually significant," either historically or architecturally, in the National Register nomination for the Kensington Historic District. The property at 3924 Baltimore Street, adjacent to Hoobler's proposed construction, like Carroll Place was identified in the National Register nomination as "individually significant."

Mr. Edwards wrote in 1988 that although his office could not offer an informed opinion at that time on the design details of the proposed development, "We do, however, have a sufficient understanding of the concept of the development to be able to assess its general effect within the context of the district listing on the National Register of Historic Places.

It is now almost exactly nine years since Mr. Edwards wrote to the HPC, but his comments apply equally well tonight and I will quote the remainder of the letter:

In this location, there are Queen Anne and Foursquare houses with large yards and lawns set back from the street in a wooded, open setting. There is uniformity among the houses, a quality of openness and a rhythm to the streetscape, and a defined sense of time and place. These are the factors which were cited as the basis for significance in the National Register nomination for the district:

The district is significant primarily for the collection of late 19th and early 20th century houses which stand in a turn-of-the-century garden-like setting of curving streets, tall trees, and mature shrubbery. The houses, which exhibit the influence of Queen Anne, Shingle, Eastlake, and Colonial Revival styles, have a uniformity of scale, design, and construction materials, that combine with their juxtaposition and placement upon the gently sloping terrain to create a significant urban neighborhood which still retains much of its early 20th century environment.

It appears that any new construction on the two lots in question would have some degree of adverse effect on the qualities from which the district derives its historic significance. The setting of the house at 10234 Carroll Place, with its large yard and extensive shrubbery by the proximity of new buildings on either side. The historic streetscape of large wooded lots and the sense of time and place conveyed by this district would be changed by the introduction of greater density.

The Kensington Historic District previously has experienced some development that is incompatible with the characteristics that qualified the district for listing in the National Register. However, that development has not been of sufficient magnitude to jeopardize continued listing. We are not in a position to judge whether the proposed development would alter that situation, but a significant trend in its direction certainly would.

In addition to the careful review afforded by your Commission, we encourage continued efforts to secure the donation of historic preservation easements within the district to Montgomery County or the Maryland Historical Trust.

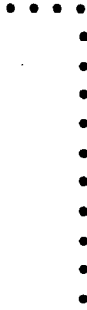
We hope that our comments will be useful to the Commission in your important deliberations.

The LAP urges the Historic Preservation Commission to inform the applicant that the plans for this lot would not only irretrievably alter the "uniformity of the houses, the openness and rhythm of the streetscape and the sense of time and place, but may also jeopardize Kensington's continued listing as a National Register Historic District.

Thank you for the opportunity to share our concerns.

Sincerely,

Barbara H. Wagner, Chair
Kensington Local Advisory Panel



To: Gwen Marcus Wright
Company:
Fax number: (301) 495-1307
Business phone:

From: Barbara Wagner
Fax number: +1 (301) 949 5016
Business phone:
Home phone:

Date & Time: 11/11/97 9:40:06 PM
Pages: 4
Re: Baltimore Street Preliminary Consultation

Please share the LAP testimony with the Commission.
