

→ How many times did Cary come back
to HPL ?
projects ?
times per projects ?

→ Find out date of Lossing's
house on Lot 24.

John Lossing. Dist 13 sub 15 # 1019378 Lot 23 BK 11
3924 Balt. St

10/4/77 129,500 L. F. 4986/112

Cop New Park, Meredith St.
Kenny - St. Paul
Hawkins Lane -

Ahearn Dist #3 # 03186525
01018277 Lot 26

~~3916 Baltimore St~~

3914 Baltimore St - Reynolds, O. Craig
L. 2891/181

Kensington

4/2/93

Harry McPherson - lawyer living on Carroll Place

across from Mann House...

John Sharpe - has 5 lots ...

o o o o o o o

(Eddie Luther) County Attorney ...

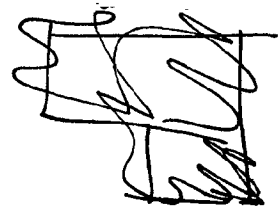
Zoning goes to maximum allowable height & size. Not necessarily achievable.

HP - max. allowable is the ceiling, but may be much less by law.

April 21st:
(available until 2³⁰ pm. ?) (\$125/hr.)

(after 3 hrs afternoon) :

Matt Herman.
1970's



(3)

= "Clear criteria" - always present w/ vision of Kensington.

- All of that could happen - especially ~~if~~ if HPC is unbound of this kind of proposal

→ It is a problem to the county.

3940
New house on corner of Salt + Prospect } both large or
New house on Prospect } large lots.
"122.5'"

→ They don't have to look Victorian
3918 Prospect = Colonial Georgian Revival

(grading plan)

Q: What is size of Lussigny home?

Q: What does vision of K say about coverage for 3920 + 3924?

→ Was there grading plan for St. Paul? in Hubble's Case...
or Wash. St?
or

Covenant: checked Land Records -

standard practice

starting date

Variation based on value of new house

slightly the form, diff. classes of neighborhoods

CC. has them too. - standard process.

Mrs. Hendricks paid \$2000.

SPD: 1
3SPD: 2

Call Joe Lorenzeman - did he understand
the project when he wrote the
letter to BSA?

Jeanie L. Ahearn, et al. 9920 Bathmore
 Block 11 Lot 25
 Lots 26 + 27
 13-015-01018977 DST. ACCT
 P60
 Deed: 8914/665

25,875 sf. 944 Bldg. A
 Purchase date: 7/19/89 \$ 370,000
 Land value: 233,870
 Bldg: 218,260
 Total \$ 432,460

Schedule

Due clearing arguments - May 27th
 + letter to file
 a rebuttal - May 28th
 Discussion - June 2nd - Markham

Get transcripts for 5913 Bath. St.

ST 342. Study space

Recommended
 featuring Zoom 90-WK \$259⁰⁰
 water resistant, V case
 S.Y. warranty.
 markers
 + 2 trays 88 slides cost
 \$11⁰⁰ cost ea

Liber 8914 Folio 665 July 12, 1989

Virginia H. Brown to Jeanie L. Ahearn $\frac{1}{2}$
+ Vincent P. Ahearn, III + Rebecca Ahearn $\frac{1}{2}$

\$345,000

Lots 25, 26, 27 Block 11
Kensington Park

Covenant for 7 years to not build a new dwelling
on the property. - not to sell any lot
separately but only as an entire property.

Same property described in Liber 3845, F. 521

L 3845 F 521 March 19, 1969

Walworth Brown ^(married) + Marvin Brown to
Virginia Brown. for \$10

Lots 25, 26, 27 Bl. 11 Kensington Park

Same as described in L. 2620 F 51

Fannie Brown Life Tenant having died 1/11/68

L. 2620 F. 51

June 29, 1959

Fannie Brown, widow + Walworth Brown +
Virginia Brown
↙ married

Frederick Brown + Virginia Brown parents of Fannie (died 1925)
(↑ died 1959)

For \$10 Fannie gives to Walworth + Virginia the property.

Lots 25, 26, 27 Bl. 11

Subject to life tenancy.

L 270 F 270

April 1, 1918

~~of Arthur Hendricks~~
Alice Exley, widow; Ralph Hendricks + Edith Hendricks; +
Leland Hendricks + Alice Hendricks sell to
Frederick Brown + Virginia Brown

for \$10

Lots 25, 26, 27

Subject to covenants:

in deed from Bernard Warner + Mary Warner to Arthur Hendricks

May 19, 1899, Libert T.D. #8 Folio 355 and also
from Warners to Ida V. Hendricks Aug 1, 1903 Liber T.D #26, F. 465

No covenants June 12, 1899 Lots 26, 27 to Arthur Hendricks \$ 3500
Covenants Aug 1, 1903 Lot 25 to Ida Hendricks \$ 500

Covenants 1st shown in deed records & July 15, 1899

Then w/ varying amounts from 2500 - 700.

(July 19, 1901) \$ 700 is in Block 13 which has
W. section of Washington St

- Owner may indeed have been

~~planning~~ planning areas in his
form of higher status (expense) &
lower status (expense).

For comparison, Ch. Ch. covenants at
no time stipulate
4/29/1899. cost of houses of \$5000 along main
& 3000 on side streets.

perception of
LACK - NO GUIDELINES, INCONSISTENT

NOW WE HAVE GUIDELINES. RES.

Alice Exley

Ralph + Edith Hendricks (married)

Leland + Alice Hendricks (married)

heirs of Arthur
Hendricks +
Ida
Hendricks both
deceased

Wks. B. Warner + Mary Warner (married) sold to

Arthur Hendricks property under L. TD 8 F 355 5/19/1899
married

and Warner sold to Ida Hendricks 8/1/1903

L. TD 26 F 465

L TD 26 F 465

August 1, 1903

for \$500.00 Brainerd Warner + Mary Warner sell to Ida Hendricks,
wife of Arthur Hendricks
Lot 25

(Standard
Covenants)

Ida, heirs + assigns agrees to a ^{front yard} set back of 30'
shall build no hotel tavern, drinking saloon, blacksmith, Carpenter
or wheelwright shop, steam mill, ... or bldgs used for any
offensive purpose or occupation hereafter forever...

How does
this compare
to CC?

she + her heirs shall + will build a substantial brick, stone or
frame dwelling-house of not less than \$2500 value

Kensington Park Subdivision, described in the Plat as five in circuit
Court.

L. TD & F. 355

Arthur Hendricks June 12, 1899

Brainard Warner to Arthur Hendricks of Wash. D.C.

\$ 3500

Lots 26, 27 Block 11
Kensington Park

NO COVENANTS.

note ~~#~~ L. TD & F 319. Warner sells to Hart

Lots 4 & 5 in Block # 9

for \$ 10⁰⁰

June 2,
1899

NO COVENANTS.

Ch. Ch. Land Co. sells Lot 3 Block 45 on Melrose St.

for \$1500

L. TD &

F 217

houses to cost no less than \$5000 on Connecticut, or

Covenants - No stables carriage-houses, trade, etc.

less than

\$3000 on side streets

(Nellie Chandler & Ch. Ch. Land Co.) 4/29/1899

~~#~~ L. TD & F 352

Warner to Adra Martin

6/12/1899

for \$3375

Lot 14 in Block 10 in Kensington Park

NO COVENANTS.

~~L. TD 8 F. 355~~

L TD 8 F 370 CC. Rand Co to John Weaver

6/15/1899

\$4000

Bowdenville Rd + Erbe Rd 258' x 140'

CC. typical covenants

w/ covenants against "trade" bldgs. \$43,500

L. TD 8 F 380

at same time, i.e., land on Laybournville sold

\$175 127' x 264'

6/17/1899

L. TD 8 F 418

~~William Deane~~ William Deane to Warner!

7/1/1899

For \$5⁰⁰

Lots 21, 22, 23 Block 11 of Kensington Park

(No covenants)

L. TD. 8 F ~~418~~ 455

7/15/1899. Deed of Horace Eaton to

Robert Martin 810 Lot 13 Block 10

see F. 456 * same covenants as in Ida's deed! No trades bldgs; substantial house no less than \$2500

1st use of Standard covenant language

L.T.D 8 F 466

Warner to Herbert Wright 7/20/1899

\$1425 for 52, 53, 54 Block ~~12~~ 13
Kensington Park

* Some covenants as Ida's

Standard language about $\left\{ \begin{array}{l} \text{Zoning, setbacks, } \text{~~price~~} \\ \text{use} \end{array} \right.$ primary location,

Minimum house cost - brick, stone or
frame no less than \$2,000!

L.T.D 17 F 43, 51, 54, 64, 185, 271, 349,
363, 412, 440, 442

#43 ~~4/18/1901~~ 3/27/1901: Walter Johnson - wife Lizzie
sells to Warner Inc
\$52.62 Lots 18, 19, 20 Block 12

#51 Warner to Laura Peter Feb 9, 1901
\$300 Lot 48 Block 13
w/ standard covenants
house > \$1500

#54 ~~4/18/1901~~ Joseph Canby sells to Warner Lot 20 Bl. 11
April 18, 1901 (no covenants)

#64 Trading deal w/ Beltzleys!
w/ covenants! (Open Echo)
N/A

#85 Warner sells to John Stubbs May 11, 1901
Lot 6 Bl. 7
w/ covenants
house value of > \$1200

#271 Warner sells to Terrell June 20, 1901
\$10 Lot 20 Bl. 11
both parties "of Kensington"
No covenants.

349. Carrie Scott sells to Warner for \$10⁰⁰
July 16, 1901
Lots 26, 27 Block 3
No covenants.

363 Warner to Walter July 19, 1901
\$600 Lots 59, 60, 61 Block 13
Covenants
house > \$700

#412 McCross to Warner \$10⁰⁰
Lot 1 Bl. 3. No covenants

#440 - Aug. 21, 1901.

MA hand - Bldg Co to Warner

Lots 4, 5, 6, 7 Bl 4

Lots 6, 7 Bl. 5

Lot 15 Bl. 6

for \$ 10⁰⁰

Write down questions for Cary Hubble:

get to Dr John Lossing's home?

John Lossing showing up for testimony? or a letter?

Sean Scanlon - (949-2424)

Requests:

take slide of Cary's photograph/enlargement of
info.

ON 10/11/04
DHR

5016

March 9, 1998

- 1. Write Denial for Feb 25 meeting

~~Call Khalid for Drawing~~

My Role:

Master Plan Designation - variety of bldg styles, Victorian garden style.
 Slide tour of District
 List of Exhibits to shoot for slides
 - pieces of Vision

Slides Need

- ✓ wide-4 to include 3920 + 3924..
- ✓ both sides of 3920

(Pull emphasis on garage)

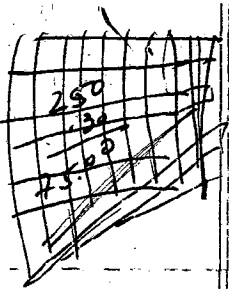
✓ Slides of 3924.

✓ Same view of Schmidt's house + spacing to next door house towards down - to include entire S. house.

✓ Other small houses in Kensington = get top points

→ Write down 3 bullet points in Cary's proposal = other new construction
 Wash St. + line drawing - slide

Small Houses
 Photograph
 ① Prospect St - next the church parking lot
 3700 ② Wash St - east home on south side...
 ③ Sam Schmidt's 1078 Face east St.



May 6, 1998

Continuation of BOA hearing re Kensington

Jack McCray on Baet. St. across from lot 25. They support
new construction here. 3919 Baet. St.

Walter Schmidt - @ 3913 Baet. St.

12/20/87. approval for home + driveway + garage ^{2-car}

Demolition of ~~the~~ Environmental Screening.

Q: Is this like a age cut? one of BOA asked

^{be illustrated with}
2 story would ~~refer to~~ be floor plans.

1 1/2 story provides smaller floor area than the 1st floor, +
substantially smaller, due to roof heights.

2 stories provide 2 equal floor areas.

May 5, 1998

Ch: "Contract Owner of Mrs. Ahearn's lot"

- "2 opinions about this lot."
 - "I've built in historic districts in N.C."
 - "overstated = embellished"
 - "conviction"
 - "open space"
 - "side gardens"
-) Not in Master Plan.

- M.P.
- (1) environmental setting is defined.
 - (2) Victorian garden is stated
 - (3) Setbacks refer to side yards.

Proposal:

Re: Noting buildings in Master Plan
Doesn't have to be listed
by fact in Chap. 24A.

Re: Repair of structures.
Not relevant because of demo-by-neglect

→ What about property across the street which
is also Primary, & measures ca 22x24?

+ Why would you want a transition? in the street?
The street is a collection -

HPC: 7 yB 1988-1995. by Joe Brennan

3429 Prop.
5913 Burt St

He is a Builder/Contractor

②

May 5, 1998

Re: his photomontage -

focusing on the house themselves.

But not in the same ~~Residential Care area~~
where building patterns differed.

Could bring up owner's Covenants which
stipulate prices for new houses
of no less than _____

\$ 700 - 2500 Range.

Needs more research,
but could be by different areas in
Kensington.

Re design: Bungalow -

Q: The HPC didn't agree on a bungalow pushed back
on the lot.

What is the permissible width in Kensington? 30' wide -
on a 50' lot, w/ 10' side yard setbacks.

Not suitable on Baltimore St.

Note Time Factor NOT our issue.

Host Pl: Set Backs refer to side yard!

1947 - 1948 - 1949 - 1950 - 1951 - 1952 - 1953 - 1954 - 1955 - 1956 - 1957 - 1958 - 1959 - 1960 - 1961 - 1962 - 1963 - 1964 - 1965 - 1966 - 1967 - 1968 - 1969 - 1970 - 1971 - 1972 - 1973 - 1974 - 1975 - 1976 - 1977 - 1978 - 1979 - 1980 - 1981 - 1982 - 1983 - 1984 - 1985 - 1986 - 1987 - 1988 - 1989 - 1990 - 1991 - 1992 - 1993 - 1994 - 1995 - 1996 - 1997 - 1998 - 1999 - 2000 - 2001 - 2002 - 2003 - 2004 - 2005 - 2006 - 2007 - 2008 - 2009 - 2010 - 2011 - 2012 - 2013 - 2014 - 2015 - 2016 - 2017 - 2018 - 2019 - 2020 - 2021 - 2022 - 2023 - 2024 - 2025

1947

1948

3947

- of 2 story garage

1947 - 1948 - 1949 - 1950 - 1951 - 1952 - 1953 - 1954 - 1955 - 1956 - 1957 - 1958 - 1959 - 1960 - 1961 - 1962 - 1963 - 1964 - 1965 - 1966 - 1967 - 1968 - 1969 - 1970 - 1971 - 1972 - 1973 - 1974 - 1975 - 1976 - 1977 - 1978 - 1979 - 1980 - 1981 - 1982 - 1983 - 1984 - 1985 - 1986 - 1987 - 1988 - 1989 - 1990 - 1991 - 1992 - 1993 - 1994 - 1995 - 1996 - 1997 - 1998 - 1999 - 2000 - 2001 - 2002 - 2003 - 2004 - 2005 - 2006 - 2007 - 2008 - 2009 - 2010 - 2011 - 2012 - 2013 - 2014 - 2015 - 2016 - 2017 - 2018 - 2019 - 2020 - 2021 - 2022 - 2023 - 2024 - 2025

1948

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1961

1962

1962

1963

1963

Grading Plans - since 1994

9/16/94 - T.P. 7323 Cornell Ave

12/21/94 Brookville Lot 2
North Street

3/9/94 Fleming 3806 Wash St

14 W. Henry St.

(Topo at 2' intervals
on Lot 2
Brookville)

Huddle

Cup V. Park 10215 Merediton Ave 2/26/92 Prelim.

(Cross) Preston.) 4/8/92 HAMP

10221 Merediton Ave 9/2/90 Prelim.

10221 Mer. Prelim. 5/15/91

2/19/92

at 2' intervals
on Lot 2
Brookville
at 2' intervals
on Lot 2
Brookville

1/22/91 10219 Meredith

1st ARK review 12/19/90
applicant reduced height,
changed roof pitch, etc

Hawkins home 6/12/96

8816 Hawkins home

10535 St. Paul St 11/9/92. HAWP
Preliminary 5/27/92

		2.75
		2.95
(1)	Does 3913 or 3948 show up in V.K. ?	<u>2.95</u>
		8.75
(2)	Talk about picturesque movement - Downing, etc. Victorian Gardens.	
(3)	Tension between 24A & zoning	
(4)	HPC role in design, massing, size, Scale, etc.	

MEMORANDUM

TO: Historic Preservation Commission
FROM: Laura McGrath, Planning Specialist LM
SUBJECT: Continuation of Review of HPC Case 31/7-90P
DATE: January 16, 1991

Hoobler, Appl.
10219 Meredith Ave

As you may recall, the Commission first considered this case at its December 19, 1990, meeting. The Commission agreed with the applicant to keep the record open and asked the applicant to submit revised plans showing a house lower in height than that proposed. The revised plans, along with the original staff report, are attached. The height has been reduced by approximately 2' from 29.5' from 27.8'. Other changes have been made to the roof pitch, cornice and window widths and spacing in order to decrease the appearance of height. Staff, however, was not able to formulate a recommendation prior to distribution of the meeting packet. Staff will have a recommendation at the January 23 meeting.

Attachments

1. Revised Elevations.
2. December 5, 1990, Staff Report

2442E

(old address -
10215)

8/96

House requested
under this HAWP
never built.

New HAWP submitted
in 1991 by Patrick
Keating for different house.

PREPARED BY: Laura McGrath

DATE: May 1, 1991

CASE NUMBER: 31/7-91H

TYPE OF REVIEW: HAWP

SITE/DISTRICT NAME: Capitol View Park PROPERTY ADDRESS: 10215 Meredith Ave.,
Silver Spring

TAX CREDIT ELIGIBLE: No

DISCUSSION:

Commissioners may recall that the applicant met with the Commission in April for a preliminary consultation for new construction on this lot in the Capitol View Park Historic District. At that time, the applicant requested comment on a 2 story, front gable house measuring 40'6" X 28', with a rear wing measuring 15' X 8', and a wrap-around porch. The house was 27'5" in height. Also proposed was a 20' X 14' garage in the rear.

Upon review of these plans, the Commission expressed concern about the overall height and width of the proposed house and withheld further comment until more complete plans were submitted.

With this application, the property owner is requesting approval of construction of a house similar to that considered previously, measuring 40'6" X 28', with a rear wing measuring 15' X 8', and a 6' wide wrap-around porch. [NOTE: The plans submitted are "reversed" - the rear wing will be located on the south side of the house; the porch will wrap around the north side of the house.] The house will be covered in cedar shingles with an asphalt shingle roof. In response to Commission concerns, the applicant has reduced the height of the house to 26'10" and eliminated plans for a rear garage. Also submitted is a tree survey, showing that all significant trees are on the periphery of the lot; these will not be impacted by any new construction. As a reminder, the lot is 88'9" wide at the front property line and 114'19" long at the northern property line.

As background for new Commissioners, an application for new construction was approved for this property in January of this year (see approved plans attached). The approved application proposed a 2-story farmhouse-style house, 27'8" in height, 25' wide and 42' long with a 12' X 20' garage at the rear of the property. The application presently before the Commission differs from the previously approved plans primarily in the siting of the house on the lot (40'6" X 28' versus 25' X 42') and in its lower height. Both houses result in similar lot coverage. The applicant has noted that this house will be built for his own family and that the siting of the house as proposed meets his family's needs for space, recreation, and privacy better than the approved house's siting. As is shown on the site plan, this property has also been subdivided; new construction is possible on the Lot 11 which is to the rear of 10215 Meredith Avenue (Lot 10).

APPROVED _____

Patrick Keating, applicant

For Chairperson, Historic Preservation Commission

DISAPPROVED _____

Signature _____

Date _____

9120190062

FILING FEE: \$ _____

CASE NUMBER: N/A

TYPE OF REVIEW: Preliminary
Consultation

SITE/DISTRICT NAME: Capitol View Park PROPERTY ADDRESS: Lot 11 - 10215
Meredith Avenue

TAX CREDIT ELIGIBLE: N/A

DISCUSSION:

The applicant is requesting Commission comment on a proposal for new construction on this property in the Capitol View Park Historic District. This lot is to the rear of Lot 10, 10215 Meredith Avenue, for which new construction was approved by the Commission at its May 8 meeting. To the north of the Lot 11 is 10232 Capitol View Avenue, a 1 1/2 story Bungalow considered a primary resource in the Historic District and 10226 Capitol View Avenue, a two story brick Colonial, identified as a nominal resource. To the south is 10213 Meredith Avenue, a 1 story nominal resource. The area to the rear is wooded and belongs to another property on Capitol View Avenue. Of particular importance in this case is the proposed realignment of Capitol View Avenue, which would result in the road running through a portion of Lot 11 (see site plan). This in turn affects the area in which the applicant can build.

The applicant is proposing construction of a Cape Cod/Bungalow-style 2 story house with 2 front gable dormers. The house would measure 32' wide and 48' long, including a 10' wide front porch. It also should be noted that the rear 14' of the house is set in 6' on both sides. The house is 30' high. It will be sided in cedar shingles with an asphalt roof. Also proposed is a 12' X 20' detached garage, to be located at the end of the driveway into the property.

The proposed house will face the house to be constructed on Lot 10, 10215 Meredith Avenue. As you will recall, this house will be 40' wide and 26'10" in height. Because of the building restriction lines on the property, the house is sited closer to 10213 Meredith Avenue and extends about 10' beyond the southern edge of the proposed house on Lot 10. There a number of large trees on the property, primarily located on the northern and southern property lines.

STAFF RECOMMENDATION:

While construction on a rear pipestem lot is not an ideal situation for the historic district, it appears that the applicant recognized the need for a relatively low-scale house on this property. Thus, staff finds that the style, size and scale of the house proposed is appropriate to the area and to the Historic District. However, the proposed height is greater than that

PROJECT SITE

MAP OF H.D. walking
Approach from Conn. Ave, driving up Baltimore
View of adj. property, with east side lot + 3920
3920 Balt, looking west, over to 3924

Site of proposed construction, perspective view
including 3920 + 3924 adj. properties

walking into site

walking into site

Rear of yard: possible bldg site, looking beyond
to houses + yards on Prospect St

Shed for 3920 Balt + shed for property on Prospect
Property looking into lot, towards Prospect St

Property looking out of lot towards Balt St
3920 w/ adj. side yards.

Project Proposals

~~2~~ Site plans for 3 different submissions

Perspective w/ # 1

Perspective w/ # 2.B

Perspective w/ # 3

Tour of Kensington

Map

train station

Circle House - Warner's house

Carriage house

Keyes Library

Victorian QA on ~~Circle~~ Carrol Place + Fawcett

~~QA~~ on Shingle style Victorian 10545 St. Paul

3915 Buet - QA to 4-square exuberant

Colonial Rev. 3911 Buet

4-square single

Streetscape w/ 1880's, 1905's Buet. St.

Bungalow w/ new construction

Prospect St ~~St~~ new construction

Washington St - view, including new construction

Street view, 1900's on Carrol Place

Street view Buelthorne

Buet. Small 2-story ~~car~~ ~~portico~~ ancillary structure at rear

w/

Small garage or auto house 3929 Buet

Gardens

3923 Buet - parking to one side

3923 side yard garden

shared driveway - parking + garden

garden + garage of 3924

~~garage~~ garden

Small houses in Kensington

H.D.

~~3700 Washington St. - 1940's~~

3710 Washington St - 1940's +

10202 Carroll Place - 1960 +

~~10210 Carroll Place - 1890 20x28 (560 sf)~~

(main block)

has 1st story recent addition

10316 Fawcett St. - Col. Rev. 1920

10318 Fawcett St. - Col. Rev. 1960 25x30 (750 sf)

3906 Prospect St. - Col. Rev. 1950's w/garage

Prospect St - Bungalow 1920's ca. 900 sf

3919 Baltimore St - Col. Rev. 1920's ~~1890~~

2 slides

Takoma Park - Philadelphia Avenue

Front yard
Large setback

Spacing on Belt Street

3924 + 3928 Belt.

W. sideyard of 3919 (across the street) Garden

14' spacing between 3913 (new house) + 3911

3911, 3913,
3915
Belt.

Model of Large house / small outbuilding

(on Carroll Place + Fawcett St)

House

Carriagehouse

Site - relationship

If Emily talks
be careful that
she doesn't stick
to the numbers too
hard — they seem
to have a real problem
with us assuming
zoning authority.

Maryland Court Affirms Use of Police Power Through Land Use Regulations Which Protect "Environmental Settings" of Historic Properties

Until the decision by the Maryland Court of Special Appeals in *Coscan Washington, Inc. v. Maryland-National Capital Park and Planning Commission*, 590 A.2d 1080 (1991), there had been doubts about the real meaning of the apparent authority for Maryland historic preservation commissions to protect "structures with their appurtenances and environmental settings." Now, these doubts have been removed by a startlingly strong decision upholding the use of the Comprehensive Design Zone process in Prince George's County to protect the setting for Oakland, a privately-owned "former plantation manor house" from the 1820s.

Even though a state statute construed in *Coscan* applies only to Prince George's and Montgomery Counties, the language in more general enabling legislation for Maryland preservation commissions is similar and would almost certainly be identically construed.

The fact situation in *Coscan* was more basic than the court's complicated description made it seem. *Coscan* had acquired 196 acres outside Upper Marlboro, the county seat of Prince George's County, Maryland. It proposed to construct 357 attached townhouses on 114 acres of the site, and to construct 119 detached single-family houses on the remaining 81.78 acres. The *Coscan* decision involved an interpretation of a single condition attached by the county Planning Board to plans for the single-family houses.

Under the county's Comprehensive Design Zone process, an applicant works through three increasingly detailed steps: (1) Basic Plan; (2) Comprehensive Design Plan (CDP); and (3) Specific Design Plan (SPD). *Coscan* ran into problems when the Planning Board's September 1988 CDP approval included the statement that "[a]luminum and vinyl siding will be discouraged" but the SPD proposal "offered vinyl siding as the standard exterior finish on all sides of the units."

In early 1989, the Planning Board approved the SPD proposal with a crucial Condition 2 which led to the *Coscan* litigation:

Sixty percent (60%) of the total number of units shall have exterior elevations of one hundred percent (100%) (except foundations or chimneys) of either brick, stone, wood or

stucco. Of this sixty percent (60%), at least one-third shall have exterior elevations of one hundred percent (100%) brick. Units directly adjacent to the historic site shall be all brick. The various styles and materials used in the construction of units shall be distributed throughout the development to provide visual variety and interest.

At one point in its *Coscan* opinion, the court seemed to swerve toward a retrograde position already abandoned by courts in many other states by stressing its insistence that the police power not be used in Maryland for purely aesthetic purposes. (The Maryland court's *Coscan* decision was handed down five weeks prior to the Supreme Court of Pennsylvania's disastrous July 10, 1991 Boyd Theater decision.) The court stated decisively:

Essentially, the Commission argues that aesthetic considerations are always a matter of protecting and promoting the general welfare. We reject such an argument. To accept this argument would, in effect, validate all governmental attempts to regulate aesthetics as legitimate regulations for the general welfare. . . . A decision based solely on aesthetic reasons is invalid whether it completely prohibits or only partially prohibits certain acts. Moreover, simply because the zoning process used in this case is an alternative rather than a mandatory process cannot validate an otherwise invalid act. The freedom of an applicant to choose between alternative processes does not give the government the power to do that which the government cannot otherwise do. . . . Whether the Planning Board may regulate the type of material used in constructing homes depends on whether there were legitimate reasons for regulating building materials other than aesthetics.

The *Coscan* court found four valid reasons for supporting the Planning Board's decision:

In sum, the Planning Board's decision to impose Condition 2 and mandate that a minimum percentage of houses be wood, brick, stone or stucco was not based solely on aesthetics. That decision was also based on ensuring that the SDP conformed to the CDP, improving the quality of housing in Prince George's County, protecting a scenic area and preserving an historic area.

On one point the *Coscan* decision might appear at a quick reading to differ from previous Maryland court decisions or Attorney General's Opinions holding that localities wishing to create a local historic preservation program may not deviate from the provisions of the state enabling legislation once they begin to implement such legislation. (See "Updates" 1987-23 and 1989-17.) But *Coscan* now stands for the proposition that localities may already have *other inherent powers* to protect historic resources.:

Essentially, appellant argues that, when the General Assembly authorized the District Council to enact ordinances for the protection of historic areas, the General Assembly intended to restrict the [Council's] authority to regulate historic areas to this method. We find this interpretation of [the statute] overly narrow. . . . The statute provides that the power to regulate historic areas . . . is "in addition to any power or authority of the district councils to regulate by ordinance, planning, zoning or subdivision"

More significantly, the *Coscan* court showed a broad understanding of the Planning Board's legitimate interest in enhancing the settings in which the structures would be built:

It defies common sense to require the Planning Board to consider building design in a vacuum. Building design can only be evaluated effectively in the context of the environment in which the buildings will ultimately exist. An important consideration in this evaluation is the historical importance of not only the land on which the structures will be built, but the adjacent land as well.

After losing in its attempt to show that the county Planning Board had improperly rested its Condition 2 requirement on "aesthetic" considerations, *Coscan* also lost its argument that the Planning Board had gone too far in requiring that no artificial siding be used on all "facades" of 60% or more of the structures. The Comprehensive Design Plan for the *Coscan* project had stated in two guidelines:

The choice and mix of materials on the facades of buildings will provide an attractive living environment. Materials which will be encouraged include wood, stone, brick and stucco. Aluminum and vinyl siding will be discouraged.

If a side or rear elevation faces a street or common space, it shall be designed with the same attention to detail and in the same material as the front.

Coscan attempted unsuccessfully to argue an incompatibility between Condition 2 and the second of these CDP guidelines. The court found no incompatibility:

Condition 2 is not inconsistent with the second guideline. The second guideline applies only to those units whose sides or rear face a street or common area. Under the second guideline, the sides or rear of these units must be made of the same material as the front. Many of the 60 percent of the units which under Condition 2 are required to be all brick, stone, wood or stucco could be units whose sides or rear face a street or common area. Condition 2 implements the requirements of the second guidelines as well as the first.

Furthermore, the court found that the Planning Board had not misinterpreted the first of the quoted guidelines by interpreting "the term 'facade' to mean all four exterior elevations of a building":

[T]he term "facade" may mean all exterior sides of a building or the front of a building only. The fact that the Planning Board chose the more inclusive definition does not render its decision arbitrary or unreasonable.

Similarly, in *City of New Orleans v. Impastato*, 3 So.2d 559 (La. 1941), a Louisiana court read "exterior" expansively:

The word "exterior", as applied to a building, clearly means all of the outer surfaces thereof as distinguished from its interior or the portion enclosed by the outer surfaces. . . .

The last argument demolished in *Coscan* was that the county Planning Board acted improperly in imposing Condition 2 because it had not imposed a similar condition for a nearby development by another developer or for another development by the same developer. The court dealt decisively with each situation:

The Fox Chase subdivision was approved under the conventional zoning process. Conventional zoning is regulated under a separate statutory scheme. The requirements for zoning approval and the amount of control the Planning Board may exercise under conventional zoning differ substantially from the requirements and authority of the Planning Board under the Comprehensive Design Zone process. . . . Although the exact location of the Arbor Park subdivision is not clear, the record makes clear that Arbor Park is not adjacent to, or even in close proximity to, an historic site. . . . The Arbor Park development differs significantly in its environmental setting from the King's Grant development.

Coscan should immediately encourage other localities in Maryland to consider the possibility of a Comprehensive Design Zoning process of their own:

The CDZ process is an alternative to conventional zoning approval. The CDZ process is more flexible and yet more rigid than conventional zoning. "It is more flexible in the scope of permissible uses, residential densities and building intensities. It is more rigid in that commitments made by the developer in his plan proposals will carry the force and effect of law."

A lengthy footnote in the *Coscan* decision suggests that there are, however, lurking

procedural questions for the entire CDZ scheme, such as where an appeal from a Specific Design Plan decision should initially go. The *Coscan* decision itself is likely to lead to early legislative resolution of such an issue, in reaction to an obvious judicial hint.

When quoting, please credit the Center.

Maryland Commission Upheld in Protecting "Environmental Settings"

For more than a year, developers who have hoped to obtain a court ruling which would facilitate the construction of over-scaled neo-Victorian houses on small original lots within the Kensington Historic District in Montgomery County, Maryland have battled their way to defeat. A Maryland trial court upheld the challenged decisions of the Montgomery County Historic Preservation Commission in *Avery-Flaherty Properties, Inc. v. Montgomery County Historic Preservation Commission* (Nos. 39657 & 39658, Montgomery County Circuit Court, Md., decided December 1, 1989).

The end, when it came, was quite simple: a court decision of less than two pages turning on a basic point of administrative law:

The applicable test in reviewing an administrative decision is whether reasoning minds could reasonably reach the same conclusion by direct proof or by permissible inferences from the facts and the record before the agency. . . . If the conclusion reached by the Respondent is based on substantial evidence, the Court has no authority to reject the conclusion.

The history behind this decision was, however, anything but simple. In 1985, developers purchased a three-lot corner property within the Kensington Historic District, directly across the street from a Victorian children's library and at the core of a district characterized by comfortably large Victorian houses on multiple-lot properties. The sole house on the three-lot property was situated entirely within the boundaries of the middle lot of the three, with side yards which a close look at applicable zoning maps suggested were "recorded" and "buildable" lots of record. The developers proceeded to carve up the property into its three component pieces, selling the middle lot and its house and retaining the side yard lots, thus setting the stage for a valiant and expensive attempt to insert large houses and companion garage structures into the "environmental setting" for the house on the middle lot.

The Maryland enabling legislation for local historic preservation commissions states:

The preservation of structures of historic and architectural value together with the appurtenances and environmental settings is a public purpose in this State (emphasis added).

The Maryland legislation includes a lengthy definition of "structure" which states in part:

"Appurtenances" and "environmental settings" include walkways and driveways (whether paved or not), trees, landscaping, and rocks.

The Montgomery County preservation commission originally rejected two applications for new houses on the two lots in question, but failed to specify its reasons for these decisions in any detail. The two developers involved with the property filed an appeal alleging a "taking" of their property because of their inability to construct houses whose compatibility their architect and attorney had argued at length at a commission hearing which ran until nearly 1:00 in the morning. The developers also alleged a number of purely procedural irregularities which they claimed should cause the commission's decision to be invalidated.

The trial court's response to briefs in the case was that without detailed decisions by the Montgomery County commission making needed findings of fact the court could not possibly consider (or uphold) the commission's decision. The court therefore remanded the matter to the commission solely to allow the commission to prepare the missing findings of fact and did not hear arguments on the major claims in the case.

On remand, the Montgomery County preservation commission issued two nine-page amended decisions. Because the issues in the two applications were quite similar in the commission's opinion, the decisions themselves are similar though hardly identical. Each decision focuses on the specific parcel involved, and reviews the evidence and arguments presented to the commission relating to that parcel and the construction proposed for it.

Each decision recited a portion of the Kensington Master Plan Amendment, which had made findings of historical and architectural significance for the Kensington Historic District at the time of its designation by the county:

The subdivision was designed in the Victorian manner with ample sized lots and a curvilinear street pattern. . . . It is this concentration of Victorian period, residential

structures located in the center of the town which constitutes the core of the historic district. . . . 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.

With regard to the structure proposed for Lot 17, the commission stated:

The Commission finds any structure with the size and massing as that proposed for Lot 17 would significantly impair the existing streetscape of the core area of the historic district. "Streetscape" is the street views created by the interrelationship of structures, appurtenances, and environmental setting. . . . [T]he existing streetscape alternates rhythmically between residential structures and spacious yards. The existing rhythm in the core area surrounding Carroll Place would be significantly altered and virtually destroyed with the introduction of a structure of the size and massing that has been proposed in this application.

. . .

The Commission finds that the stylistic elements of the proposed structure are not consistent with the existing range of turn-of-the-century styles in the immediate vicinity. The proposed elements are borrowed from many different architectural styles and are combined in a manner that is not cohesive, compatible and complementary to the other styles in the district. This free combination of architectural styles is unprecedented not only in the surrounding area, but also in the entire historic district.

The commission found specifically that the proposed house would occupy too much "yard" and would therefore intrude into the historic district:

The Commission finds that the percentage of coverage of the proposed house ("footprint") to its site, which has traditionally served as the open space and environmental setting for the house at 10234 Carroll Place, an identified historic resource, is such that the resulting relationship of house to "yard" would be significantly different from the existing relationship of houses to "yards" in this area of the historic district. This change would be especially apparent along Montgomery Avenue, the gateway into the garden-like setting

of the core historic area. Therefore, the proposed house is incompatible with the character of the district.

The commission found also that the applicant had not met his burden of proof on a crucial issue, his alleged economic "hardship" should the commission deny the application before it:

[T]he Commission finds that the applicant has failed to prove that the denial of this application would cause him to suffer undue economic hardship. The applicant has testified that the high cost of the lot dictates the size of the house that is built upon it. Documentation provided by [him] reveals that Lot 17 was purchased for \$78,850 in May 1988. At the hearing, Mr. Flaherty testified that the lot was worth \$175,000 to \$200,000. The applicant also testified at the hearing, without documentation, that the total cost for Lot 15 is \$97,304.07. If the applicant is correct in his estimate of the lot's present value, the vacant lot could be sold for a handsome profit. Mr. Flaherty's testimony that he must sell the undeveloped lot for \$200,000 to make himself whole, simply does not fit the figures he provided. The Commission is not suggesting that the applicant sell his lot as undeveloped land (although it certainly is an option). . . . However, the Commission finds that the applicant has not met his burden of proof on the hardship issue. The evidence presented as to the alleged economic hardship to the applicant is found not to be convincing.

Similar language on these points appears in the commission's decision on the application for new construction on Lot 15. The length of the amended decisions, and the care with which they emphasized the characteristics of the Kensington Historic District which had led to its local designation, may have had a strong impact on the reviewing court.

Because of the importance of "environmental settings" to both applications, there was considerable public interest in the outcome of the applications before the commission, and later on appeal in the Maryland courts. As noted above, the court decision did not address this issue at all.

The trial court's final decision in the Avery-Flaherty matter is disappointing because it does not say anything about historic preservation or the powers of a local historic preservation commission in Maryland. Perhaps the court was silently acknowledging the routine validity of preservation commissions as administrative bodies in light of two strong earlier Maryland

decisions in both *Mayor and Aldermen of City of Annapolis v. Anne Arundel County*, 316 A.2d 807 (Md. 1974), and *Faulkner v. Town of Chestertown*, 428 A.2d 879 (Md. 1981).

The decision does suggest that developers who think they can browbeat a commission into submission by appealing the denial of a certificate of appropriateness would do well to consider the alternative costs of (1) mounting a lawsuit which might be unsuccessful and (2) scaling down or revising a controversial project in order to make it acceptable.

When quoting, please credit the Center.

Damage to "Environmental Settings"

Maryland's enabling legislation for local historic preservation commissions states: "The preservation of structures of historic and architectural value together with the appurtenances and environmental settings is a public purpose in this State."

The statute gives a quite basic definition of "environmental settings":

"Appurtenances" and "environmental settings" include walkways and driveways (whether paved or not), trees, landscaping, and rocks.

The statute defines "structure" to include "environmental settings," and requires a permit for any "alteration" to a structure:

Before the construction, alteration, reconstruction, moving, or demolition of any structure is made within the county or municipal corporation, if any changes are involved which would affect the exterior appearance of a structure visible or intended to be visible from an adjacent public way in the district, the person, individual, firm, or corporation proposing to make the construction or change shall file with the commission an application for permission to build, alter, reconstruct, move, demolish, or make the addition.

As one might suspect, there is no Maryland law clarifying these provisions as they relate to "environmental settings," nor is there helpful law from other states. The recent English decision by the Queen's Bench Division of the High Court of Justice in *The Queen v. South Herefordshire District Council ex parte Felton* (No. CO/890/88, decided May 18, 1989) does, though, deal in part with a similar issue. The *Felton* case involved the erection of a storage warehouse for potatoes near an 18th Century sham Gothic castle named Bollitree Castle, and the question of whether the storage facility "affected" the "setting" for a listed building. The court held that it did and should be moved.

The local district council had granted planning permission for construction of the storage warehouse, and the owner of Bollitree Castle appealed from that decision, complaining that his neighbors, the owners of the storage building (the Greens), should have posted a notice on the proposed site for the structure and sent a copy of the notice to English Heritage (the Historic

Buildings and Monuments Commission).

Events had moved quickly in the situation. The owner of Bollitree Castle contracted to purchase it in October 1987 and acquired title in April 1988. Planning permission for the potato storage warehouse was granted in May 1988. Although the owner of Bollitree Castle and the Greens attempted to find an alternative site for the storage warehouse on the Greens's property, planning permission was denied for the preferred alternative site.

Mr. Justice McCowan referred to provisions of Circular 8/87, an "official" statement of government policy on a number of preservation issues:

The setting of a building of special architectural or historic interest is often an essential feature of its character, especially if a garden or grounds have been laid out as an integral part of the design and layout of a listed house. (Paragraph 25)

Authorities are asked to ensure that they bring fully informed opinion to bear on any development which, by its character and/or location, might be held to have an adverse effect on buildings or special architectural or historic interest. (Paragraph 26)

For example, where a listed building forms an important visual element in a street, it would probably be right to regard any development in the street as being within the setting of the building. A proposed high or bulky building might also affect the setting of a listed building some distance away. The character and appearance of a conservation area could be affected by proposed development outside the designated area but visible from it. This provision should therefore not be interpreted too narrowly (Paragraph 27)

A complicating factor in this case was the fact that the Bollitree Castle property is "divided into five separate parts." One part is listed as Grade I (presumably the Castle structure itself), another part is Grade II* and the remaining three parts are Grade II. (These listings indicate the relative importance of the buildings.) No notice to English Heritage is required for properties outside London rated lower than Grade II*.

An employee of English Heritage who furnished an affidavit in the case indicated that English Heritage would have been a vigorous opponent to the application for planning permission:

In consequence of their interest and importance as examples of their style the principal

buildings are listed Grade I and II* placing them within the most important 6 per cent or so of listed buildings within the United Kingdom. . . . The potato store stands close to listed buildings and is clearly visible from the drive and forecourt of the applicant's house and, indeed, is strongly obtrusive in views from those areas and in views of the listed building especially from the south I have no doubt whatsoever that the potato store would affect the setting of the Grade I and II* buildings and clearly falls within the Department of the Environment circular 8/87.

Mr. Justice McCowan was unsympathetic to the reasoning of the individual identified as having made the decision that the storage warehouse might be constructed where it was in fact built. This individual suggested in an affidavit:

I was of the opinion that the new building would not be significantly visible from the Castle and that has, in the event, been borne out by the actual construction. It is possible to see part of the roof of the potato store from one attic window in the south-east corner of the house. By contrast, the pre-existing modern agricultural barn immediately to the north of the potato store . . . is prominently visible from several windows.

Mr. Justice McCowan stated conclusively:

It does seem to me . . . that he appears to think that what he has got to have regard to is whether you can see the potato store from the house. He certainly there does not appear to be appreciating that that is not the whole answer when one considers whether the setting of the listed buildings will be affected. There is, of course, to be taken into consideration, the view of the listed buildings in relation to the new building seen from other positions, notably in this case from the south. . . . I am . . . amazed that anybody could have thought that a building of the nature of the potato store, of the sheer bulk of the potato store, would not affect the setting of the listed buildings.

Mr. Justice McCowan found specious the argument that because some of the listed buildings were rated only Grade II notice did not need to be sent to English Heritage, which would clearly have opposed the application for planning permission:

True, three of the buildings were only Grade II, but of the remaining two, one was Grade I and the other was Grade II*. I have no doubt that the proposed building affected the setting of the last two, as well as of the others. The words are: "affect the setting of a listed building", and it is impossible in my judgment to cut this grouping of listed

buildings at the castle into sections. Some parts are no doubt of greater architectural merit and importance than others. Nonetheless, this is a setting. In my judgment, the decision that this development would not affect the setting of a listed building was, indeed, unreasonable verging on an absurdity.

Mr. Justice McCowan did not accept the argument that because the owner of Bollitree Castle had not attempted to enjoin construction of the storage warehouse, he should be precluded from obtaining an order of certiorari "quashing" the planning permission for the storage warehouse and implicitly requiring its relocation. The court noted efforts by the Greens to find a more acceptable location, the willingness of Bollitree Castle's owner to "pay for Mr. Green to rebuild an identical potato store on a different site which did not impinge upon [the Castle]," and the clear need of Mr. Green to have a place to store his potatoes:

So far as Mr. Green is concerned the effect of not being able to use his potato store at the time of potato harvest would have been disastrous whereas if the application now proceeds a new potato store on an alternative site could be erected before the next harvest or other arrangements made for storage of potatoes.

The court was particularly firm against the suggestion that if the planning permission were "quashed" nothing further would happen and the storage warehouse would remain in its location:

[The local council's representative] says that if I quash the planning permission it will not make any difference to the situation. He said, in perfectly polite terms, and I in no way am to be thought to be criticizing him for this, that he would advise the council against taking enforcement action; and so, he said, the building will remain, and the order will therefore serve no useful purpose. . . . I am afraid I am unmoved by that argument. I am told that the Greens have a 60 acre site. I know not whether any part of it is suitable for the erection of a potato store without planning objection But I certainly hope that I can depend on the respondent council to act reasonably and properly in considering any application which may come to them for an alternative planning permission for another site. I think I would be insulting the South Herefordshire District Council if I were to assume that they would pig-headedly refuse to take any enforcement action, or to consider an alternative site for the potato store

This case illustrates memorably some of the problems in determining when the setting of a historic property has been adversely affected.

When quoting, please credit the Center.

Attorney General Rules that Maryland Commissions May Regulate All Exterior Facades

The new historic preservation ordinance for Portland, Maine, has a curious exception provision which states:

A Certificate of Appropriateness is not required . . . in the case of either alteration of a structure (other than a landmark) or of construction within a district . . . where the Department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights, when viewed at any height between four (4) and six (6) feet from any open space or street. Where a Certificate of Appropriateness is required for such changes it shall be limited to those portions of the structure or structures so visible.

The Portland approach could obviously lead to an undesirable "candy-stripe" problem in historic districts, with horizontal lines of compatible changes located above other horizontal bands of incompatible (but arguably invisible?!) changes.

Several state enabling statutes (and many local preservation ordinances) state that a commission may regulate only changes visible from a public street or way (see "Update" 1988-1). This is a troubling issue, on which little law has developed in any state. The Maryland Attorney General's office ruled by letter on January 17, 1989 that *all* exterior changes to structures in local historic districts may be regulated by a Maryland preservation commission:

Your second inquiry focuses on alterations to structures in an historic district that might not be visible from a public way, such as changes to the side, rear or back yard of a building. In my opinion, these alterations require commission approval under [the Maryland enabling legislation for local preservation commissions] as long as any part of the structure, *e.g.*, the front, is visible or intended to be visible from an adjacent public way. That is, the "visibility" requirement applies to the "structure" not to the "changes". And I believe this construction to be supported by the purpose of the Historic Area Zoning law, the language of the statute as a whole, and the context where the "visibility" requirement appears

Among the purposes of the Historic Area Zoning law are preservation of the "district" and the improvement of property values "in such a district" The language of the statute is exceedingly broad. The key term, "structure", includes "parts" of structures and even "environmental settings", landscaping, and rocks. . . . The relationship of the proposed change to the "surrounding area" and to the "remainder of the structure" are necessary considerations for the commission. . . . If the language of [the statute] is read in this context, it is clear that the reference in the provision to visibility from a public way refers not to the *change* in question but to any part of the *structure*. That is, if the front of the building is visible from a public way, an alteration to the sides or back, even if not seen from a road or alley, is subject to commission approval. In my view, this construction of [the statute] avoids absurd consequences, *viz.* the impairment of property values in the historic district, of the surrounding area in the district and of the environmental setting of historic buildings by notoriously offensive or tasteless alterations to a portion of such structures which might not happen to be visible from a public way.

The only thing that gives me pause is language of a portion of [*Faulkner v. Town of Chestertown*, 428 A.2d 879 (1981)]. In rejecting a vagueness challenge to an ordinance modeled after [the statute], Judge Smith noted that:

In plain language what the ordinance and the Act are saying is that if one proposes to do anything to a building within a historic district which will involve changes to the exterior appearance of the structure visible from a street or alley in the district, then one must obtain a permit. . . .

I believe this language of the *Faulkner* opinion suggesting that the "changes" must be visible from a public way is *dicta*, not necessarily controlling of the question you have raised. Rather, I believe if the Court were squarely [presented] with the issue of whether [the statute] conferred jurisdiction on a commission with respect to alterations of any portion of a structure visible from a public way, it would conclude that the General Assembly intended [the statute] to be construed in the broad manner I have suggested.

When quoting, please credit the Center.

**3922 Baltimore Avenue
Ellison Corporation response to
2/18/98 Historic Preservation Commission Staff Report
February 25, 1998**

1. Master Plan for Historic Preservation provides:

"The challenge is to weave protection of this heritage into the County's planning program so as to maximize community support for preservation and **minimize infringement on private property rights.**"

2. The Amendment Kensington Historic District provides:

"The subdivision was **designed in the Victorian manner with ample sized lots** and a curvilinear street pattern."

"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.**"

3. The Vision of Kensington: A Long-Range Preservation Plan provides:

"The planning study evaluated specific qualities of the historic district, such as **open space, distance between structures, and a pattern of development.**"

4. New information on Warner's original intended use for Lot 25

Lots 26 and 27 were sold by Warner in 1899 for a total price of \$3,500, including the house currently at 3920 Baltimore Street. **Lot 25 was not part of this sale.**

Lot 25 was sold by Warner in 1903 to a different owner than 3920 Baltimore Street for \$500. Original deed of sale for Lot 25 contains a covenant recorded by Warner, where he states that certain offensive uses and structures are prohibited from being constructed on the property and providing for **a substantial house of stone, brick or wood frame construction to be built on the lot with a value of not less than \$2,500.**

Demonstrates that Warner intended for a single family home to be built next door to 3920 Baltimore St. on Lot 25, and that **Lot 25 was considered by Warner "an ample sized lot"**. Clear from intent of Warner that the historical setting includes construction of traditional single family home on a single lot, with normal setbacks.

Strong case could be made to BOA for construction of a traditional house on Lot 25 with normal setbacks. Applicant has worked extremely hard to respect the legitimate concerns of the historic district and prefers to compromise with HPC over the few remaining issues.

5. Applicant has followed the directions provided by HPC for the proposed house on Lot 25.

A. Staff Report Direction: *Reduce size of proposed house.*

(See fig. A1 to A5.)

Applicant has reduced size of proposed house and garage in four plans as follows:

House 1716sf 1536sf 1370sf 1143sf

Garage 576sf 484sf 484sf 231sf

2292sf 2020sf 1854sf 1374sf

Total reduction from original size of house and garage of 40%.

B. Staff Report Direction: *Site structure to rear of property to maintain a subsidiary relationship to 3920.*

(See fig. B1)

Applicant has setback house 94'6" from front property line. Original setback from front property line of 50' is nearly doubled.

Applicant has established a sideyard setback of 18' from the Lot 25 east lot line for the first 28' of the house, reducing to 10' for the last 20'; the proposed house is more than 31' away from 3920 at its closest point.

Staff comment to change: *"The applicant is proposing to site the new residence to the rear of Lot 25, at a location that is suitable for a subsidiary structure in the historic district. The proposed new structure would appear to defer to the primary structure at this location, as well as to the other primary historic resources on the street."*

C. Staff Report Direction: *Maintain the open space important to the integrity of the historic district.*

(See fig. C1 and C2)

Siting of proposed house at rear of Lot 25 by Applicant maintains 100% of the 85' building separation distance between 3920 and 3924 Baltimore Street. Allows for **complete preservation** of the view and landscape elements in the interstitial space between 3920 and 3924 as shown in the map titled Kensington Historic District Vacant Land and Open Space, page 48 of the Vision of Kensington.

The house has been sited to save the significant mature redbud on the approximate edge of Lots 26 and 25.

D. Staff Report Direction: *Proposed house should not have a strong relationship to the street.*

(See fig. D1 and D2)

The proposed new house has **no distinct style and the front door does not address Baltimore Street.** The proposed new house presents a front of 22' to Baltimore Street at a distance of 94'6'.

Staff comment to change: *"There is no distinctive addressing of the street, which one would expect in a house of equal standing to the primary resource. The lack of any distinct style is also viewed by staff as a positive response to the HPC comments to design a subsidiary structure for this site."*

The original garage remains in its approximate location to **screen the west side of the house from street view.**

Staff comment to change: *"Staff feels this is a historically significant structure and such a retention and restoration would be a benefit to the historic district overall."*

6. Analysis of Additional Staff Concerns in 2/18/98 Report.

E. Staff Concern: *"The mere size of the proposed structure will overwhelm all of the good intentions. The proposed house is a full 2-story structure, with a substantial footprint which will be multiplied by 2 or 3 to provide a substantial structure in a subsidiary location. No amount of vegetative screening will hide the sheer bulk of the proposed house from public view."*

(See fig. E1, E2 and E3)

Applicant has proposed a structure with a footprint of 1,143sf, height of 28'9", and a 94'6" front yard setback that presents a front of 22' to Baltimore Street.

The house is screened from view as you proceed west on Baltimore Street by 3920, and a large Holly tree located on the line of Lots 26 and 25. The house is screened from view as you proceed east on Baltimore Street by 3924 Baltimore, and the restored garage, which reduces the full view of the front of the house from Baltimore Street to approximately 17'.

The accompanying photograph, showing to scale the relationship of 3924 to 3922, demonstrates that the house on Lot 25, because of its siting and limited front view, does not overwhelm the historic setting of 3924. The "bulk" of the house is simply overstated. As the accompanying photograph further illustrates, the height of the proposed house is perceived to be much lower than the height of the primary resource because of the 94'6" front yard setback. In addition, the height of the proposed house in relation to 3924 Baltimore Street further reduces its visual impact and perceived height.

The total square footage of the house, (2,359sf) makes the structure one of the smallest houses on Baltimore Street, and a modest sized home by today's standards. The house is smaller in size to what was originally contemplated to be built on Lot 25 by Warner.

3924 Baltimore Street is a massive Georgian Revival Cottage sited on two lots with a very large subsidiary building on its west side. In comparison, the proposed house on Lot 25 is appropriately sized and located as a subsidiary building in relation to 3920 in comparison to the house and subsidiary building located at 3924 Baltimore Street.

F. Staff Concern: *"The proposed construction of the "auto arbor" adjacent to the primary structure would constitute an encroachment on the environmental setting of both the primary resource and the historic district, and nullify all of the efforts to place the proposed new construction to the back of Lot 25."*

(See fig. F1 and F3)

Applicant agrees with the concern addressed in the staff report and will eliminate the auto arbor from the proposed plan. In addition, in order to enhance the historic district and the "Victorian garden suburb" envisioned by the Montgomery County Master Plan for Historic Preservation, applicant will replace the auto arbor with a large ornamental shrub and perennial garden to provide 3920 with a garden setting where there presently exists only grass and a few sparse shrubs.

G. Staff Concern: *"A reduction in size of the proposed single family residence so that the overall project would fall within the recommended lot coverage of 10%."*

(see fig. G1 and G2)

The Vision of Kensington, which is the source of the 10% lot coverage ratio, states the following: **"In this area it is important to preserve these patterns of open space, front yard setbacks, building scale, architectural character, and the streetscape qualities."** As detailed above, applicant has addressed the open space, front yard setbacks, building scale and architectural character concerns of staff by following the direction given by staff and agreeing to eliminate the auto arbor as suggested in the staff report. Strategy 1.1 of the Vision of Kensington, which contains the 10% lot coverage ratio, is to be used "in addition to existing protection ... to achieve this objective". Applicant believes the plan submitted meets the objective and the spirit of the 10% coverage ratio because:

Further reduction of the size of the house on Lot 25 to meet the 10% guideline would limit construction to a house with a footprint of 631sf, or approximately 30' x 21'. **Such a reduction on size advances no historic preservation purpose because the front view of the house from Baltimore Street (22') would remain exactly the same. The additional square footage of the proposed house is at the rear of the house and in no way visible from Baltimore Street.** To impose this size limitation guideline arbitrarily, after Applicant has met the legitimate concerns for **open space, front yard setbacks, building scale and architectural character** as set forth in the Vision of Kensington guideline, would result in a clear violation of the directive in the Master Plan for Historic Preservation to "minimize infringement on private property rights".

The spirit of the 10% lot coverage ratio is met when the existing and proposed structures on Lots 27, 26, and 25 are considered as a whole. The primary resource on Lots 27 and 26, and the proposed house and restored garage on Lot 25, result in total structures of 2,774sf on a combined lot area of 25,875sf. **This results in a lot coverage ratio of 10.7% for the combined site.**

Taking into account the original intent of Warner, for a house to be built on Lot 25 of similar value to the house on Lot 26, would allow a ratio of 18.9% for Lot 25. Taken alone applicant has proposed a ratio of 15.9% for Lot 25, which is also less than the 16.2% ratio of the primary resource on Lot 26.

April 20, 1998

TO: Robin Ziek
FROM: Gwen Wright
RE: Hoobler Case at BOA

Robin, here are some questions that I think it would be useful to have Christopher ask me tomorrow. I will be at the Council Office Building just before 10:30 a.m. and must leave by 12 noon.

1. What is your involvement with this case?
2. Have you been involved in review of other similar cases in Kensington over the last ten years?
3. What has been the HPC's role in reviewing new construction in Kensington and how does it relate to the zoning and/or building codes in the area? Describe the Avery/Flaherty and Fleming cases.
4. Have the HPC's requirements that are more restrictive than zoning/building codes been upheld in Court and/or by the Board of Appeals?
5. What guidelines does the HPC use in making decisions?
6. Describe the guidance in the Kensington Master Plan and in the Long Range Vision Plan for Kensington's Historic District?
7. What do the Executive Regs approved by the Council say should be used to guide design review decisions? How did the County Council come to include this language in the Executive Regs?
8. What efforts have been made to achieve a design solution with this applicant? (i.e. Did you have a charrette to develop alternatives?)
9. Has the applicant followed through with the alternatives developed at the charrette?
10. Why is size/massing the crucial issue in this case rather than architectural details?

Questions 2, 3, 4, and 10 would also be appropriate to ask Stephen Dennis. He should also be asked questions about how these matters are treated in other communities and whether other courts have upheld HPCs' authority to regulate size and massing.

To: Christopher Hitchens
From: Robin Ziek

Questions:

1. Q: How long have you worked on this project with the applicant?

A: Since 1995. The applicant, Mrs. Ahearn, worked with another developer to bring a proposal to the HPC for a Preliminary Consultation. The project was for a new single-family dwelling with 1485 sf footprint, and 4-bedrooms. The staff report discussed in depth the main issue that the proposal would be detrimental to the environmental setting of the Historic District, in terms of lot coverage, relationship to adjacent structures, and demolition of the historic garage.

2. Q: Was this staff report provided to the appellant, Mr. Hoobler?

A: Yes. It is my understanding that Mrs. Ahearn provided Mr. Hoobler with a copy of this prior to his initial submission in April of 1997.

3. Q: Would you describe the project which was submitted in April, 1997, which is currently being appealed, and the HPC decision regarding this application?

A: The application involved the construction of a 5-bedroom house with a footprint of 1716 sf. The applicant proposed to demolish the existing historic garage on the site, and construct a new 2-car garage at the rear of the yard. The staff report recommended denial of this application because this proposal was too large and would be damaging to the environmental setting of the historic district. The HPC voted to deny, and this is being appealed.

4. Q: Could you explain to the BOA what is meant by the environmental setting of the historic district, and how you arrive at an understanding of this concept?

A: The environmental setting of a historic site involves the relationship of structures to the surrounding landscape. This is defined in Chapter 24A, and "includes walkways and driveways, vegetation (including trees, gardens, lawns), rocks, pastures, cropland and waterways." Each historic site and each historic district has its own distinctive character based on the county council's evaluation at the time of designation and as approved in the Amendments to the Master Plan for Historic Preservation, and related planning documents, as noted in the HPC Executive Regulations in Section 1.5 Criteria for Approval.

→ [slide show] Kensington is an early railroad suburb of Washington, D.C., and is notable for its relationship to the railroad stop on Howard Avenue, and for its form with the two intersecting curvilinear streets. Baltimore Street is one of the primary streets in the district, and it exemplifies the character of the Victorian suburb, with the spacious homes, generous porches, development on large properties which resulted from the aggregation of multiple lots, the mature landscapes with large trees. The district is also notable for its range of development, which contributes to the small-town scale of Kensington. Notable features which contribute to this

include the government center, the commercial center with large-scale and small-scale industry and shops, the diversity of the housing stock and the variation in property size. This provides a diversity of opportunity in the historic district, providing for a diversity of the population (richer, poorer, older, younger, larger families, smaller families). For example, Baltimore Street is notable in that all but 3 of the structures are Primary Resources in the district. Washington Street, on the other hand, has much more of a mixture of Primary, Secondary and out-of-period resources. The character of Carroll Place and Montgomery Avenue are very similar to Baltimore Street again, with the concentration of contiguous Primary resources on the north 2/3s of the circle. This is the site of the Avery-Flaherty case which was heard by the BOA and which is so similar to this case.

The special and distinctive character of the district is evaluated on an overall basis, and than through a specific site analysis. In that way, the HPC evaluates any new proposal for its impact on the overall district, on the general vicinity and on the specific site within the district. The planning guidelines provided in the Amendment, the Secretary of the Interior's Standards for Rehabilitation, and the Vision of Kensington help to structure the analysis of the HAWP applications. Staff looks at the basic characteristics of the historic district, and analyzes the impact of the new proposal on the district.

In the case of the particular site, staff had provided the applicant with a detailed analysis in of the site 1995, analyzing the possibility of construction here in terms of the qualities and character of the historic district. This was confirmed in the staff report in April 1997 when the application was denied because it did not conform with the overall character of the historic district - the proposed new construction would have destroyed the basic spatial relationships on Baltimore Street which cumulatively define the environmental setting of the historic district.

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

FAX TRANSMITTAL SHEET

Historic Preservation Section
Department of Park & Planning

Telephone Number: (301) 563-3400

Fax Number: (301) 563-3412

TO: Christopher Hitchens FAX NUMBER: (301) 217-2662

FROM: Robin Zrek

DATE: 4.20.98

NUMBER OF PAGES INCLUDING THIS TRANSMITTAL SHEET: 1 of 4

NOTE: for discussion / your use

RZ

HPC can't go outside of zoning.

EXTRA
COPY



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

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) 563-3400

Fax Number: (301) 563-3412

TO: Bridgette Hartman FAX NUMBER: 202.588.6038

FROM: Robin Zrelk

DATE: 3.10.98

NUMBER OF PAGES INCLUDING THIS TRANSMITTAL SHEET: 13

NOTE: Thank you! This is the Denial for Case #1. He then
appeared before the HPC with 2 other versions - slightly further
back on the lot & smaller. ~~the~~ ^{#3} ~~was~~ was a proposal for an
1100 ft ^{footprint} ~~horse~~ at the rear of the lot. That too was denied by
HPC for size... HPC recommends something under 800 ft
footprint. Thanks again - Robin.

HISTORIC PRESERVATION COMMISSION

of

MONTGOMERY COUNTY

**8787 Georgia Avenue
Silver Spring, Maryland 20910**

301-495-4570

Case No: 31/6-97D Received March 17, 1997

Public Appearance: April 23, 1997

Before the Montgomery County Historic Preservation Commission

Application of Ellison Corporation (Cary Hoobler, Agent)

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

DECISION AND OPINION OF THE COMMISSION

Decision of the Commission: DENY the Applicant's proposal to demolish an existing garage, and construct a new house and garage on the west side lot for 3920 Baltimore Street.

Commission Motion: At the April 23, 1997 meeting of the Historic Preservation Commission, Commissioner Lanigan presented a motion to deny this application for the demolition of the existing auto house and the construction of the proposed new house and garage. Commissioner Soderberg seconded the motion. Commissioners Kousoulas, Trumble, Eig, Bienenfeld, Hondowicz, Lanigan, Soderberg and Spurlock voted in favor of the motion. The motion was passed 8 - 0.

DEFINITIONS:

The following terms are defined in Section 24A-2 of the Code:

Appurtenances and environmental setting: The entire parcel, as of the date on which the historic resource is designated on the Master Plan, and structures thereon, on which is located a historic resource, unless reduced by the District Council or the commission, and

to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways.

Board: The county board of appeals of Montgomery County, Maryland.

Director: The director of the department of permitting services of Montgomery County, Maryland or his designee.

Exterior features: The architectural style, design and general arrangement of the exterior of an historic resource, including the color, nature and texture of building materials and the type or style of all windows, doors, light fixtures, signs or other similar items found on or related to the exterior of an historic resource.

Historic resource: A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture. This includes, but is not limited to, all properties on the "Locational Atlas and Index of Historic Sites in Montgomery County".

Historic site: Any individual historic resource that is significant and contributes to the historical, architectural, archeological or cultural values within the Maryland-Washington Regional District and which has been so designated in the Master Plan for Historic Preservation.

Permit: An historic area work permit issued by the director authorizing work on an historic site or an historic resource located within an historic district.

BACKGROUND:

Historical Context

The Kensington Historic District was listed in the National Register for Historic Places in 1980. The local historic district was designated in 1986 on the Master Plan for Historic Preservation because, as stated in the Amendment to the Master Plan,

"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 town of Kensington began as a small crossroads settlement along the Bladensburg Turnpike, an early market road between the County's major north/south route, Old Georgetown Road, and the port of Bladensburg on the Anacostia River in Prince George's County. When the B&O Railroad was built in 1873, the crossroads settlement became known as Knowles Station, named after the major land holding family in the area.

By 1890, Knowles Station had developed into a village of several hundred people, most of whom were living north of the railroad. In that year, Washington financier, Brainard H. Warner, purchased and subdivided property to the south and southwest of the railroad, naming the area Kensington Park after the famous London suburb. The subdivision was designed in the Victorian manner with ample sized lots and a curvilinear street pattern.

Warner established his own summer residence and invited his friends to join him in this park-like setting away from the heat and congestion of Washington. It is this concentration of Victorian period, residential structures located in the center of the town which constitutes the core of the historic district.

Character and Integrity of Kensington Historic District

The purpose of the Historic District designation and the role of the Historic Preservation Commission (HPC) is 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 in a historic district designation is the issue of "integrity." The nomination to the Master Plan addresses this issue, as does 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. (emphasis added)

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. (emphasis added)**

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

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

The HPC commissioned a study in 1992 to analyze the character and integrity of the Kensington Historic District. The purpose of this study was to provide objective means to understand the existing character of the historic area and to evaluate the effect of proposed changes and alterations to the historic district. The document, entitled Vision of Kensington: A Long-Range Preservation Plan, was prepared for the HPC by Traceries and PMA Associates. This study analyzed open space, property coverage, and existing rhythm of development in order to understand the growth pattern of Kensington, and provided recommendations for future development which would follow the existing patterns.

Through this detailed type of evaluation, there is a full understanding of the environmental setting of this particular historic district - including information on how the houses were spaced and the percentage of green space to constructed sites. It is clear from the Vision of Kensington document that a character-defining feature of the Kensington Historic District is the generous spacing between house and the very low percentage of property coverage which existing buildings exhibit.

Character of Baltimore Street

Baltimore Street is a significant area within the Kensington Victorian garden suburb, with a high level of integrity and few intrusive elements: all but three of the dwellings are Primary Resources dating between 1880-1930. In fact, the development pattern for the **entire** Kensington Historic District is illustrated in the Vision of Kensington study by the evaluation of frontyard setback and building separation for the portion of Baltimore Street where the present proposal would be built. The Primary Resources on Baltimore Street are typically built on property consisting of 2 or 3 platted lots, or on 1 lot which is trapezoidal in shape. The property sizes are typically around 18,000 sf., with a 9% property coverage for Primary Resources.

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.

The second period of development on this street (1910-1930) included the construction of 3 Colonial Revival style homes on lots purchased from existing homeowners. These dwellings are characterized by their modest scale, massing, and size which contrasts with the earlier constructed dwellings which are typically much larger structures.

DESCRIPTION OF PROPOSAL:

Site Description

Lot 25, Block 11 is currently part of a grouping of three lots (25, 26, 27) which provide the environmental setting for the house at 3920 Baltimore Street which is a Primary Resource within the Kensington Historic District. Lot 25 is the west sideyard for this house; Lot 27 is the east sideyard. Each of the three lots measures 50' x 172.5' (8,625 sf).

The house at 3920 Baltimore Street (Lot 26) is a center gable I-House, with a rear ell and small additions to the rear and east side (1,440 sf footprint). Originally, there was a porch on the front facade, but this was removed some time in the past. Today, there is a small stoop to provide access to the front door. The house is approximately 26'-6" high from the finished first floor to the ridgeline of the roof.

The dwelling was constructed during the first period of significance (1880-1910); the footprint of the house is shown on the 1904 Sanborn Map. The matching garage, or auto house, was not shown on the 1911 Sanborn Map, but it is included on the 1924 Sanborn Map. This is within the second period of significance (1910-1930) for the Kensington Historic District.

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. At the rear where some of the shingles have been removed, the original lap wood siding is apparent. 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, and gently rises from the street to the rear yard area. There are some shrubs to the front of the property, and trees to the rear.

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. 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.

New Construction Proposal

The applicant proposes to demolish the existing garage or "auto house" which matches the Primary Resource at 3920 Baltimore Street. After the demolition of the existing driveway and garage, the applicant proposes to construct a new frame 2-1/2 story single-family house (1,716 sf footprint) and a two-car garage (576 sf footprint) on Lot 25. The new house would have a first-floor footprint of ca. 1,716 sf and would have a total living area of well over 3,000 sf. (This includes the porches on the first floor and the attic living space; it is exclusive of any basement area.) The house is proposed to be 32' high from finished first floor to the ridgeline of the roof. The 2-car garage proposed for the rear has a footprint of 231 sf. The total property coverage would be ca. 26.6%.

The new house would be set 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 new house is in a vernacular Victorian style, with irregular massing. The applicant has submitted two variations in the elevations. The proposed structure would utilize a steep roof pitch with cross-gables. The use of decorative lattice or wood shingles is proposed in the gable ends. The windows are proposed to be 1/1 light. The house would be constructed low to the ground, with only four steps up to the front wrap-around porch. There would be a second-story porch on the west side, and a second-story deck at the rear. The house is proposed to be sided with wood, and utilize asphalt shingles on the main roofs and standing-seam metal on the porch roof.

EVIDENCE IN THE RECORD:

On March 17, 1997, Cary Hoobler of the Ellison Corporation submitted an application for a Historic Area Work Permit (HAWP) at 3922 Baltimore Avenue, Kensington, to demolish the existing garage or auto house and construct a new single-family dwelling and garage.

A written staff recommendation on this case was prepared and sent to the HPC on April 16, 1997. At the April 23, 1997 HPC meeting, staff person Robin D. Ziek showed 35MM slides of the site and presented an oral report on the staff recommendation. The written staff report was entered into the record at the meeting, citing information from Vision of Kensington, National Register Bulletin #15, How to Apply the National Register Criteria for Evaluation, and the National Park Service Manual for State Historic Preservation Review Boards.

Staff recommended denial of the demolition and new construction as it was not consistent with, and was detrimental to, the preservation or ultimate protection of the environmental setting of the Kensington Historic District, a district designated on the Montgomery County Master Plan for Historic Preservation.

Staff's specific concerns about the proposed demolition and new construction that constituted reasons for denial included: **encroachment on the environmental setting** of the historic district as a whole, and on the individual resources within the historic district; the proposed **demolition** of a historic outbuilding; and the **incompatibility** of the proposed development with existing patterns of development. This includes the loss of open space, the proposed percentage of property coverage, and the proposed non-conformance with the development pattern of this part of the historic district.

Staff pointed out that there are twenty buildings on Baltimore Street between Connecticut Avenue and Prospect Street, and thirty-four platted lots. The lots are of varying sizes because of the curving street plan designed in the 19th century by Brainard Warner. The 20 lots which are located in the straight section of Baltimore Street were platted at 50' x 172.5'. The individual lots in the curving section of Baltimore are trapezoidal in shape measuring ca. 70' at the street and ca. 50' at the street edge. Therefore, the lots have differing square footage. **The development pattern generally shows that houses in the straight portion of Baltimore Street occurred on multiple lots**, while houses within the curving portion of the street, where the individual lots have more square footage, appear sometimes on single lots and sometimes on multiple lots.

On this block, the average distance between buildings is 87.3', ranging from 40' to 170'. The overall character of the streetscape is established through a building pattern which is a combination of large setback (typically 40') and open space created by the distance between buildings. **The intervening open space provides the garden setting for the entire district**, as well as views across yards which provides the opportunity for long views through the community; this helps to tie the different blocks together.

The existing development of the Kensington Historic District can also be characterized by the percentage of property coverage (with single and multiple lots). 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. As presented in Vision of Kensington (table on page 47), 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%.

In marked contrast, staff noted that the proposed development utilizes a single lot with only 8,625 sf. The proposed new construction (house and garage, or 2,292 sf) would provide for a coverage of 26.6%, or **almost 3 times the average coverage** for Primary Resources. The average coverage for the entire historic district is only 15%.

In addition, the environmental setting for the Primary Resource at 3920 Baltimore Street would be reduced from 6.5% coverage to 9.7%. And the distance between the houses on the west side of the Primary Resource would be reduced from ca. 85' to ca. 20'. This would effectively reduce the environmental setting of both 3920 and 3924 Baltimore Street. In marked contrast, the distance between 3920 and 3914 Baltimore Street would remain 120' at this time, with a resulting disruption of the rhythm of structure to open space.

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. 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 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."

Staff discussed that, in the case of this particular proposal, the historic outbuilding or "auto house" is proposed for demolition. The small garage was an important element in all of the suburbs around Washington. While Kensington first developed around the railroad, the suburban development around Washington expanded dramatically with the introduction of the low-cost automobile. At that point, everyone added an "auto house", which is best illustrated in the Sanborne insurance maps. The garage in question was added after the house at 3920 Baltimore Street was in place and, although only a small outbuilding, provides physical evidence of the historic development of Kensington. There are several small garages of this scale still in Kensington, but a brief survey of Baltimore Street illustrates that many of these key outbuildings have already been lost.

The HPC's consistent policy has been to preserve historic structures rather than endorse their demolition. In support of that policy, the County and the State both have enacted tax credit programs to assist with maintenance costs for the exterior and structural costs undertaken to preserve designated historic sites and resources within designated historic districts.

Finally, in evaluating the design of the applicant's proposal, staff noted that the proposed new house would be higher and bigger than the existing historic resource at 3920 Baltimore Street. Staff is concerned that a building of this size would "crowd" the existing historic resources on either side, further diminishing the environmental setting of the historic district.

The applicant, Cary Hoobler, came forward to testify. He expressed his appreciation of the historic district, noting that the HPC had approved a similar design for new construction on another street in the district which he had submitted in the past. He expressed his belief that the new house was appropriate and would complement the historic district aesthetically. And he noted that the size of the house might seem smaller than staff had presented if one did not count the first floor porches in the footprint. He noted that there are large historic structures already on the street, and this new house would be somewhat comparable. Mr. Hoobler also noted that the small garage has been in poor condition for many years, probably well before the present owner bought the property. He also volunteered to move the garage to another location, and flip the project plan to save a large tree (a redbud).

Several neighbors and other Kensington residents came forward to testify on this project. Some expressed their concern over people's rights to do what they wish with their property. The majority, however, expressed support for the staff report and supported denial of this proposal based on concerns for existing trees, existing spacing between dwellings, and concern for existing structures, i.e., the small garage. The Kensington Local Advisory Panel, Historical Society, and Town Council were all represented and all endorsed a denial for this proposed project.

The owner testified that she was a real estate agent, but, at the time of her purchase of this property, she did not really understand the implications of purchasing within a historic district. In addition, she stated that she wasn't required to sign a statement, as is now required, that she had consulted the Master Plan for her area prior to signing her contract.

Commissioner Trumble asked staff if the garage would also be considered a Primary Resource as is the residence. Staff responded that the environmental setting of any historic resource includes the ancillary buildings as well as mature trees and driveways.

Commissioner Trumble questioned the status of the Vision of Kensington planning document. Staff informed him that it was not part of the law, but was a study commissioned by the HPC to provide qualifiable information to assist the HPC with project evaluation.

Commissioner Trumble also asked for staff comments on the proposal to move the garage. Staff noted that moving historic structures is only done as a last resort. In fact, relocation of a historic building can be a reason to actually de-list a structure which has been listed in the National Register of Historic Places. Staff also noted that the HPC has approved of proposals to move resources in the past, but only under compelling circumstances such as when a new road is proposed through the building site.

Commissioner Soderberg expressed concern for the preservation of the small garage.

Commissioner Hondowicz expressed concern for the environmental setting of the district, while expressing his general support of opportunities for new construction.

Commissioner Lanigan stated her support of the recommendations stated in the staff report.

Commissioner Eig supported the recommendations stated in the staff report, and also noted that the applicant had not applied for the removal of any mature trees on the property - although one citizen had testified that the application would actually require removal of a large redbud tree.

Commissioner Kousoulas noted that the environmental setting is an integral part of the historic district, and that this project proposal did not meet the criteria due to its size in relation to the lot and other construction in this part of the historic district. He noted that the HPC has approved of new construction in the Kensington Historic District, as recently as March 26th. But this was in a different location in the district where the proposed project was felt to be appropriate to the site and to the overall development patterns of the historic district.

CRITERIA FOR APPROVAL AND FINDINGS OF THE COMMISSION:

The criteria which the Commission must use in determining whether to deny a Historic Area Work Permit application are found in Section 24A-8(a) of the Ordinance.

Section 24A-8(a) provides that:

The Commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate or inconsistent with, or detrimental to the preservation enhancement or ultimate protection of the historic site, or historic resource within an historic district, and to the purposes of this chapter.

In analyzing whether the criteria for issuance of a Historic Area Work Permit have been met, the Commission also evaluates the evidence in the record in light of generally accepted principles of historic preservation, including the Secretary of the Interior's Standards for Rehabilitation and Guidelines, adopted by the Commission on February 5, 1987. In particular Standards #1, #2, #3, #4, #6, and #9 are applicable in this case, with Standards #2, and 6 being particularly important:

Standard 1: A property shall be used for its historic purpose or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Standard 2: The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 3: Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural eatures or architectural elements from other buildings, shall not be undertaken.

Standard 4: Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Standard 6: Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature hall match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Based on this, the Commission finds that:

1. Lot 25, block 11 is a sidelot to a Primary Resource within the Kensington Historic District, with an existing ancillary structure on it that is also a historic resource within the district, as designated on the Montgomery County Master Plan for Historic Preservation.
2. The proposal to demolish the original "auto house" or garage constitutes a change within the district that significantly changes the character of the Kensington Historic District by reducing the range or variety of historic structures and the relationship of primary structure to ancillary outbuildings. The structure is in poor condition due to deferred maintenance. However, the HPC's policy has been to encourage repair/stabilization of historic structures in situ through the application of the county and state tax credit program to assist with the necessary expenditures.
3. The environmental setting of a historic district or historic site comes under the protection of the Historic Preservation Ordinance, Chapter 24A, and is of equal concern to the HPC as the individual structures within the district. In a district, the cumulative effect of many properties constitutes the historic environment rather than any one particular element. The HPC is therefore required to protect the integrity of the historic district as a whole in considering project proposals at individual addresses within the district.

4. Kensington is characterized by individual residences on large parcels of land which are often the result of accumulation of two or three smaller platted lots. The result is a building pattern with large sideyards and generous setbacks from the road, providing opportunities for large garden areas around the dwellings.

5. The proposed project does not meet the existing building pattern in the historic district in terms of having too much property coverage, thereby diminishing the garden setting in the district, and in terms of disrupting the typical patterns of distances between houses.

6. The proposed new house is of a substantial size, and would be both larger and higher than the existing historic house associated with the property. The new project would both crowd and overshadow the historic structures on either side.

CONCLUSION:

The Commission was guided in its decision by Chapter 24A and by the Secretary of the Interior's Standards for Rehabilitation.

Based on the evidence in the record and the Commission's findings, as required by Section 24A-8(a) of the Montgomery County Code, 1984, as amended, the Commission must deny the application of the Ellison Corporation (Cary Hoobler, Agent) for a Historic Area Work Permit to demolish an existing garage and construct a new house and garage at 3922 Baltimore Street in the Kensington Historic District.

If any party is aggrieved by the decision of the Commission, pursuant to Section 24A-7(h) of the Montgomery County Code, an appeal may be filed within thirty (30) days with the Board of Appeals, which will review the Commission's decision de novo. The Board of Appeals has full and exclusive authority to hear and decide all appeals taken from the decision of the Commission. The Board of Appeals has the authority to affirm, modify, or reverse the order or decision of the Commission.



George Kousoulas, Chairperson
Montgomery County
Historic Preservation Commission

5-8-97
Date