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BOARD OF APPEALS
for
MONTGOMERY COUNTY

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ADMINISTRATIVE APPEAL OF CAREY HOUBLER : A-4771
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A hearing in the above-entitled matter was held on
May 5, 1998, commencing at 10:30 a.m., at the Stella B. Werner
Council Office Building, 7th Floor Hearing Room, 100 Maryland
Avenue, Rockville, Maryland 20850 before:

BOARD MEMBERS

Susan Turnbull, Chairman
Angelo Caputo
Louise Mayer
Donna Barron
Wendell Holloway

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T E S T I M O N Y

Page

ON BEHALF OF THE APPELLANT:

Martin Hutt, Esquire
Lerch, Early, & Brewer

ON BEHALF OF THE COUNTY:

Christopher Hitchens, Esquire

TESTIMONY ON BEHALF OF TOWN OF KENSINGTON:

Lynn Raufaste

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TESTIMONY ON BEHALF OF APPELLANT:

Carey Hoobler

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P R O C E E D I N G S

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2 MR. HOLLOWAY: Good morning. We're going to
3 begin. Our first case is A-4771, the appeal of Carey L.
4 Hoobler and Jeannie Ahearn, Administrative Appeal Historic
5 Preservation Commission. It's a denial of a historic area
6 work permit. We had previous hearings held on March 11th
7 and April 21st. I'm trying to refresh my recollection as to
8 who was up. I think the county was making their case.

9 MR. HITCHENS: I think the county completed their
10 case.

11 MR. HOLLOWAY: You just completed?

12 MR. HITCHENS: The presentation of their direct
13 case.

14 MR. HOLLOWAY: Before, please identify yourself
15 for the record and proceed.

16 MR. HUTT: My name is Marty Hutt and I'm with the
17 law firm of Lerch, Early, and Brewer in Bethesda
18 representing Carey Hoobler and Jeannie Ahearn in this
19 appeal. Before Mr. Hoobler starts, I would like to just
20 bring up one point of clarification because I want to make
21 sure we're all on the same page when we finally close this
22 matter.

23 During the first open statement by Mr. Hitchens in
24 March he did mention the fact that there was a single appeal
25 from the historic area work permit file and I believe it was

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1 April of '97 and subsequently the appellant had filed
2 several preliminary consults with the Historic Preservation
3 Commission and also I believe there was another historic
4 area work permit application filed in February of this year.

5 But, in Mr. Hitchens' opening comments he did
6 comment to the board at page 21 and 22 of the transcript
7 that in light of this being a de novo hearing, in light of
8 some other cases that the board has heard, specifically
9 thinking this was a matter heard in the summer, the board
10 indicated it was open to hearing proposals that weren't
11 necessarily listed in the appeal, so, we're prepared to
12 discuss all of these proposals that Mr. Hoobler has brought
13 before the commission and goes on to say that request the
14 board, you know, to rule upon everything that you're going
15 to hear.

16 I would join in that because I would agree that
17 you have one basic appeal that I keep hearing which is the
18 spring of '97 historic area work permit, but, you will be
19 hearing as the county did present several other proposals.
20 Of course, we're not asking and won't ask you to reverse the
21 decisions on all those proposals and I ask you for one
22 specific proposal that you'll ultimately hear Mr. Hoobler
23 testify as to one that he's seeking your approval of.

24 All I'm trying to say is I'm joining in the
25 county's request both for the expediency of time and effort

1 not to have hopefully the board to rule that all we have
2 before it is one historic area work permit appeal. Anything
3 beyond that we're not going to decide. We have to go back
4 to the Historic Preservation Commission.

5 I hope at the conclusion of this case you will
6 have enough information on all the proposals that HPC heard,
7 whether they were historic area work permit or a preliminary
8 consult. You will have through the staff reports and
9 transcripts that are already in the record what their
10 concerns were with the proposals that they did not approve
11 as well as on the preliminary consult which they said we
12 could not support this preliminary consult, this preliminary
13 idea also, so, all I'm suggesting is that you will hear a
14 proposal. It's not going to be the one that is the
15 initiating factor of the initial appeal, but, it is all part
16 of my continuing history with HPC and, I guess, I'm being
17 long-winded and concurring with what Mr. Hitchens has asked
18 that ultimately make a decision on the request based on
19 everything that you've heard rather than saying this is not
20 the initial historic area work permit proposal.

21 With that I'm going to start with Mr. Hoobler.

22 MR. HOLLOWAY: Before we go on, I would like to
23 ask Mr. Hitchens, does this tally with your request?

24 MR. HITCHENS: Well, I think it does in generally
25 in the spirit of the, of what has transpired between the

1 commission and Mr. Hoobler and the county and Mr. Hoobler.
2 I would add some additional information to it just for
3 clarification and I'm Christopher Hitchens. I'm the
4 Assistant County Attorney for Montgomery County.

5 I don't believe that a de novo hearing permits an
6 applicant to come before the board and present a new
7 proposal. I believe de novo refers to the fact that you're
8 not bound to the decision of the HPC below you.

9 Nonetheless, I am aware that I don't believe that is the
10 board's interpretation of de novo and when we discussed what
11 proposals would be brought before the Board of Appeals and
12 when I say we I mean this commission staff, me, Carey
13 Hoobler and his former attorneys, Wilkes, Artis, Hedricks,
14 and Lane.

15 We agreed that we would permit or we would not
16 oppose Mr. Hoobler bringing the second historic area work
17 permit application proposal to the board and we would not
18 oppose him bringing the preliminary consultation proposal
19 from November. There's a strong argument that since he had
20 a Board of Appeals appeal going for him to present any new
21 proposals was a waiver of that first proposal, but, in
22 spirit of trying to get a resolution to this matter we
23 agreed that we would not oppose those proposals before the
24 board.

25 Now, we also agreed as part of those discussions

1 they would not bring any proposal to the board that they had
2 not brought to the commission because to do that just
3 circumvents the purpose of having a commission. So, if the
4 board were going to permit any proposal, to hear any
5 proposal that had never come before the Historic
6 Preservation Commission we would oppose that and ask for the
7 board to let the commission rule on that.

8 MR. HUTT: I was unaware of the background of the
9 prior discussions with Mr. Hoobler's counsel, but, I would
10 agree with the proffer that was made, that's being made in
11 terms of any proposals and you will not hear one, so, that's
12 why I'm very ready and able to stipulate that if there was
13 one that it would first have to go back to the Historic
14 Preservation Commission for their ability to consider it.

15 MR. HOLLOWAY: Thank you. If there's no questions
16 on the part of any of the board members I believe we're
17 willing to proceed in the manner that's been requested.

18 Before we move on I think there was a request
19 pending for one of our former colleagues who addressed the
20 hearing. Is that correct?

21 MS. RAUFASTE: Yes. In fact, I believe it was
22 stated by Mrs. Turnbull last month that I would be first to
23 speak today.

24 MR. HOLLOWAY: Well, I was reminded of that and
25 given the fact that I am allowed senior moments.

1 MS. RAUFASTE: I just didn't want to be left out.

2 MR. HOLLOWAY: I've been reminded, so, now, if
3 you'd identify yourself other than the lady in the maroon
4 outfit.

5 MS. RAUFASTE: Lynn Raufaste and I am living in
6 the Town of Kensington in the historic district and have
7 been there for 27 years. I also have two other people to
8 speak for today and if it's all right I'd like to do that.

9 I have a letter from Julie O'Malley, who also
10 lives in Kensington, and I can just give you a quick
11 synopsis of her letter if you'd like. She's not able to
12 make it today. Julie O'Malley lives in the Town of
13 Kensington. She is outside of the historic district, but,
14 originally did live in the district. She moved for whatever
15 reason. She was on Armory Avenue. She is very active in the
16 community. She's a member of many clubs and on boards of
17 clubs and has tended most of the HPC hearings in the last
18 ten years and hearings before this board.

19 So, she would like to -- I will read the last
20 paragraph. The Historic Preservation Commission, their
21 review of this case and denial of a permit are well
22 supported and I agree with their denial. I think that this
23 proposal, if allowed, would benefit only the builder and to
24 the detriment of many Kensington residents. Mrs. Julie
25 O'Malley. Her address is 10019 Frederick Avenue,

1 Kensington, Maryland 20895.

2 The other one I have is from Barbara Wagner, chair
3 of the Kensington Local Advisory Panel. If you'd like, I'll
4 read this. This is lengthy, but, I think it's important
5 because it is the LAP.

6 My name is Barbara H. Wagner. I am writing to you
7 as the chair of the Kensington Local Advisory Panel to
8 request intervenor status for the LAP in the above appeal.
9 I also request that if my responsibility as a nurse for
10 Montgomery Hospice Society preclude my attendance, that
11 Barry Peoples in this case -- Barry couldn't make it
12 either -- Kensington Historical Society's representative to
13 the Kensington LAP, be allowed to summarize the LAP
14 statements.

15 I can't do that because I haven't seen this letter
16 until this morning so I haven't read it. I cannot
17 summarize. The Local Advisory Panel is appointed by the
18 Montgomery County Historic Preservation Commission in
19 accordance with Section 24-A-5 to assist and advise the
20 commission the performance of its functions. The Kensington
21 LAP has seven members. We are all residents of the Town of
22 Kensington. Four of the seven are residents of the
23 Kensington historic district.

24 In addition to being a resident of the district,
25 Shawn Scanlon is also town councilman and serves as liaison

1 between the LAP and the Town of Kensington Council. Three
2 of the seven residents do not live in the historic district.
3 All three are interested in history with Barry Peoples, the
4 current president of Kensington Historical Society.

5 As the Kensington LAP we will assist the Historic
6 Preservation Commission by -- -- the creation and
7 significance of the Kensington historic district. The
8 Kensington historic district predates the passage of Chapter
9 24-A of the Montgomery County Code.

10 The Kensington historic district was identified as
11 significant by the Maryland National Capital Park and
12 Planning Commission historian and included as atlas site
13 number 31-6 on the commission's location atlas and index of
14 historic sites in Montgomery County published in October
15 1976.

16 The formal district was envisioned by residents of
17 the town who know of this area's special significance. In
18 1977 these residents formed the Kensington Historical
19 Society with one of its purposes the preservation of the
20 Town of Kensington's historic character. In order to
21 recognize and protect the area's special character the
22 Kensington Historical Society nominated the town's historic
23 area for inclusion on the United States Department of
24 Interior's national register of historic places inventory.

25 Kensington historic district was entered among the

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1 national register of historic places on September 4, 1980
 2 and its significance was described. The district is
 3 significant primarily for the collection of late 19th and
 4 early 20th Century houses which stand in the turn of the
 5 century garden-like setting of curving streets, tall trees,
 6 and mature shrubbery.

7 The houses which exhibit the influence of Queen
 8 Anne shingles, east lake and colonial revival styles have a
 9 uniformity of scale, design, and construction materials that
 10 combine with their juxtaposition and placement upon the
 11 gently sloping terrain to create a significant urban
 12 neighborhood which still retains much of its early 20th
 13 Century environment.

14 The house at 3924 Baltimore Street was identified
 15 as significant in the national register nomination and
 16 described as designated by Washington architect T.M. Medford
 17 who designed the stucco hip roof structure with straight
 18 lines and simple decorative detail. In July 1979 Montgomery
 19 County established permanent tools for protecting and
 20 preserving its historic and architectural heritage by
 21 adopting a functional master plan for historic preservation
 22 and enacting an historic preservation ordinance, Chapter 24-
 23 A of the Montgomery County Code.

24 The ordinance requires that once designated on the
 25 master plan for historic preservation any substantial

1 changes to the exterior of a resource or its environmental
2 setting must be reviewed by the Historic Preservation
3 Commission and a historic area work permit issued if the
4 proposal will not substantially alter the exterior features
5 of a historic site or historic resource within a historic
6 district or the proposal is compatible in character and
7 nature with the historic architectural and archeological or
8 cultural features of the historic site or the historic
9 district in which a historic resource is located and will
10 not be detrimental, therefore, to the achievement of the
11 purpose of this chapter.

12 However, the ordinance requires a permit be denied
13 if the commission finds based on the evidence and
14 information presented to or before the commission that the
15 alteration for which the permit is sought would be
16 inappropriate or inconsistent with or detrimental to the
17 preservation, enhancement, or, ultimate protection of the
18 historic site, or, historic resource within a historic
19 district and to the purpose of this chapter.

20 On September 17, 1986, Montgomery County Council
21 approved and adopted an amendment to the master plan for
22 historic preservation creating Kensington historic district
23 with boundaries similar to those of the national register
24 district. The amendment describes the significance of
25 Kensington's historic district.

1 The district is architecturally significant as a
2 collection of late 19th and early 20th Century houses
3 exhibiting a variety of architectural styles popular during
4 the Victorian period, including shingle, east lake, and
5 colonial revival. The houses share a uniformity of scale,
6 setbacks, and construction materials that contribute to the
7 cohesiveness of the district's streetscape.

8 This uniformity coupled with the prominent design
9 inherent with the original plan of subdivision conveyed the
10 strong sense of both time and place, that of a victorian
11 garden suburb. Since its creation the Montgomery County
12 master plan historic district in 1986 there have been many
13 changes to the district's integrity and its continued
14 preservation in the form of in-fill development much like
15 the case before you.

16 With respect to another case of in-fill
17 development the Maryland Historical Trust, the State lead
18 agencies for historic preservation, was contacted by a group
19 of Kensington residents. After reviewing the information
20 provided Mark R. Edwards, Deputy Historic Preservation
21 Officer, a letter to the chairman of the Montgomery County
22 Historic Preservation Commission dated 17 of November 1988
23 wrote: While the trust has examined information provided to
24 us by the committee we cannot ascertain the completeness of
25 the data provided to us. We do, however, have a significant

1 understanding of the concept of the development to be able
2 to accept the general effect within the context of the
3 district listing on the national register of historic
4 places. In this location there are Queen Anne and four
5 square houses with large yards and lawns set back from the
6 street in a wooded open setting. There's uniformity among
7 the houses, a quality of openness and rhythm to the
8 streetscape and a defined sense of time and place. These
9 are the factors which were cited as a basis for significance
10 in the national register nomination for the district.

11 The historic streetscape of large wooded lots and
12 the sense of time and place conveyed by this district would
13 be changed by an introduction of greater density. The
14 Kensington historic district previously has experienced some
15 development that is incompatible with the characteristics
16 that qualify the district for listing in the national
17 register.

18 However, that development has not been of
19 significant magnitude to jeopardize continued listing. We
20 are not in a position to judge whether the proposed
21 development would alter that situation, but, a significant
22 trend in its direction certainly would. In 1992 the
23 Maryland National Capital Park and Planning Commission on
24 behalf of Montgomery County Historic Preservation Commission
25 studied four historic districts in the county, Kensington,

1 Boyd, Clarksburg, and Hyattstown in order to determine an
2 appropriate vision for the areas and guide decision-making
3 for the future.

4 The purpose of the study was to develop a
5 methodology that would allow appropriate change by
6 management of the historic district and by adherence to a
7 vision or standard by which changes would be assessed. The
8 resultant comprehensive report entitled Vision of
9 Kensington: A Long Range Preservation Plan describes the
10 Kensington historic district both quantitatively and
11 qualitatively and presents a long range preservation plan
12 for the Kensington historic district.

13 The report has been adopted by both the Montgomery
14 County Historic Preservation Commission and the Council of
15 the Town of Kensington. The report describes the Kensington
16 historic district. The Kensington historic district
17 presents a well preserved turn of the century garden suburb.
18 The district is distinguished by open development pattern,
19 its rich variety of revival architectural and its historic
20 relationship to the railroad.

21 The district is composed of two residential areas
22 to the east and the west of Connecticut Avenue and a
23 commercial area along Howard Avenue. The residential areas
24 are dominated by engaging freestanding Queen Anne style
25 residence sited within large garden settings.

1 The commercial area is characterized by the
2 mixture of historic modernized commercial establishments
3 along Howard Avenue and the industrial development
4 surrounding railroad. The study identified five distinct
5 areas comprised of Kensington historic district. The case
6 before you today is located in the area designated as
7 historic residential core. This area consists of most of
8 the primary historic resources in the residential
9 neighborhood.

10 This includes historic resources built in 1890 to
11 1930 which exemplify historic pattern of development
12 characterized by expansive open spaces between adjacent
13 homes. In this area it is important to preserve this
14 pattern of openness, front yard setbacks, building scale,
15 architectural character, and the streetscape qualities.

16 The report offers the following strategy regarding
17 new construction in the historic residential core. Any
18 additional residential development on adjacent lots within
19 this area should meet the characteristic pattern of
20 historical development for the district. Based on the
21 analysis of lot characteristics of primary resources in this
22 area the following criteria are suggested for limiting new
23 residential construction to the extent feasible.

24 A minimum of two lots with 15,000 square feet of
25 lot area for construction of a single family dwelling based

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1 on the historic development pattern and lot sizes within the
 2 district. A maximum lot coverage of 10 percent based on the
 3 pattern of lot coverage for primary resources. Minimum yard
 4 setbacks of 35 feet based on the average setbacks of primary
 5 resources and side yard setbacks with 25 feet to maintain
 6 average building separation distances of approximately 50
 7 feet.

8 The recommendations to the Historic Preservation
 9 Commission as stated above, the Kensington LAP was appointed
 10 by the Historic Preservation Commission to advise the
 11 commission regarding the potential impact of historic work
 12 permit applications on the Kensington historic district.

13 In accordance with our mission, the Kensington LAP
 14 has met and carefully reviewed the application submitted for
 15 the side yard of 3920 Baltimore Street also known in the
 16 application before the Board of Appeals as 3922 Baltimore
 17 Street. In this letter I have described the LAP's thought
 18 process and documents upon which we base our recommendation.

19 Regularly, the LAP has advised the commission to adhere to
 20 the Vision of Kensington criteria for new construction
 21 presented above.

22 To date, none of the applications presented by the
 23 applicant has incorporated these criteria. The LAP's
 24 recommendation remains unchanged. It's lengthy, but, now
 25 I'll give you my which is much shorter I assure you, one

1 page.

2 MR. HOLLOWAY: Did you want to enter those as
3 exhibits?

4 MS. RAUFASTE: Yes, I will.

5 MR. HOLLOWAY: Okay. The first letter was the
6 O'Malley letter.

7 MS. RAUFASTE: Ms. O'Malley's letter.

8 MR. HOLLOWAY: No. 31.

9 MS. RAUFASTE: Yes. Okay. The second one is
10 Barbara Wagner, chair.

11 MR. HOLLOWAY: Exhibit 32.

12 MS. RAUFASTE: Chair of the Kensington Local
13 Advisory Panel.

14 Okay. Lynn Raufaste, Town of Kensington historic
15 district. My husband and I have been residents in
16 Kensington since 1971. We chose Kensington because it was
17 and still is a unique residential community. Kensington's
18 development began in the late 1800's. Bernard Warner, the
19 first major Kensington land developer envisioned a
20 residential community with large homes on large lots. Even
21 today in Kensington we find homes built on parcels of three
22 and four residential lots.

23 Some homes were constructed straddling lot lines.
24 These large lots invite designs for wonderful homes that are
25 set back on their property. This, in turn, encourages

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1 designs for beautifully landscaped rolling green lawns. The
2 garden setting continues today. In 1978, the Kensington
3 Sector Plan was approved and adopted. The plan encouraged
4 Kensington to preserve the character of its community,
5 including maintaining a sense of continuity with the past.

6 With this in mind a group of residents spearheaded
7 by the Kensington Historical Society began to look to the
8 historic district as a nation. Through the efforts of the
9 citizens and county and town officials a small area of
10 Kensington was designated historic district. Those of us
11 living in this district take great pride in the care of our
12 homes and follow the guidelines of historic preservation
13 whenever exterior changes are proposed for our homes.

14 Kensington is a desirable place to live and those
15 who wish to live or build in the Kensington historic
16 district are expected to follow the historic preservation
17 guidelines. The applicants of property lot 25, block 11,
18 3922 Baltimore Street, put in his application to construct a
19 two to two and a half story home with a footprint of 1,716
20 square feet.

21 This footprint is more than double the size
22 recommended by the historic preservation guidelines.
23 Counting the existing garage of 576 square feet, the total
24 footprint is 2,292 square feet. That is more than three
25 times the recommended footprint.

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1 Professional architects and builders can design
 2 architecturally acceptable homes that conform to the
 3 streetscape and local architectural profiles that are within
 4 the recommended footprint not to exceed 10 percent lot
 5 coverage.

6 Kensington home sales are increasing in today's
 7 market. There's a market demand for smaller homes in
 8 Kensington. This home was designed to meet HPC guidelines
 9 with scale and bulk could answer the needs for persons who
 10 want to live in the Kensington historic district, but, do
 11 not require a larger home.

12 In closing, in cases involving special exception
 13 requests the Board of Appeals considers recommendations made
 14 by the Park and Planning staff and the Planning Board.
 15 During the last hearing the board qualified two experts in
 16 the field of historic preservation, both of whom supported
 17 unequivocally the findings of HPC staff and the denial of
 18 the commission.

19 The view of the members of the board have strong
 20 expertise in zoning. The HPC and their staff's expertise in
 21 historic preservation. I believe in instances of appeal
 22 against the HPC you must consider and examine the
 23 recommendations and decisions. I believe they are doing the
 24 job they were hired or appointed to do to protect the
 25 valuable history we have in Montgomery County.

1 They are willing to work with applicants as was
2 done in this case to find an acceptable solution to the
3 petitioner while protecting the historic district. I know a
4 solution can be found to design a home that fits within the
5 footprint limitation. Accordingly, I strongly recommend
6 that you uphold the HPC's decision to deny this proposal and
7 encourage the applicant to see additional guidance from HPC
8 staff. Thank you.

9 MS. TURNBULL: Does anyone have any questions?

10 MR. HUTT: Where does Barbara Wagner live in the
11 town?

12 MS. RAUFASTE: She lives on Washington Street.

13 MR. HUTT: 10915 Baltimore.

14 MS. RAUFASTE: I'm sorry, Baltimore Street.

15 MR. HUTT: That's across the street from the
16 subject property?

17 MS. RAUFASTE: Yes. Actually, caddy corner I
18 think it is.

19 UNIDENTIFIED MALE: Actually, it's not across the
20 street.

21 MS. TURNBULL: We really need to take an answer
22 from Ms. Raufaste.

23 MR. HUTT: And just one other question that
24 relates to your comment in the prior hearing there were two
25 individuals who were qualified in historic preservation and

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1 supported the HPC staff and HPC decision. Correct me if I'm
2 wrong, one was a Carol Mitten who was a real estate
3 appraiser?

4 MS. RAUFASTE: Yes.

5 MR. HUTT: And she testified not as to the
6 appropriateness or inappropriateness of the Historic
7 Preservation Commission's decisions, but, as to whether the
8 lot in question would still retain value if the HPC decision
9 were affirmed.

10 MS. RAUFASTE: I stand corrected.

11 MR. HUTT: Okay. The second individual, who I
12 believe was a gentleman in terms of historic preservation
13 law?

14 MS. RAUFASTE: Yes.

15 MR. HUTT: That's the second individual?

16 MS. RAUFASTE: Yes.

17 MR. HUTT: As I recall his testimony, correct me
18 if I'm wrong, his opinion was that the ordinance in terms
19 that is a model kind of ordinance that HPC follows, how the
20 make up is in terms of the make up of the HPC in terms of
21 who are commissioners and what they're looking at and that
22 the law and how they went about their decision was in his
23 opinion in accordance with the enabling legislation that
24 created such laws. Is that fair?

25 MS. RAUFASTE: Yes, that's fair.

1 MR. HUTT: No other questions.

2 MS. TURNBULL: Okay.

3 MR. HITCHENS: Ms. Raufaste was speaking on behalf
4 of herself and a couple of other individuals. She wasn't
5 presented as a county witness and I think we're at the point
6 of having the appellants present their case.

7 MR. HUTT: At this point in time, Mr. Hoobler, for
8 the record would you please identify yourself by name,
9 business, and your relationship to the property?

10 MR. HOOBLER: My name is Carey Hoobler. I'm a
11 building contractor and I am the contract owner of Mrs.
12 Ahearn's lot.

13 MR. HUTT: With the board's permission I'd, rather
14 than going through a series of questions to Mr. Hoobler,
15 he's got sort of a statement of presentation to provide. At
16 any time I recognize there's something that Mr. Hitchens
17 feels that is inappropriate that he obviously has the right
18 to object at that point in time, but, I think if no one
19 objects that the time frame it may be helpful to let him do
20 his presentation and then I will have some questions at the
21 end.

22 MR. HOOBLER: Let me just first, if I can, try to
23 remind us of where we are and what it looks like. The lot
24 sits in here. This is -- to describe it, this photograph
25 was taken I stood back at the street and took two photos to

1 try to get all of the lot in and to also capture Dr.
2 Loessing's house which is on the right side, 3924, which was
3 mentioned in the letter that was just read by Barbara Wagner
4 and then to, I caught a little bit here of Jeannie's house
5 on the left and then here it's a straight on picture of
6 Jeannie's house and a straight on picture of Dr. Loessing's
7 house.

8 Let me also say that I realize that there are two
9 opinions about this lot and historic preservation and lots
10 like this one and I believe that I'm in a position to
11 appreciate both sides. I've lived in two historic
12 districts. I've built in historic districts in Montgomery
13 County.

14 My overall sense here is that things have been
15 overstated or embellished a little bit more out of -- and
16 not there isn't strong conviction by the people that are
17 opposed to this development, but, I think that it's been
18 sort of some of the terms that are before you that have been
19 bandied about are not in the master plan; terms like open
20 space and side gardens and things like that.

21 They're words that engender, you know, a feeling
22 that's nice and there are examples of that in Kensington,
23 but, I don't believe that's what the law was specifically
24 stating that was referring to other things as part of the
25 characteristics.

1 Also, I would differentiate between this
2 particular site where it's located in the houses that are
3 around it and the case that was cited also in Barbara
4 Wagner's letter that's referring to Carroll Place. It's
5 different. And I could see the point in Carroll Place.

6 In March 1987 I submitted a HOP for a new house at
7 3922 Baltimore Street. This was the April hearing. My
8 original application is intended to stand up with the
9 existing houses to be of victorian style, have lots of
10 porches and be a two and a half story house. Let me --
11 excuse me -- somewhere I have a handout that I wanted to
12 give you where you could see what I was doing a little bit
13 better and I have to confess in this jumble of papers I'm
14 not finding it.

15 MR. CAPUTO: Why don't you take a second to get
16 it. It may be very interesting to have a handout.

17 MR. HOBLER: Thank you.

18 MR. HUTT: Carey, make sure you keep at least one
19 for Mr. Hitchens.

20 (Off the record discussion)

21 MS. TURNBULL: Now, are these already -- these are
22 already in the documents?

23 MR. HOBLER: I believe that they are. I think
24 it's actually two different HOP's, exhibits though.

25 MS. TURNBULL: But, you also had a comparison

1 chart attached to it? That wouldn't have been.

2 MR. HOOBLER: No. That is not. That is something
3 -- the last page.

4 MS. TURNBULL: I'm just going to call this
5 presentation material.

6 MR. HOOBLER: That's all It is and that will be
7 Exhibit 34.

8 MR. HITCHENS: Could we take a minute to look at
9 the comparison chart because we haven't seen that until
10 right now.

11 MS. TURNBULL: Okay.

12 MR. HOOBLER: In the packet which you see here and
13 what's here on the board the picture which actually was used
14 as a slide by the HPC in our first meeting was a picture
15 that I made by sort of working off that photo which you saw
16 there in front where we went out and held up story poles
17 with the height figured out and then allowing for what the
18 grade of the lot was.

19 We set the house at the height that the house
20 would actually be. And, so, this is how the house would set
21 with its height and then in relationship to the grade. And,
22 and this over here is showing the lot coverage that I
23 proposed and then here are the elevations that were given to
24 the HPC. Now, these are out of, these elevations are out of
25 the packet that I believe was originally Exhibit 8, but,

1 that was the staff report for the April hearing.

2 What I'd like to show from that is that first off,
3 referencing the height that this was 32 feet tall from the
4 finished first floor to the ridge. This is 3'3" taller than
5 3920 which is Jeannie's house, the house on the left, and
6 it's about 2 feet taller than Dr. Loessing's house and this
7 is me sort of guessing on his house quite frankly as to what
8 the height is of his house.

9 Both of these houses on the earliest Sanborn
10 master noted is two and a half story houses. I did measure
11 Jeannie's house actually so that should be within about a
12 quarter inch, half inch on that. As for the width of the
13 houses, Jeannie's house at 3920, the house on the left, is
14 34'3" wide solid. That is, there's no porch sort of added
15 to that so what you see is that solid part. Dr. Loessing's
16 is 40 foot wide solid. That's the house on the right.
17 Plus, another 8 foot porch so it would be 48 feet that
18 width.

19 The proposal that I have here is 24 feet wide
20 solid and 30 feet wide if you include the porch that wraps
21 around the side.

22 MS. TURNBULL: How much is the solid?

23 MR. HOOBLER: 24 feet. That's the width at the
24 front. The length, my proposal is in the middle of these
25 two, 66 feet deep, with 12 foot ebbing porches. Jeannie's

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1 house on the left is 44 foot deep, there are no porches.
2 And Dr. Loessing's house with sort of the various things
3 added on to it is over 100 feet deep.

4 MS. MAYER: Is that for porches too?

5 MR. HOUBLER: That includes porches on Loessing's
6 property.

7 MS. TURNBULL: When you're saying 100 are you
8 putting back --

9 MR. HOUBLER: Yes, and, honestly, it's like 114 or
10 something. My proposal without porches in its footprint
11 coverage is 1,304 square feet. There are 412 square foot of
12 porches on the first floor, so, with the porches that's
13 1,716 square feet. If you add the garage, the 20x20 garage,
14 which was part of the presentation that I had before the
15 Board of Appeals -- that I had before the HPC in April the
16 total is 2,116 square foot of coverage of footprint.

17 3920, Jeannie's house, is 1,440 square feet
18 according to staff report. I measured it a little bit
19 bigger, but, roughly that's about right. If you add in her
20 existing shed and were to relocate the auto house, which is
21 the garage that's on the lot, to her property, which was
22 part of my first proposal, that would bring the total up to
23 1,789.5 square feet.

24 3924, and this I gathered from the tax records, is
25 1,834 square feet without the porches, just the house. It's

1 2,316 square foot with the porches and if you add all the
2 different things it's 3,315 square foot.

3 I believe that my original proposal with a decent
4 house, even Commissioner Trumble noted in the first meeting
5 that it was nicer than some of the others that they had
6 seen. It conformed to the existing zoning for R-60 on a 50
7 foot wide by 172-1/2 foot lot with 8,625 square feet. We
8 have a 50 foot setback for the front. We have 10 foot side
9 yards. We had a 56 foot rear yard and we had a 24-1/2
10 percent lot coverage.

11 The detached garage was shown at two plus two, two
12 from the side and two from the rear, but, that could be
13 easily changed to five plus five because I know that the
14 ordinance has changed since then for the setbacks.

15 And the height was 32 feet to the ridge which
16 means that it would actually probably measure a little bit
17 less the way the zoning measures things which would be to
18 the mid point of the gable but then to the grade itself.

19 I offered some of the changes I mentioned after I
20 got the staff report in April to try to accommodate the
21 things that they wanted. One of the other things I did was
22 reverse the house on the lot to remove it from having a
23 driveway conflict with the red bud which you heard about
24 last time from Dr. Loessing. I also offered to rebuild the
25 garage or auto house as it's been termed on Jeannie's other

1 lot.

2 HPC staff did suggest that this was a big deal
3 because it was a primary resource. However, I would mention
4 that it needs a lot of work in its present condition, it
5 doesn't currently attach to the macadam driveway that's
6 there anyway, and although it is on the Sanborn maps it was
7 never picked up or noted by the HPC on the master plan as
8 were other accessory structures, and neither was it picked
9 up on the Vision of Kensington's survey in 1992. They
10 missed it as well and even sort of a dating of Jeannie's
11 house has been, has had about a 50 year range by the HPC as
12 to what date it is from the various staff reports.

13 So, I think, I don't want to say they're going to
14 miss it if the house was gone, but, I think moving the
15 garage wouldn't be as a disastrous thing as has been
16 suggested.

17 MR. HUTT: Mr. Hoobler, there was, I think, a
18 reference at least with the garage just so we have an idea
19 of whether the garage perhaps was attacking a tree or the
20 tree was attacking the garage. In your opinion is there --
21 you've mentioned that it does need to be repaired. With
22 regard to its location vis a vis an existing tree there,
23 does it need to be moved merely to also accommodate further
24 deterioration because of the tree that's adjacent to it?

25 MR. HOOBLER: There's also a little bit of dirt

1 that's sort of packed up against the side that can't be
2 helped again either from the right side. Yes, it needs, it
3 needs something. It needs more than a coat of paint.

4 MR. HUTT: Go ahead.

5 MR. CAPUTO: On your chart, could you help me, I
6 just put on that next to last line lot size. Start with
7 3922, what's the lot size? Is that the one that's 50x172.5?

8 MR. HOOBLER: There are five lots represented
9 there.

10 MR. CAPUTO: Okay, but, let's take yours.

11 MR. HOOBLER: Okay. That is --

12 MR. CAPUTO: That is 3922 is the address?

13 MR. HOOBLER: Yes, sir.

14 MR. CAPUTO: And that's 50x172 which is about
15 8,600 square feet?

16 MR. HOOBLER: Yes, that's correct.

17 MR. CAPUTO: Now, if we go to Jeannie's house,
18 3920, the house there on two lots, lot 27 and lot 26?

19 MR. HOOBLER: Right. Each of those lots are the
20 same size as the lot in the middle as the lot under
21 discussion.

22 MR. CAPUTO: Okay, so, the house straddles?

23 MR. HOOBLER: Part of the house does straddle over
24 into that other lot.

25 MR. CAPUTO: So, that house and gardens is on

1 17,200 square feet?

2 MR. HOOBLER: Yes, sir.

3 MR. CAPUTO: Okay. Why don't you go to lot 23 and
4 24.

5 MR. HOOBLER: It's the same situation.

6 MR. CAPUTO: 8,600 and 8,700 plus or minus?

7 MR. HOOBLER: 8,625.

8 MR. CAPUTO: Okay. Exactly. And 8,625 for lot
9 23?

10 MR. HOOBLER: That's correct.

11 MR. CAPUTO: So, it's the same thing.

12 MR. HOOBLER: Yes, sir.

13 MR. CAPUTO: Okay. 17,250.

14 MR. HOOBLER: Yes.

15 MR. CAPUTO: Thank you.

16 MR. HOOBLER: As for the house I proposed,
17 although George Koutsoulos stated for the Board of Appeals
18 in the first meeting on page 58 of the transcript that my
19 proposal was "comparable in every way to the neighbors in
20 terms of width, height, massing, ridge line". The HPC staff
21 report stated on page 7 of the April '97 report "would
22 dominate the existing historic resources through height and
23 size."

24 But, in that report there were no figures or
25 comparisons given to Dr. Loessing's house on the right-hand

1 side. The HPC voted down the proposal saying that it would
2 both crowd and over-shadow the historic resources on either
3 side.

4 Let me remark about a point that George Koutsoulos
5 made at the first board meeting. He used the slide that
6 this picture was taken from this picture and that's all he
7 used when he spoke about cross gables. On pages 61 and 62
8 of the Board of Appeals transcript "It also had cross gables
9 on it. Gables that were facing the side lot lines and what
10 this tends to do is to make the roof even more magnificent,
11 he goes on to say, and, so, cross gables are particularly
12 troublesome in terms of massing."

13 He's referring to these gables here that you would
14 then see them sort of straight on if you came to the side of
15 the house. But, I would note that only showing you the
16 front elevation makes the cross gables troublesome and the
17 roof more magnificent than it really is because if one looks
18 at the side elevations, which weren't shown, you would see
19 that the one cross gable is on the back towards the rear of
20 the house and the other cross gable right here is very
21 narrow and halfway back on the house.

22 So, you don't see those standing up straight at
23 you like one might get the opinion by only looking at the
24 front elevation. They sit back farther on the house and
25 they're more diminutive in size than I think is related to

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1 here.

2 My original proposal is a good house. I certainly
3 don't believe it is the -- -- that has been described. Most
4 of the recent in-fill of new construction is this big. Some
5 of it's bigger. Many of the older Kensington homes are much
6 larger. Stand between Jeannie's house and the house to the
7 left and the houses that go down from Jeannie's house are
8 more the size of Jeannie's house, probably a little more on
9 the delicate side. The houses that go up along Dr.
10 Loessing's house really are about the same kind of house.
11 Again, they're bigger houses.

12 I, I thought that my house was a fair transition.
13 I'd like to read, I promise a real short, one-page letter.
14 And I have to say that this man -- I mean, he wrote this
15 letter because I asked him to. He's a personal friend of
16 mine and we do work together. When he was on the Board of
17 Appeals -- I mean, the HPC, we had no business relationship
18 at that time.

19 Dear members of the Board of Appeals: Having
20 served as a member of the Historic Preservation Commission
21 of Montgomery County for seven years, 1988 through 1995, I
22 would like to address a concern of mine that has developed
23 during my term as a commissioner on the board. My concern
24 centers on the fact to deny the owner of a recorded
25 approving building lot is unconstitutional and unfair to the

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1 owners who have maintained an extra lot to their property
2 with the idea of financial security, nest egg type
3 investment for retirement, educational needs, etc.

4 During my term in office I know of two vacant lots
5 that were developed plus several additions in the immediate
6 area and all have blended into and are an asset to the
7 streetscape. The two lots were 3929 Prospect Street and
8 3913 Baltimore Street. I'll describe those later.

9 Both are within several hundred yards of the lot
10 being considered at this time. I would also like to
11 emphasize my support of historic preservation that proven by
12 the seven years of volunteer service, in addition my own
13 participation in buying and restoring ten condemned master
14 plan sites in Montgomery County. All these properties have
15 been sold to proud homeowners and, in turn, they have become
16 valuable tax producing properties.

17 Some examples of these are Rockland, Kinsman
18 Farms, Oak Grove, the Poole house, and Pleasant View Farm.
19 I would urge you to approve this building permit. A denial
20 gives a negative message to the general public and gives the
21 feeling that once property is given to historic designation
22 one loses control of one's property. Sincerely yours,
23 Joseph B. Brenneman.

24 MS. TURNBULL: Would you like to submit that as
25 Exhibit 35?

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MONTGOMERY COUNTY ARCHIVES

1 MR. HOOBLER: I didn't give you a copy of this.
2 Do you want to see it?

3 MR. HITCHENS: What's the date of the letter?

4 MR. HOOBLER: April 27th.

5 MR. HITCHENS: Mr. Brenneman -- was that the first
6 HPC in April?

7 MR. HOOBLER: So, I appealed the April hearing I
8 had with HPC. I hired an attorney who was to go back to HPC
9 and try to work this out. I subsequently met with staff to
10 try to come up with another proposal. Robin Zeik directed
11 me to look at the smaller in-fill period houses on Prospect
12 Street and also mentioned some other houses in Takoma Park.
13 I also met on the site with the Park and Planning arborist,
14 Steve Perry, to look at the red bud tree, which he said was
15 healthy.

16 I came back to the HPC with two options.
17 Actually, it was something in between that but I had shown
18 Robin and she said make it smaller still, so, I came back
19 with two other proposals. We called them proposals A and B.
20 That is, proposal B was able to be either up at the average
21 building line at about 50 feet or be slid back to about 70
22 feet in order to help sort of defer to the houses on either
23 side. This would have -- -- of Robin's comment subsequent
24 to the April meeting that some historic folks thought the
25 house should be an in-fill type like the 1910 to 1930's

1 houses in Kensington while there were some others that
2 thought it should move back on the lot to be more sort of
3 ancillary kind of house.

4 My proposal house type B was trying to do both.
5 Both of those options were shorter houses. Well, Robin's --
6 this is from the HPC files for the house at 3806 Washington
7 Street in Kensington which actually has been before you guys
8 and these are photographs that are labeled 50 foot lot
9 houses in Kensington.

10 MR. HITCHENS: Can we see that before it's shown?

11 (Off the record discussion)

12 MS. TURNBULL: This is going to be Exhibit 36 and
13 it's the photo montage of 1910 to 1930 in-fill period
14 houses.

15 MR. HOOBLER: Yes. These seem to be relevant to a
16 50 foot wide lot and on Washington Street and I was directed
17 to look at some of these houses by staff and one of the
18 houses is directly across the street on Baltimore Street.

19 MR. HUTT: What's the address of that house?

20 MR. HOOBLER: I just know it's Jack's house. I
21 don't know the --

22 JACK: 3919.

23 MR. HOOBLER: It's directly across the street from
24 the lot. These houses that are here, I mean, there's one
25 story -- one house that's one story, but, a lot of them are

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1 definitely two story houses. There is, and you can't really
2 see it here, because the picture's not really good, there is
3 one and a half story bungalow here in this photograph, but,
4 most of them are two story houses and one of them is over 35
5 feet wide.

6 MR. HUTT: Now, we'll make this clear. All but
7 one of those, one is of a house that is actually on
8 Baltimore Street. The other in-fill photographs are
9 reflective of houses that are on Washington Street, not
10 Baltimore Street.

11 MR. HOOBLER: Um, that's, that's correct. There
12 are some on Prospect Street which is one block over. Okay.
13 These seem to be better light than that proposal A that I
14 had of the A and B, so, I focused on that and the B house,
15 here's the front elevation, here's the rear elevation, and
16 here are the two side elevations and if you look here you'll
17 see how the footprint is set up.

18 It basically has sort of a main part in the front
19 and then sort of like an addition portion on the rear of it.
20 This would be the main part. This would be the part that's
21 added onto the rear. The intention there was to follow the
22 way a lot of people have access onto their homes where what
23 you really see from the front is only so big, but, there's
24 more going on behind.

25 If you don't pick that up from the street, but,

1 they're able to use that inside of their house. It's a one
2 and a half story house with the second floor sort of tucked
3 in underneath the roof dormer. It was only 26'6" high. The
4 second part, the rear addition, had the same height and was
5 21 feet by 26 feet in dimension. This house is 1910 to 1930
6 in-fill looking period in Kensington and we were able to set
7 back 70 feet from the road so we were able to get another 20
8 feet in the front yard to try to sort of let the front yard
9 space be shared by the other houses to keep the rhythm, I
10 guess, to keep the, to coin a phrase here.

11 However, the staff report was negative. On
12 11/12/97, page 7, it says, proposal B, however, raises the
13 issue of whether or not a structure pushed the rear of the
14 lot might not be acceptable. Staff feels that this specific
15 proposal is still too large in relation to the other primary
16 resources in this part of the district.

17 Here's the house in relationship to the two houses
18 on either side. And that it doesn't equate to an ancillary
19 structure in terms of size. The proposed use of the
20 bungalow seems an appropriate in-fill house, but, the
21 question remains whether the goal is to moderate in-fill or
22 to preserve the existing character of the street. In other
23 words, construction of a new structure in the form of an
24 ancillary structure might preserve the overall feel and
25 character of the street.

1 The proposed bungalow would merely be easily
2 identified as in-fill construction. So, I postponed the
3 HPC meeting to later in November and then met again at the
4 meeting that Gwen Marcus referred to when she was here last
5 time where she used the term, shirette, where we basically
6 had -- I had my architect working with -- -- to sort of try
7 and scribble up something that might be appropriate.

8 Chris Hitchens was at that meeting at the
9 beginning and George Koutsoulos was there as well.

10 MR. HUTT: Before you leave this and perhaps we
11 could just mark this as Exhibit 37 just so it has a
12 reference point for the record, what is the width of the
13 proposed house?

14 MR. HOOBLER: It's 28 feet wide and that's the
15 porch is on the front so it's 28 foot wide solid.

16 MR. HUTT: And, again, just to refresh everybody's
17 memory, with regard to Jeannie's house, her house was how
18 wide?

19 MR. HOOBLER: 34'3" wide solid.

20 MR. HUTT: Dr. Loessing's?

21 MR. HOOBLER: 40 solid and then when you add the
22 side 48 feet wide. We tried to pin down the criteria that
23 HPC wanted that might work. Terms like smaller ancillary,
24 something that would not engage the street, something
25 carriage house like. My architects tried to develop a plan

1 that would not look like a house, address the street, and be
2 smaller and still fit a house inside.

3 We then showed to staff and later to George which
4 basically what became my February proposal for the HPC.

5 But, it was, in my opinion, sort of strange and fun at the
6 same time and sort of offbeat. Staff did not think that
7 there was sufficient notice time to add this carriage house
8 type structure to the November HPC consultation so we didn't
9 and as I thought more about sort of a practical appeal of
10 what became proposal C I was concerned that it would be too
11 weird.

12 So, I went forward on that meeting with only the
13 proposals A and B and we focused on this one, B. Again,
14 like the first house, the commissioner said it was a nice
15 house, but, they also wouldn't support it as a HOP and
16 several said to focus on something more ancillary, not
17 smaller in-fill and also at that meeting there was something
18 circulated about carriage houses.

19 So, with my first proposal denied and B
20 discouraged and at the end of November I postponed the Board
21 of Appeals case from December to March to try to get my head
22 together. In the meanwhile, a family that I had been
23 working with about a new house called me about this lot.
24 They had heard that somebody had sort of a lot in trouble
25 and it was in a close-in location and they could live with

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1 something funky and, so, we tried to work with what they
2 needed and keep it in the skin of what we had started in
3 this proposal C.

4 So, we went back with proposal C.

5 MR. HUTT: And this is February 1998?

6 MR. HOOBLER: Yes, sir. A smaller footprint. The
7 footprint is 1,143 square feet. It is a one and a half to
8 two story structure with the front door not visible from the
9 street. The front door actually comes in through the side
10 here. It's in this alcove.

11 It's 94-1/2 feet back from the street and only 26
12 foot wide. I thought I was reaching my mission in trying to
13 make it disappear. And at 26 and 2-1/2 inches tall is still
14 shorter than the houses on either side. It is taller than
15 the bungalow was. That is in the staff report.

16 MR. HUTT: We ought to just make it for our
17 purposes 38. But, it did come from -- it was in the staff
18 report.

19 MS. TURNBULL: I think we should just refer to it
20 as part of the staff report rather than -- okay.

21 MR. HOOBLER: What I neglected to do is give you
22 guys -- the only thing that is -- again, there's a page at
23 the end that is not listed as an exhibit. It's a page of
24 comparisons again.

25 MS. MAYER: Mr. Hoobler, did you say the height

1 was now down to 22 feet wide?

2 MR. HOOBLER: No, 26 feet, 2-1/2 inches.

3 MS. MAYER: So, that's less than 32.

4 MR. HOOBLER: Yes.

5 MR. HUTT: However, I think the question at least
6 in reference to the 22 feet, 6 inches, what was the proposed
7 height of the proposal B?

8 MR. HOOBLER: That was 22'6". See, you're looking
9 at the very original.

10 MR. HITCHENS: The only thing that's right was the
11 chart on this.

12 MR. HOOBLER: Yes.

13 MR. HITCHENS: Just give us a second to look at
14 it.

15 MR. HOOBLER: At 22 feet wide, I mean, it's half
16 of Dr. Loessing's width. It was substantially smaller than
17 the width of Jeannie's house. Sitting back 94-1/2 feet from
18 the street it should be getting a little bit smaller in its
19 field certainly. I left the auto house basically -- this is
20 that little garage -- basically where it was in relationship
21 to the side lot lines, but, I did move it forward on the lot
22 14 feet in this proposal.

23 I did several things. One, it got it away from
24 the tree that it is sort of engaged with right now. It also
25 connected it up to the macadam, the driveway that's there

1 now, which is not connected to now. It also gave a little
2 bit of space to be able to go around the side of the house
3 and it allowed us to get a little bit deeper of a backyard.
4 The backyard is not including a little bump added is 30 feet
5 --

6 MS. TURNBULL: I'm sorry. What may be a problem
7 associated with that right off it would need a variance
8 because it's an accessory structure in the front yard.

9 MR. HOOBLER: One of the commissioners brought
10 that up and I guess the solution would be to place it in the
11 rear and use it as a garage for this house in the rear.

12 MS. TURNBULL: Okay.

13 MR. HOOBLER: Christopher, is it okay to pass this
14 up?

15 MS. TURNBULL: This is going to be presentation B.
16 Is this option C?

17 MR. HOOBLER: This is B and C.

18 MS. TURNBULL: Okay. Some of the presentation
19 materials B and C.

20 MR. HUTT: I'm not sure we've seen proposal C.

21 MS. TURNBULL: We've been talking about it.

22 (Off the record discussion)

23 MS. TURNBULL: The next exhibit will be 37-B and
24 C. There is no 37-A.

25 MR. HITCHENS: When you refer to a proposal as C

1 are you meaning the proposal that was --

2 MR. HOOBLER: February.

3 MR. HITCHENS: -- February '98.

4 MR. HOOBLER: '98. Let me, while you guys are
5 looking at that, say that I provided all the information
6 that DEP requested of me of any of the proposals and
7 whenever Robin asked for something I gave it to her with the
8 exception of floor plans. She allowed that I could mark
9 grading for this proposal C. It had never been requested
10 for the other houses, but, she said I could give her what
11 was relative to grade as opposed to giving them a grading
12 plan.

13 A grading plan is not required in Montgomery
14 County for a lot of this size by the DEP. This is the first
15 that I had been asked for one on anything with HPC.

16 MS. BARRON: Why do you think that was that they
17 asked you for that?

18 MR. HOOBLER: I think that there was some problem
19 with the house that was built on Washington Street at 3806.
20 There were some issues related to a tree dying and grade and
21 such there. The grade's a little steeper on Washington
22 Street, but, I think it was becoming now sort of an issue or
23 ammunition for some of the neighborhood concerns to ask
24 about grading.

25 MR. CAPUTO: I've got a question for you on C

1 please.

2 MR. HOOBLER: Yes, sir.

3 MR. CAPUTO: When you drive up the street now the
4 structure in the back, you call that the auto house, or,
5 garage?

6 MR. HOOBLER: It's not quite in the back. It sits
7 about midway back.

8 MR. CAPUTO: No, I mean right now when I drive by
9 there today it's not sitting there, right, it's in the back?

10 MR. HOOBLER: No, sir. It's sitting 14 feet
11 further back than it's shown on this drawing. So, it's not
12 back behind either of these houses.

13 MR. CAPUTO: Okay. And that's called what, an
14 auto house?

15 MR. HOOBLER: It's called an auto house, which is
16 a little one car garage.

17 MR. CAPUTO: Okay. And you're going to --

18 MS. AHEARN: You could be referring to the old out
19 house, the little shed back there.

20 MR. CAPUTO: Yeah, that's what I was referring to.

21 MR. HOOBLER: Oh, that's actually just on the line
22 on Jeannie's property. This right here.

23 MR. CAPUTO: It has nothing to do with this?

24 MR. HOOBLER: No, sir.

25 MR. CAPUTO: Now, the garage, or, auto house

1 there, is it movable, or, will it fall apart, or, what?

2 MR. HOOBLER: It's sort of falling apart where
3 it's standing now.

4 MR. CAPUTO: Is it attached to the blacktop?

5 MR. HOOBLER: No, sir, it is not.

6 MR. CAPUTO: That plan there tells us it's moving
7 forward.

8 MR. HOOBLER: Yes. That is what I suggested.
9 The chair mentioned it doesn't meet zoning and that is true
10 and that is also mentioned by the HPC commissioner.

11 MR. CAPUTO: You're trying to move the existing
12 auto house, or, garage forward, or, rebuild it, or, what?

13 MR. HOOBLER: Both is what I offered to do in
14 February.

15 Let me just backtrack. The November proposal,
16 which wasn't a HOP, it was more of a consultation, also had
17 where that house sat the auto house had moved and in the
18 initial, the original proposal was the same thing. The auto
19 house would need to move for that proposal to work and in
20 all instances before the board, although I have to say that
21 on my very first proposal before I got the staff report I
22 was suggesting to demolish the garage.

23 After receiving the staff report I reformed my
24 ways and said that I would rebuild it.

25 MS. TURNBULL: Okay. I have a question. Is the

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1 reason that C is back is because it's trying not to be an
2 in-fill structure, it's trying to be an accessory structure?

3 MR. HOOBLER: Yes.

4 MS. TURNBULL: What would happen if C was just the
5 in-fill structure and moved forward? Because isn't that --
6 wasn't that a concern as to size and scale of this compared
7 to others, yet, at the same time a concern about the
8 streetscape and I don't know, was that an option that ever
9 was put forward?

10 MR. HOOBLER: Not with -- see, I guess everybody
11 sort of gets a different take on this, but, the way I saw it
12 was that I was originally asked to do something in-fill
13 compared to my first proposal and, so, I tried to do that
14 and then in the midst of that I was told maybe it could go
15 part way back.

16 And, actually, Robin's comment was that -- tell me
17 if I got this right -- but, that she wasn't really of the
18 opinion it should be halfway. It should either be up on the
19 line if it's going to be in-fill, or, it should be all the
20 way back if it's going to be ancillary.

21 Is that fair?

22 MR. HITCHENS: You can't ask her the questions.

23 MR. HUTT: Let's get to the origin of moving of
24 whatever the proposal is back, further back on the lot. Was
25 that your idea, or, were you given direction from either HPC

1 staff or what you perceived from hearing from the HPC
2 commissioners to move whatever you're proposing deeper into
3 the lot?

4 MR. HOOBLER: It came from the HPC.

5 MR. HOLLOWAY: One question if I might. I know
6 what's in the record, but, how long have you been involved
7 in this process? What's the starting date to date until
8 now?

9 MR. HOOBLER: I started in March of -- I had a
10 date March of 1987 -- '97. It hasn't been that long,
11 sorry, it only feels that way. And we had a date sooner
12 than the April date, but, Robin called me back and asked for
13 a delay to give sort of more time.

14 MR. HOLLOWAY: So, you started in March of 1997?

15 MR. HOOBLER: Yes, sir.

16 MR. HOLLOWAY: Thank you.

17 MS. TURNBULL: I'd like to go back to my thought
18 on that, pushing things forward. Whether there are pluses
19 and minuses, at the present time pushing C forward. It
20 seems the lot coverage is 16.9 versus 27, I believe.

21 MR. HOOBLER: 24.5.

22 MS. TURNBULL: 24.5. It's a big difference. The
23 lot coverage is smaller than Ms. Ahearn's. Part of my
24 concern is when we started with this, with the charts that
25 you gave us today, the first chart shows how the percentage

1 of lot coverage on this lot is if you add the two lot
2 coverages, 26 and 27, for example, that's about 20 percent,
3 20.7 percent plus or minus, but, the lot size is twice what
4 you have for lot 25. Then you look at lot 23, 24, which is
5 really heavy lot coverage, but, it's still 49. It's about
6 50 percent lot coverage on those two lots.

7 MR. HOOBLER: It's not quite that much, but, the
8 point you're bringing up is it's very hard to meet the
9 criteria. I've found it hard to sort of get comfortable
10 with what the criteria is and I believe what's happening
11 with these proposals is they are taking me from a regular
12 house, asking me to go a little smaller, and then smaller
13 still and none of these proposals were approved.

14 So, I have to go smaller still and I feel like
15 it's more going, going, gone than it is -- I mean, what it
16 is is they are desirous to -- it's very hard to fit a house
17 that meets today's market standards.

18 I know that there -- I mean, I lived in a little
19 house on Hawkins Lane. I know that people live in houses
20 smaller than that with lots of kids and the whole bit, but,
21 it's very hard to meet the criteria that the HPC is
22 contemplating.

23 MS. TURNBULL: And your view of the criteria at
24 this point is what? It's 25 percent lot coverage? Is
25 that --

1 MR. HOOBLER: Their criteria, they want 10 percent
2 lot coverage.

3 MS. TURNBULL: 10 percent lot coverage. But, Ms.
4 Ahearn's house, which is a relatively small house, I mean,
5 comparatively in that neighborhood that house is 17 percent
6 lot coverage.

7 MR. HOOBLER: That would be on her lot. If you
8 added that other lot onto it -- see, I tried on the top of
9 that, but, --

10 MS. TURNBULL: That's about 20 and then you take
11 half of that and it's two lots.

12 MR. HOOBLER: Right.

13 MS. TURNBULL: So, that's where you'd have to put
14 the home.

15 MR. HOOBLER: So, if you have two lots together,
16 which I don't think that's a pretty rare animal, but, if you
17 have two lots together you don't have much of an issue. You
18 wouldn't be able to build a house, I think, as big as Dr.
19 Loessing's house to meet the guidelines.

20 MS. TURNBULL: You couldn't even come close
21 because if you add the two -- his house with the greenhouse
22 in the back would be 25.

23 MR. HOOBLER: Uh-hmm. That's -- those are the
24 figures that I came up with, yes.

25 MS. TURNBULL: So, you've got 25 on one side and a

1 little over 10 on the other side is what we're talking
2 about, right?

3 MR. HOOBLER: Yes.

4 MS. TURNBULL: Okay. Across the street there is
5 someone else who has a house that's on one lot that's
6 probably a little bit more than 10 percent as well, right?

7 MR. HOOBLER: I'm under the impression, yes, it's
8 Jack's house that would fall under that.

9 MS. TURNBULL: Okay.

10 MS. BARRON: Question. What Mrs. Turnbull said on
11 lot 23, I thought that -- is that usable space, living
12 space, 12.5 that we just added in to make 50 and then
13 divided by two to make 25 percent coverage?

14 MR. HOOBLER: I wouldn't live there. I mean, no,
15 it's --

16 MS. BARRON: I mean, isn't that just the garage?

17 MR. HOOBLER: That is the --

18 MS. TURNBULL: It doesn't matter. It's comprised
19 of area -- the ratio number is concerned. Any coverage is
20 lot coverage.

21 MR. HITCHENS: I think the question relates to
22 building lot coverage.

23 MS. BARRON: So, that's included in this or it's
24 moot or --

25 MR. HUTT: By analogy HPC staff when they did

1 their calculations included the footprint of the auto garage
2 in the calculations for lot coverage as well, so, it's
3 basically building lot coverage whether or not it's not
4 calculated on livable, habitable space, but, just building
5 lot coverage.

6 MR. HOOBLER: And the porches as well are
7 included. Now, with Dr. Loessing's house I never went on
8 his property so the measurements that I have there were the
9 best guess that I could do from trying to measure it. Going
10 all around I could on places I was allowed to see it running
11 tape measures around here and here.

12 (Off the record discussion)

13 MR. HUTT: If you're finished with discussion
14 because I think, again, all of these are sort of background
15 information to come to the point of which of these three
16 proposals are you requesting the board to grant approval to
17 build?

18 MR. HOOBLER: Can I just finish something?

19 MR. HUTT: Oh, sure, I'm sorry. Absolutely.

20 MR. HOOBLER: There was some discussion or comment
21 last time by Gwen Marcus that the proposal C that had been
22 part of the shirette which was the -- -- session was vastly
23 different than the proposal C that was before the HPC in
24 February and what I did was I sort of flinched a little bit
25 and I called the architect and I said fax me what you have

1 from the meeting that we had with the HPC staff.

2 So, they did and I then took the drawings that
3 were part of the HPC staff report that showed this proposal
4 that I gave, proposal C that I gave, and I tried to shrink
5 those down to eighth inch scale to match up the scale that
6 we were trying to use in the shirette.

7 And I think if you look at sort of comparing sort
8 of the sizes of what's there you can see --

9 MR. HITCHENS: Can you hold on for just a second?

10 (Off the record discussion)

11 MR. HITCHENS: Madam Chair, I'm going to object to
12 these drawings coming in, the ones that Carey is holding,
13 because the commission has never seen them. My
14 understanding of them is that they are reduced size drawings
15 and I think he's proffering them as something that the
16 commission might approve. I'm not sure what it is.

17 MS. TURNBULL: I think what I'd like clarification
18 on too, my impression of this is what this is that we had
19 instructed at the last hearing what was described to us was
20 that there was a session where people had drafting papers
21 and they drafted out a series of compromises and that this
22 is what that compromise was and then in order to articulate
23 that C is what had been shown that the drawings that are now
24 on the easel and the ones that seem to be part of our packet
25 are a comparison thing.

1 This is what was shown, this is what it is, do you
2 see that match. I think that's what you're --

3 MR. HOOBLER: I'm trying to respond to comments
4 Gwen made.

5 MS. TURNBULL: So, in fact, these were brought up
6 in the earlier testimony that these drawings had occurred
7 and, so, I would like for them to be included in the record.
8 We've already had discussions about these drawings. Clearly
9 there's an understanding that when something is fact --
10 first of all, because it was on bum wad it's xeroxed. Once
11 it's xeroxed it changes a little bit and it goes from xerox
12 to fax and that changes it a little bit again. We
13 understand that and recognize that.

14 MR. HITCHENS: Okay. What I'd like to clarify is
15 that they did not make their way to the commission for any
16 review by the commission. So, they're new.

17 MS. TURNBULL: They were part of the staff
18 discussion and I think that that was clear during the last
19 hearing.

20 MR. HUTT: The sole purpose of their submission is
21 only because it was brought into question that Mr. Hoobler,
22 after attending the staff session, went ahead and submitted
23 something that at least that particular staff member felt
24 was not representative of what was being discussed and Mr.
25 Hoobler is only presenting the version of what was discussed

1 this was an 18 foot wide piece that has grown to 20 foot
2 wide.

3 What we did to try to make up for some of that we
4 had a number in mind. I asked -- --. She said 1,152 square
5 feet was what we had shown in that shirette. The proposal
6 that went before the board, I mean, before the HPC in
7 February was 1,147 square feet. It was actually a little
8 smaller, but, we, you know, fiddled with things to get that
9 to happen.

10 We made these little areas that you see here, here
11 in the front, remember I described to you how the door was
12 sort of hidden in this recess, we made these recesses
13 deeper. There's a little door that goes into the house
14 through this recess. We made it deeper in order to try to
15 carve off some of the space that we've added and what we've
16 done is what we intended to do was to give it a sense of the
17 this isn't just the house. I mean, there's something
18 strange about it, something different, and maybe at one time
19 it was part of a barn or a garage and that these were
20 openings that had sort of been filled in.

21 So, that's what we were trying to do. This can be
22 seen in better detail in the staff report, all the pages
23 that are in there.

24 MR. WAGNER: I'm Jim Wagner with the -- Council
25 member with the Town of Kensington and I think we've been

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1 granted intervenor status. I would just like to point out
 2 that the true footprint of that proposal would be the shadow
 3 or the footprint created by the second story which is harder
 4 than the upper story indentation, if you would, a
 5 mathematical smaller footprint, but, the real bulk of the
 6 house is in the second floor.

7 MS. TURNBULL: Okay.

8 MR. WAGNER: Thank you very much, Madam Chair.

9 MR. HOOBLER: The second floor does stand over
 10 those insets. What all of this gains for us in total square
 11 footage is roughly 60 square feet over what was shown to the
 12 staff.

13 MS. TURNBULL: Sixty square feet? Is it in the
 14 front, in the back?

15 MR. HOOBLER: To the back.

16 MS. TURNBULL: Okay.

17 MS. BARRON: I guess my question is you're 15.9
 18 percent coverage with this?

19 MR. HOOBLER: With that including the auto house
 20 still on the same property.

21 MS. BARRON: So, it's with auto house. It's 2.67
 22 from 15.9 --

23 MR. HOOBLER: 13 something. I don't know off the
 24 top of my head.

25 MS. BARRON: And if you were just to reduce it 3

1 percent more which you thought was the magic number they
2 were after, 10 percent, is that correct?

3 MR. HOOBLER: Oh, yes.

4 MS. BARRON: Over their 10 percent including the
5 2.67 for the auto house.

6 MR. HOOBLER: I believe it probably would have had
7 it included the auto house. I never got a clear read on
8 that. The other thing is that I was getting the sense in
9 the last hearing because when we pushed it all the way back
10 or not quite all the way back, but, we pushed it back on the
11 lot the comment was then that people would see it from
12 Prospect Street and it would interrupt their vistas through
13 the neighborhood.

14 So, my sense is that this two story house, or, one
15 and a half story house is really probably pushing that too,
16 but, I don't feel that I ever got a real definitive answer
17 on that. So, we may be looking at a footprint of 1,000
18 square feet, but, of course, you may not be able to have
19 much space above that for bedrooms or whatever.

20 MS. BARRON: So, the lot coverage at 15.9 is 3922.
21 Is that correct?

22 MR. HOOBLER: That's the street address, 3922.

23 MS. BARRON: I'm sorry. And how much then is at
24 15.9 or 13 what is the square footage of your house?

25 MR. HOOBLER: Proposal C was 1,147 square feet

1 with the shadow lines above on the second floor.

2 MS. BARRON: And then if we reduce that then as
3 you just said then you'd be under that.

4 MR. HOOBLER: If we cut the top off and chop some
5 of the sides off I think that's my point.

6 MS. MAYER: It's only four feet you're talking
7 about from here and in your comparison chart it says 1,143
8 and not 1,147.

9 MR. HOOBLER: I'm not operating on benefit and
10 then some off, yes.

11 MR. HUTT: It's 1,143.

12 MR. HOOBLER: So, it's four feet smaller.

13 MS. TURNBULL: Okay. To go back to the comment
14 about the upstairs. The 1,143 is the footprint at ground
15 level.

16 MR. HOOBLER: Yes, ma'am.

17 MS. TURNBULL: Okay. If one would take the
18 outline on the second floor, what is that?

19 MR. HOOBLER: The total for the house square
20 footage would be 2,359 square feet. So, you gain about 100
21 square feet on the second floor, a little bit, maybe 110.

22 MS. TURNBULL: Okay. And that 110, is that a
23 10x11 room at the back?

24 MR. HOOBLER: No, it's more sort of --

25 MS. TURNBULL: An overhang on the front.

1 MR. HOOBLER: Well, it's not all the way around.
2 It's only over those insets.

3 MS. TURNBULL: Could you -- actually in color --
4 does anyone have like a yellow marker or something. The
5 green's fine. Which lines are -- what's recessed on the
6 first floor?

7 MR. HOOBLER: Let me just make a comment that this
8 is actually recessed about four inches. I'm not going to
9 mark it in green, but, it's set back. This plane right
10 here, okay, is four inches further out than this right here.
11 That's to try to break things up a little bit.

12 MS. TURNBULL: But, that's really pretty much the
13 thickness of a board.

14 MR. HOOBLER: Yes, it is. That's just -- this
15 right here on the left elevation, that goes back in about 3-
16 1/2 feet. This here goes in a foot. This goes in about a
17 foot as well. And on the front, this goes in about four
18 feet so it's sort of a covered overhang kind of feeling and
19 that allows this one and this one over here to sort of tuck
20 the door down the side. We thought it was kind of clever,
21 but, --

22 At the February 25th meeting I also presented
23 documentation I had come across as to Brainard H. Warner's
24 attack for this particular lot. Mr. Warner is the author of
25 the Kensington Park Subdivision and that's where it gets its

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1 name from. There's a church and there's a street that bears
 2 his family name. In the language of the master plan
 3 amendment he's mentioned several times. I'm proffering an
 4 opinion that he was considered somewhat of an expert in
 5 these matters.

6 Beyond, I believe, his clear intent was shown on
 7 the subdivision plan for a 50 foot wide by 172-1/2 foot deep
 8 lot and beyond the master plan amendment in 1986 which made
 9 it an historic district which says on page 2, "The
 10 subdivision was designed in the victorian manner with ample
 11 side lot and a curved linear street pattern."

12 And beyond the fact that words like rhythm and
 13 generous side yards, as nice as they are, that language is
 14 not in the master plan. The master plan goes on to state
 15 "The houses share uniformity of scale, setback, and
 16 construction materials that contribute to the cohesiveness
 17 of the district's streetscapes." Beyond all this, there is
 18 clearly using the scheme Mr. Warner's intent for this lot
 19 and that it's important to bring that, sort of preface that,
 20 bring up two people who hold a different opinion than I do,
 21 but, what they said about intent. The first one is the
 22 intent of the historic district neighbor. Her name is Judy
 23 Hanks and the April '97 HPC meeting on page 24 she said, of
 24 the transcript she said "I also have a master's from Harvard
 25 in urban design. I think this is interesting about

1 historic streetscapes."

2 Who carefully sited these houses and lots? I
3 don't think we need to have intuition to understand the
4 intent for that. We do not need a 1990's vision of
5 Kensington to see the intent for this lot. At least for
6 this lot because we have the clear intent, not just the
7 subdivision plat with the signature, but, the deed selling
8 lot 25 singly a few years after selling both lots 26 and 27
9 on the left, King's house, with the house, 3920, and lots 24
10 and 23 for a house on the right, 3924. That house was built
11 in 1901 according to Dr. Rothman. There's deeds for 1903.

12 So, lot 25 was not originally part of either
13 property nor as the February '98 staff report boldly states
14 referring to the lots 27, 26, and 25 "The primary resource
15 of 3920 Baltimore Street was specifically sited in the
16 middle of the property with generous side yards." This
17 cannot be because the lot was sold separately subsequent to
18 the construction of both those houses.

19 I also think that it's important to note that
20 there's a covenant in this deed and after referring to the
21 "premises intended to be" it says "Also that she, the
22 grantee, her heirs, or, assigns shall and will build on the
23 said hereby grant of lot a substantial brick, stone, or,
24 framed dwelling house of not less value than \$2,500."

25 \$2,500 is the amount. I mean, \$3,500 is the

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1 amount that the people that bought Jeannie's house
 2 originally paid for that house and two lots. The lot -- I
 3 know the prices are different now -- but, the lots, the sale
 4 now of this lot is \$500, so, my extrapolation is that he's
 5 saying not less house than what paid for Jeannie's house.
 6 That's my opinion.

7 So, I felt vindicated when I saw this. I was
 8 actually hoping to provide one instance that was somewhere
 9 in Kensington to say, hey, you can't just say that, that
 10 it's not a buildable lot. But, I found it. I found the lot
 11 I'm talking about.

12 I think that this shows the intent, historical
 13 intent, and it shows what was in Mr. Warner's mind about a
 14 victorian garden suburb. The HPC has a different vision of
 15 this, the Vision of Kensington, and I feel like what it's
 16 done and what it's intended to do is sort of push it smaller
 17 and smaller until you disappear.

18 So, I come before the Board of Appeals asking for
 19 your help to balance the interest of historic preservation
 20 and the ability to use one's property reasonably. I have
 21 tried to be reasonable, I've tried to be accommodating, I've
 22 come back time and again to the HPC. I guess I'm probably
 23 thick-headed, but, I do not believe that the HPC needs to
 24 challenge the master plan amendment for historic density.
 25 Page 2, I believe, "To weave protection of this heritage

1 into the county's planning program so as to maximize
2 community support for preservation and minimize infringement
3 on private property rights." I believe that this whole
4 process has gone beyond type of roof, or, windows, or, even
5 really size and shape of the house to the location and even
6 it becoming a non-house.

7 This has been for me a very expensive sort of hit
8 and miss proposition. I don't believe there are clear
9 comprehensive criteria that are here and I think before
10 someone can be told they can't build a real house on their
11 property either the HPC should buy it, or, offer TDR's which
12 were actually mentioned in that Vision of Kensington but
13 nothing ever came of it, but, do something tangible and
14 quantifiable.

15 I believe it would only be fair. Lastly, what do
16 I ask the Board of Appeals to do? I'm very torn at this. I
17 know we've sort of been fighting about it a little bit. I
18 believe that the original house that I've showed is a good
19 house. I mean, I can't give the comment that I'm going to
20 make it 30 feet tall, you know, and remove the cross gables
21 or something. If that made somebody happy I could do that
22 kind of thing. And I believe that proposal B provides a
23 compatible house too.

24 I would say, personally, that my opinion of where
25 that house should be is similar to what I thought I

1 understood Robin to say. I don't think it should be party
2 way back on the lot, or, if it is, just a little bit to sort
3 of cheat it just a little bit visually. But, I think it
4 should be up front. Can't really fit in the back or we'd
5 lose the red bud tree.

6 No one can say that it's going to lose or
7 overshadow anything. It's eight feet shorter than Dr.
8 Loessing's house and six foot shorter than Jeannie's house.
9 It's only 28 feet wide which is 6 feet narrower than
10 Jeannie's and tons narrower than Dr. Loessing's. It's put
11 together with the idea of having a main part that looks like
12 sort of an older section and then in the rear where you
13 can't really pick up as well, you have an addition.

14 So, you would be seeing more than 1,028 square
15 feet of footprint looking at it from the front. I'm also
16 open to where that auto house ought to be as I have been
17 before the HPC. I'm trying to be real flexible. If the
18 board needs me to pin down a house to respond with --
19 against the advise of counsel I'm open to your suggestion
20 and then you can beat me up later.

21 MR. HUTT: On the record, that won't happen. I'm
22 not going to beat you up.

23 MR. HOBLER: The problem is, let me just say, I
24 know that there's two opinions about this and I respect
25 that, but, I think really unless beyond and I think Mrs.

1 So, really with the absence of having a buyer
2 that's too scary of a house for me to be able to build and
3 feel comfortable that I would be able to sell it.

4 MR. HUTT: Next question is, let's compare
5 proposal B with other in-fill that has in fact been
6 constructed in the historic district since 1986.

7 MR. HOOBLER: The closest example is across the
8 street down two houses. It's next to the Wagner's house.

9 MR. HUTT: Does that house have an address that
10 you're aware of?

11 MR. HOOBLER: 3913 is my understanding.

12 MS. TURNBULL: Which one is that on that?

13 MR. HOOBLER: I'm sorry, it's the one across the
14 top here. This is Mr. Shpint (phonetic sp.). It's this
15 house right here. This is taken a little bit of an angle to
16 give you a sense of sort of how it goes back and the same
17 thing over here. This is two things. This particular
18 photograph, that is, that it also shows the proximity to the
19 house next door that was allowed. That's 14 feet. It meets
20 the zoning requirements. However, it doesn't jive with the
21 numbers listed in the Vision of Kensington.

22 The line item for this house, the numbers were
23 left off in the Vision for Kensington.

24 MR. HUTT: The 14 feet is distance from building
25 to building?

1 MR. HOOBLER: That's correct.

2 MS. TURNBULL: And the total square feet including
3 the porch and the deck is 1,584. Is that right?

4 MR. HOOBLER: I don't have -- if that's what
5 you're reading numbers there.

6 MS. TURNBULL: 1,584 and in comparison to C --

7 MS. BARRON: Is 2,239.

8 MR. HOOBLER: No, that's the second floor.

9 (Off the record discussion)

10 MS. TURNBULL: So, the comparison is 1,584
11 including a porch and a deck with what on the first floor?

12 MR. HOOBLER: 1,176.

13 MS. MAYER: 1,143.

14 MR. HOOBLER: Yeah, that's correct.

15 MS. TURNBULL: Yeah, 1,143. It's basically the
16 same size house. Now, I want to go through this again
17 though because looking at this, Exhibit 5-1-8, which is the
18 Historic Preservation Commission's staff report circle 8,
19 that lot, 3913, looks to be a narrower lot than any of the
20 lots on the other side of the street. Is that just an
21 optical illusion.

22 It says the lot square footage is 9,523.

23 MR. HOOBLER: It is a deeper lot. It is only 50
24 feet wide which is the same as my lot. I think it's just
25 sort of the appearance maybe combined with copying or

1 whatever or how that was originally produced.

2 MS. TURNBULL: The front is exactly the same?

3 MR. HOOBLER: The lot frontage is the same. This
4 house though is actually wider. It's 28 feet wide with
5 solid and then another 4 feet of porch is 32 foot wide at
6 the front line.

7 MS. BARRON: I have a question. Forgive me if
8 we've covered it and I just don't have the notes in front of
9 me, but, when you described the deed I thought I heard you
10 say that it was for the house with \$3,500 originally and you
11 thought \$500 for each lot because there were two additional
12 lots? No?

13 MR. HOOBLER: I'm referring to Jeannie's house
14 that's a separate deed. That was \$3,500 for a dwelling or a
15 premises, I believe it was called, on two lots and those two
16 lots are 26 and 27.

17 MS. BARRON: Because that's the heart of what I
18 want to get to. Are you saying that lot 27 can never be an
19 in-fill lot?

20 MR. HOOBLER: Am I saying that?

21 MS. BARRON: Yes.

22 MR. HOOBLER: No. I'm not saying that.

23 MS. BARRON: So, we're saying that lot 25 and
24 perhaps lot 27 could both be filled in?

25 MR. HOOBLER: Yes, but, I think you've got sort of

1 definitions of what would have to happen. Probably
2 Jeannie's house would have to burn down in order for that to
3 proceed because it straddles that lot.

4 MS. BARRON: Well, unless she chose to have it
5 modified, remodeled and that small section removed.

6 MR. HOUBLER: She would have to --

7 MS. BARRON: If it were my house and I wanted to
8 sell the other lot I might choose to, especially if I'd be
9 moving and going to Florida and I might choose to do that.

10 MR. HUTT: The other aspect, just to respond to
11 it, in addition to a portion of the house straddling the lot
12 which now would not be permitted under the county
13 subdivision ordinance because you can't get a building
14 permit if you straddle a lot line, even if she removed a
15 portion of it she'd have to comply with a side yard setback,
16 so, in terms of severing portions of her existing house --

17 MS. BARRON: So, she could come here and get a
18 variance, couldn't she? After she got a variance down the
19 road, six months, a year, she could come back and get a
20 building permit.

21 MR. HUTT: That's all hypothetical. All right,
22 and for all --

23 MS. BARRON: But, if it couldn't be done at all
24 I'd just want to know.

25 MR. HUTT: I don't think anyone here can tell you

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1 that it cannot be done because you just come up with ways if
2 the Historic Preservation Commission --

3 MS. BARRON: Believe me, been here a year and a
4 half and you learn a lot.

5 MR. HUTT: That's right. If the Historic
6 Preservation Commission also granted a demolition permit
7 because it's a primary resource so a demolition permit would
8 have to be obtained from the Historic Preservation
9 Commission before it could meet that kind of situation.
10 Secondly, if they did grant a demolition permit they'd have
11 to come back here and get a variance and meet the criteria
12 for a variance and, thirdly, which is most important, at
13 least for my purpose, we're here talking about lot 25.

14 And, the sole purpose of the deed was basically
15 that demonstrating what did Mr. Warner have in mind for this
16 particular lot, whether or not did he envision it as a
17 garden and all we're trying to say is that is not Mr.
18 Warner's intent.

19 MS. BARRON: I think the reason I jumped into that
20 was because I thought her proposal was part of what you
21 presented was a proposal to make the garage or auto house
22 over to this lot. That's why I asked the question.

23 MR. HUTT: That's true, that's true.

24 MS. TURNBULL: Okay. Do you have more you want to
25 show us on that?

1 MR. HOOBLER: Yeah.

2 MR. HUTT: Again, before you leave that particular
3 house what did you say was the width of the --

4 MR. HOOBLER: 28 feet wide, the main body and then
5 you add 4 feet to the porch for the width, but, that would
6 not be solid.

7 MR. HUTT: Okay. Also, in terms of your proposal
8 B, your proposal B was 22'6"?

9 MR. HOOBLER: That's the height.

10 MR. HUTT: I'm sorry.

11 MR. HOOBLER: 28 feet. It's the same width
12 without any side.

13 MR. HUTT: Okay. So, it's the same width?
14 Proposal B in terms of its width is that it's the same width
15 as the house that we're talking about at 3913?

16 MR. HOOBLER: Plus the house at 3913 has a side
17 porch.

18 MR. HUTT: Makes it wider?

19 MR. HOOBLER: Makes it a little bit wider, yes.

20 MS. BARRON: I was going to ask in proposal B and
21 you had proposal C you had existing garage in proposal C.
22 Help clarify for me the garage question because in B you
23 have a garage here behind the house and then you have
24 proposed relocation garage and then so that each of these,
25 at least for B and C, I'm confused as to which garage is

1 which.

2 MR. HOOBLER: Okay.

3 MR. HUTT: Why don't we start with proposal B.
4 What is your proposal with regard to the auto garage and
5 whether you're also proposing a two car garage?

6 MR. HOOBLER: For the HPC I had asked for a two
7 car garage detached to set at the back of the lot and I
8 suggested to move the auto house to Jeannie's other lot over
9 on the other side.

10 MS. BARRON: And, so, that garage is part of the
11 23.8 proposed lot coverage, right? As we're looking at it
12 under proposal B.

13 MR. HOOBLER: That's right. That two car garage
14 was --

15 MS. BARRON: If you didn't build that two car
16 garage would that reduce proposal B by how much?

17 MR. HOOBLER: It may actually be --

18 MS. BARRON: I'm still confused. You still have
19 2.67 which I thought was referring to the existing auto
20 house. You kept those numbers, but, --

21 MR. HOOBLER: It would reduce it the amount of the
22 garage by 22 --

23 MS. BARRON: 484?

24 MR. HOOBLER: 484 square feet, thank you, and if
25 you divide that -- I've got a calculator. Okay. The

1 overall --

2 MS. BARRON: You said 23.8 proposed.

3 MR. HOOBLER: Give me just a second.

4 MS. BARRON: And you do have your coverage without
5 the porches on the side of the structures.

6 MR. HOOBLER: Yeah. Right.

7 MS. TURNBULL: I have a question, but, under
8 different circumstances --

9 MR. HOOBLER: 18.2

10 MS. TURNBULL: 18.2. Under different
11 circumstances doesn't that potentially damage the red bud
12 tree?

13 MR. HOOBLER: We tried to design the house to go
14 around the red bud tree. The proposal that has the least
15 risk to the red bud tree is proposal A -- I mean, the
16 original proposal because it sat totally in front of it.

17 MS. TURNBULL: What about being moved up?

18 MR. HOOBLER: C has a back part of it.

19 MR. HUTT: The question is if you move down to the
20 -- say the established building line with the other two
21 houses on either side of it.

22 MR. HOOBLER: I have to do a little bit of math.
23 That totally changes how -- I mean, it's not supposed to
24 look like a house, but, how it works would be all backwards.
25 If the idea was to get the less formal spaces in the rear of

1 the house.

2 MS. TURNBULL: I'm not saying front to back. I'm
3 saying --

4 MR. HOOBLER: Well, I see what you're saying. I
5 think that would probably work. If we went to 48 feet,
6 which is actually what the houses are on the front line, we
7 could probably actually fit.

8 MS. TURNBULL: Which one?

9 MR. HOOBLER: C. Your C. Now, B could fit as
10 well. B's set up to be slipped forward as well. So, B
11 could come forward to the front line.

12 MS. TURNBULL: B can come to the front line?

13 MR. HOOBLER: Yes.

14 MS. TURNBULL: Or, C could come to the front line.

15 MR. HOOBLER: Yes.

16 MS. TURNBULL: You move B to the front line but
17 still have to move the garage. Either way you'd have to
18 move the auto house.

19 MR. HOOBLER: That's correct.

20 MR. HITCHENS: Madam Chairman, with regard to
21 those two proposals and your hypothetical moving of the lots
22 I would believe that creates such a different combination of
23 siting and design factors. Those are decisions that really
24 should go back to the commission here. I would view each of
25 those as an entirely, as a new proposal, you know, D and E.

1 MR. HUTT: My only disagreement with that is A was
2 a 50 foot setback has already been viewed by the HPC and
3 they didn't want anything to the street, so, I was going
4 back with either a B or C proposal doesn't make sense to me.
5 It just means you're going to another round of reviews and
6 processes to perhaps finally come back to this board one
7 more time.

8 B and C both have been viewed as two tall, too
9 large, and you've already heard, I believe, from the
10 chairman that what they were looking for were basically a
11 600-800 square foot structure that doesn't look like a
12 house, doesn't read like a house, so, sending this back to
13 the board to HPC as D and E you're going to get it back.
14 So, I would disagree with the suggestion or objection to the
15 board considering other alternatives as you're exploring
16 them that you can't conclude, make these decisions without
17 sending them back to HPC.

18 MR. HITCHENS: Well, siting on a lot is really
19 part of a proposal and we'd object to the board making a
20 decision on D, you know, let's see, a proposal C moving
21 forward. That would constitute a proposal D to the
22 commission and to the county and we would object to it if
23 the board were considering that as something to approve.

24 MS. TURNBULL: And are you objecting to it as the
25 Historic Preservation Commission, Mr. Hitchens, or, are you

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1 objecting to it as the county?

2 MR. HITCHENS: I guess I'm objecting to it as the
3 attorney who negotiated the terms of the way the proposals
4 would be presented to the commission and that circumstance
5 was not addressed when we decided that, so, in terms of how
6 I fit in with the county or the commission I think they're
7 essentially the same.

8 MS. TURNBULL: Okay. Well, there is a problem
9 there because the commission has no standing before this
10 board. The county has standing before this board. So, if
11 you are speaking as the county and you expressed some
12 concern for whether or not anything that we would do would
13 have a problem with the county that is something that we
14 will hear.

15 We will not hear something that would be a problem
16 to the commission because that's not -- because that's not
17 of issue before us.

18 MR. HITCHENS: I'm assuming that what your
19 position in stating that is flushed out is that the
20 commission is viewed as a quasi-judicial body has no
21 standing and I'm not sure that that's accurate for this
22 circumstance.

23 I think they're an arm of the Department of
24 Environmental Protection when they issue these historic area
25 work permits which is an executive agency. So, clearly, the

1 executive agency staff are represented by the county, but,
2 to get past the hurdle, yes, I'll say as the county. I
3 believe that that circumvents the legislative structure and
4 ignores all of the expertise and process that's been set up
5 through the legislation passed by the County Council.

6 Those are the types of decisions with the Historic
7 Preservation Commission.

8 MS. TURNBULL: We have not made any decision at
9 this point clearly and we haven't and there really is no
10 proposal that has been suggested by any board member where
11 you need to take -- where we need to take an action at this
12 point.

13 Should the board determine that they wished to
14 consider other -- actually, we have been advised by our
15 counsel that we can consider anything pretty much before us
16 today because we are seeing this case de novo.

17 We would respect and acknowledge your
18 recommendation.

19 MR. HOOBLER: I don't know if it's fair for me to
20 say, but, I do not -- I mean, I had a conversation with Mr.
21 Hitchens and my previous attorney and what he's stating
22 about that I would not present to you something that the
23 commission had not seen before is true. However, I'm
24 delighted if you all, if it would be the way that you would
25 see something fit to be approved that if you were to put

1 these conditions on.

2 MR. HITCHENS: Well, I think that's an amazing way
3 to proceed because you don't have something being proposed
4 by the applicant, but, you have a new design being proposed
5 by the board and at minimum it's going to require due
6 process or fairness just would allow the HPC to rebut it.

7 MS. BARRON: Actually, in a way, it does seem to
8 me then, correct me if I'm wrong, because we're looking at
9 this differently, but, then anyone who disagrees with the
10 commission just brings it before the Board of Appeals,
11 whoever's sitting here at the time, and even though we may
12 be de novo, I'm not an expert on historic preservation and
13 I, for one, would not vote on something that had not been
14 presented to the Historic Preservation Commission.

15 I'll read through everything all of you read and
16 have hashed out and put my best judgment to it, but, I'm not
17 qualified to look at a new proposal without any record of
18 the -- of what they're furnishing the commission.

19 One thing I'd like to know though. Was it ever
20 determined you can move that existing auto house? Did that
21 ever -- did you get that far? Was it ever said by the
22 Historic Preservation Commission that you -- not that you
23 could move it, that it could be moved, but, that
24 historically speaking did they ever say, yes, that can be
25 moved to 27?

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1 MR. HOOBLER: No.

2 MS. BARRON: From that location?

3 MR. HOOBLER: They did not.

4 MS. BARRON: So, if they didn't, for me, that
5 would exclude bumping up C because then I'd be making a
6 decision that isn't part of the record, right?

7 MR. HOOBLER: It was before the HPC to move the
8 garage. They did not say that it was okay, but, it's been
9 before them ever single time.

10 MS. BARRON: But, --

11 MR. HOOBLER: The proposal to move the garage has
12 been there every time, but, they have nixed that along with
13 the proposals. So, it has been before the board.

14 MS. TURNBULL: I just want to make something very
15 clear here. There is no proposal on the table. What we
16 have before us are three houses. I asked questions as to
17 what the impact would be. We did not, therefore, take that
18 to any further steps. That's all -- I asked questions based
19 on what the possibility is.

20 It is also our prerogative to ask those question
21 and to make those determinations, but, this was -- that the
22 reason this is an appeal and the reason that this has come
23 before us is because the appellants in this case felt that
24 their position was not being heard and there was an error in
25 the determination made by the Historic Preservation

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1 Commission.

2 And, so, at this point, it's wide open. Now, that
3 does not necessarily follow that anybody could then bring an
4 appeal. Appeals can only come if there has been a supposed
5 error and then this board would determine whether or not the
6 errors would have occurred. I just want that to be clear.

7 Okay. Are there any more questions, or, do you
8 have any further statement?

9 MR. HOOBLER: Yes, ma'am. I just wanted to show
10 that some of the in-fill approved has actually been a lot
11 larger in appearance from the street. The house here at
12 3948 Baltimore Street on the same block is 40 feet wide
13 across the front. The house built on the same block facing
14 Prospect Street is -- let me just say also that there's --
15 this house has a two car detached garage with it. And then
16 also this house here was built in '92 or '93 and it measures
17 at the front 40 feet across and then also just to sort of
18 mention, as with Dr. Loessing's house there might be some
19 things that might not be considered Kosher, but, have been
20 appended to his house and to make the point that these
21 houses, the way we're speaking of them sometimes, think sort
22 of it's an over-estimation of how they've been kept or how
23 they're done and I say that with a caveat that there have
24 been comments where what's been done has been awesome.
25 They've been done very, very nicely.

1 There's an example of a house across the street
2 from Jeannie's house that had a fake sort of like tar paper
3 kind of brick put all over it. It's been all removed. It
4 looks very, very nice. But, there have been things approved
5 by the HPC that, at least in my mind, don't look very
6 victorian. This house here with this flat roof addition on
7 the rear that extends out the side at 3918 Prospect Street,
8 that's, again, I'm offering my opinion, but, then, this
9 hasn't caused the district to come tumbling down and neither
10 has the fact that there's a house here on Prospect Street
11 that has an attached front loading garage which is not a
12 victorian nature either.

13 So, I just --

14 MR. HUTT: Before you change from that, is there -
15 - the house at 3919, is that on Baltimore Street?

16 MR. HOOBLER: Yes.

17 MR. HUTT: The houses on either side, are they
18 primary resources?

19 MR. HOOBLER: Yes, they are, as well as that lot
20 is considered of the first period.

21 MS. TURNBULL: And that's the same period?

22 MR. HOOBLER: It is by virtue of the date when
23 Jeannie's house was built. It's actually in that period,
24 but, according to the master plan amendment, Jeannie's house
25 and this particular lot are lumped together in the in-fill

1 period. That's the way they're shown on the map, so, it's
2 really not representative of when the house was actually
3 built.

4 MR. HUTT: Just one other question. Had you -- if
5 you stand on Prospect Street and you're looking towards the
6 subject property, can you see through the lot presently to
7 Baltimore Street?

8 MR. HOOBLER: Presently, no. About a month ago
9 you could have. But, what you see is a little hard to see.
10 You could, if you knew what to look for, make out just a
11 little bit of the roof of the existing garage that's there
12 now. But, now that the leaves have come out it would be
13 pretty hard to sort of ferret your eyes through to see over
14 there.

15 MR.. HUTT: I have no other questions of Mr.
16 Hoobler at this time.

17 MS. TURNBULL: Okay. It's one o'clock. We have a
18 hearing scheduled at one which obviously isn't going to be
19 held at one. We scheduled that past two. The question I
20 have right now is where are we? Mr. Hitchens, do you have
21 questions of Mr. Hoobler?

22 MR. HITCHENS: Yes, I have. There were a few
23 issues that have come up that because of the order that we
24 went into, the order that the case was presented the county
25 didn't address in its case and I would like to put on at

1 least Ms. Zeik to rebut a couple of the issues that I'm
2 dealing with the covenant that was described by Mr. Hoobler
3 and a couple of other issues as well.

4 MS. TURNBULL: Okay. Mr. Hutt?

5 MR. HUTT: We may just have some letters of
6 support to submit and maybe recross of Mr. Hoobler depending
7 on what redirect rather than recross. It depends on what Mr.
8 Hitchens brings out during cross examination.

9 MS. TURNBULL: Okay. Time-wise, what are you --

10 MR. HITCHENS: I would estimate another hour and a
11 half for the county.

12 MS. TURNBULL: Okay.

13 MR. HITCHENS: Due to the cross examination.

14 MS. TURNBULL: Then we have to schedule another
15 day, another time. Hard to believe. What about tomorrow
16 afternoon? We have something tomorrow afternoon. Tomorrow
17 morning?

18 (Off the record discussion)

19 MS. TURNBULL: We can come back at 10:00, 10:15
20 tomorrow morning.

21 MR. HITCHENS: I have a meeting that I have to
22 attend in Washington at 1:00 with WMATA, so, I'd have to be
23 leaving right at noon time.

24 MS. TURNBULL: Should we try to do that?

25 (Off the record discussion)

1 MR. CAPUTO: The closing could be submitted in
2 writing.

3 MS. TURNBULL: That would be fine.

4 MR. HITCHENS: Okay. So, tomorrow at 10:00.

5 MS. TURNBULL: 10:15. Okay. Thank you. We need
6 to include some of these things that we didn't give exhibit
7 numbers to, the photos. The photos -- the last exhibit
8 number was for the view. This is No. 38.

9 MR. HOOBLER: These had been submitted earlier.

10 MR. HUTT: Just make it 38. It makes it simpler.

11 MS. TURNBULL: Okay. The shirette drawings will
12 be 39. What did you do after that?

13 MR. HOOBLER: I showed a picture of the staff
14 report with the drawings that were reduced to scale.

15 MS. TURNBULL: So, it's reduced staff report?

16 MR. HOOBLER: Yes.

17 MS. TURNBULL: Okay. 41. Have these already been
18 in here? These are the tax record sheets. This will be the
19 tax records. I have two pages here. 41 is tax records. 42
20 is -- 40 is reduced staff report.

21 (Off the record discussion)

22 MS. TURNBULL: And 42 is?

23 MR. HOOBLER: Letter.

24 MS. TURNBULL: Letter.

25 (Off the record discussion)

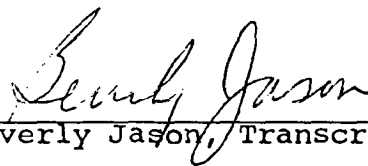
C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Montgomery County Board of Appeals in the matter of:

Appeal of Carey Hoobler

S-4771

By:



Beverly Jason, Transcriber

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