

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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ADMINISTRATIVE APPEAL OF CAREY HOOBLER : A-4771
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A hearing in the above-entitled matter was held on
May 6, 1998, commencing at 10:25 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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MAY 13 1998

BOARD OF APPEALS
MONTGOMERY COUNTY, MD.

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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 THE COUNTY:

Robin Zeik, HPC 90

TESTIMONY ON BEHALF OF APPELLANT:

Carey Hoobler 3

Jack McCrory 66

Walter Schmidt 69

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AMERICAN BAR ASSOCIATION
JULY 1980

P R O C E E D I N G S

1
2 MS. TURNBULL: Okay. We're going to go on the
3 record and we'll start with Mr. Hutt.

4 MS. MAYER: Madam Chair, could I just make one
5 comment. In talking with Mr. Hutt and I used to work for
6 Mr. Hutt many years ago. I just want it known that we never
7 discussed this case.

8 MS. TURNBULL: And I think actually this is a
9 continuation.

10 MS. MAYER: I just wanted to make people aware and
11 I didn't want people to think there was an impropriety.

12 MS. TURNBULL: This is a continuation case, A-
13 4771, which is an administrative appeal by Carey Hoobler and
14 Jeannie Ahearn. The appellants charge administrative error
15 on the part of the Historic Preservation Commission in
16 denial of a historic area work permit leading to the denial
17 of a building permit dated May 8, 1997 contained in Section
18 24-A of the Montgomery County Code, as amended and
19 interpreted.

20 The subject property is lot 25, lot 11, Kensington
21 Park Subdivision located at 3922 Baltimore Avenue,
22 Kensington, Maryland in the R-60 Zone.

23 Actually, I think we have a new exhibit list. I
24 have something for Mr. Hutt and something for Mr. Hitchens.
25 Our next exhibit would be Exhibit No. 43. Okay. Mr. Hutt?

1 MR. HUTT: We have completed our direct
2 examination yesterday of Mr. Hoobler and I believe now is
3 the opportunity for Mr. Hitchens to cross examination.

4 MS. TURNBULL: And we have also concluded our
5 cross examination. Mr. Hitchens.

6 MR. HITCHENS: Thank you, Madam Chairman. I had
7 indicated to the board yesterday that I had another meeting
8 in Washington at 1:00 and I found out that that's tomorrow.
9 I wanted to let the board know that.

10 Okay. Begin with Carey then. Carey, yesterday
11 when you began your testimony you characterized yourself as
12 a contract owner of the property and I wanted to just ask
13 you, when you use that term I'm not sure there is a term
14 contract owner, but, there is certainly a contract
15 purchaser. Is that how you would -- is contract purchaser
16 meaningful to you, or, does that clarify your interest?

17 MR. HOOBLER: I'm not sure what the distinction
18 is. I mean, I have certain responsibilities under the
19 contract and my understanding is that there are certain
20 responsibilities or there's a way that I'm vested into that
21 that there's an obligation I have --

22 MR. HITCHENS: Well, let me ask you a couple of
23 other questions about it. You don't -- there's no deed to
24 the property in your name, is that right?

25 MR. HOOBLER: Yeah, that's right.

1 MR. HITCHENS: But, you do have a contract and is
2 there a contingency in that contract for approval of a
3 permit from the HPC?

4 MR. HOBLER: Yes, there is.

5 MR. HITCHENS: Okay. So, you don't have to buy
6 the property then unless you get an approval, is that right?

7 MR. HOBLER: Yes, sir.

8 MR. HITCHENS: Okay. Did you get your deposit
9 back if you don't get the approval?

10 MR. HOBLER: I would get my deposit back, but, I
11 wouldn't get any monies back that I've spent on
12 architectural or on lawyer's fees.

13 MR. HITCHENS: Okay. Now, I'm not asking the
14 price of the purchase of the property, but, is there a price
15 in the contract?

16 MR. HOBLER: Yes, there is.

17 MR. HITCHENS: Now, when you determined that price
18 did you do an appraisal of the lot?

19 MR. HOBLER: Not a formal appraisal but what I
20 was familiar with for buying a lot in a close-in location
21 and we also, you know, sort of discussed that. I mean, we
22 sort of worked at that together as to what to come up with
23 for a price.

24 MR. HITCHENS: Okay. And, so, you didn't have an
25 appraisal, but, you have an idea from your experience as a

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1 builder what you thought the lot was valued at?

2 MR. HOOBLER: Yes.

3 MR. HITCHENS: And do you have an idea in your
4 mind of what you want to build in terms of the size and
5 style of the house that your general experience enables you
6 to think you can sell and make a profit?

7 MR. HOOBLER: I do. I mean, it's not limited to
8 one house. I mean, I came back to the HPC with actually more
9 than what the board saw here. So, I mean, there have been
10 other houses we tried to do.

11 MR. HITCHENS: Okay. And yesterday you commented
12 on some testimony that had been presented in the county's
13 case where we talked about there being a value to an
14 easement that could be granted on the lot and you said you
15 felt that the easement value would not come anywhere near
16 close. I think you said it's nothing close to what the
17 profit would be realized from just plain selling the lot.
18 Do you remember that?

19 MR. HOOBLER: Yes.

20 MR. HITCHENS: Do you know how you calculate one
21 of those preservation easements?

22 MR. HOOBLER: I don't know in detail, but, when
23 that was brought up I discussed it with Jeannie and it
24 seemed to us that a lot of what has been described to us was
25 by Mr. Peoples, I believe, was that there were certain tax

1 advantages, etc. that sort of went into that formula and we
2 looked at that with Jeannie's situation and it didn't look
3 like it was going to give her really any tax advantages from
4 that accounting.

5 MR. HITCHENS: Okay. But, you didn't do an
6 appraisal on the lot and you don't know how to calculate an
7 easement, correct, because of the tax value of an easement?

8 MR. HOOBLER: I'm a former appraiser, but, I do
9 know that there were -- there was a house sold just outside
10 the District just a few blocks, at most six or seven blocks
11 away, where the house is a 500,000 foot house, took it down
12 to get two lots just in Chevy Chase View. I'm not
13 suggesting that Mrs. Ahearn's lot is worth \$250,000 but it's
14 a lot closer to that than what we thought one might get from
15 an easement for her end of it.

16 MR. HITCHENS: But, in summary, you don't really
17 know what the value of an easement would be, do you?

18 MR. HOOBLER: I guess that it might be of value to
19 her at most, \$50,000. I don't know.

20 MR. HITCHENS: That's a guess. Okay. Now, in
21 determining the price that you were going to pay for the
22 lot, did you consider any other offers that she had for the
23 lot? Had she ever had any other offers?

24 MR. HOOBLER: I believe she had another offer.
25 You'd have to ask her what that price was.

1 MR. HITCHENS: So, you don't know what that price
2 is?

3 MR. HOOBLER: I'm not sure what it is.

4 MR. HITCHENS: Okay. Continuing on then. Have
5 you ever had other proposals -- have you had proposals for
6 other properties before the Historic Preservation
7 Commission?

8 MR. HOOBLER: Yes, I have.

9 MR. HITCHENS: Okay. Can you list what those are,
10 do you recall?

11 MR. HOOBLER: Uh, --

12 MR. HITCHENS: First off, how many different
13 properties have you been before the commission on?

14 MR. HOOBLER: Well, that's what I'm trying to
15 count up now. Um, had one property in Forest Glen that at
16 the time was still an atlas site, so, it was handled by
17 staff. I applied for a permit and was granted one on a
18 house in St. Paul Street in the district which the owners
19 and I sort of, they got a little flaky about granting an
20 extension because it had gotten to be a pretty long period
21 of time before the plan was approved, so, I was unable to
22 bring the documentation that the bank needed to continue
23 with the loan process, but, we were approved for a house
24 there.

25 It was a narrow lot situation. In fact, it was on

1 a corner so we sort of had some frontage issues, both front
2 and side. I built a house in Capitol View in the historic
3 district and had a re-subdivision in that same district. I
4 restored a school house, but, things that we were doing were
5 not of a level that had to -- because a lot of it was
6 interior and replacing things with light materials on the
7 outside, one room schoolhouse also at Forest Glen and then,
8 you know, I've done some work for some people who have
9 gotten their permits from the HPC.

10 MR. HITCHENS: Okay.

11 MR. HOOBLER: That's all I can think of right now.

12 MR. HITCHENS: And you testified yesterday that
13 you own some property on Hawkins Lane.

14 MR. HOOBLER: You're absolutely right. And I got
15 a permit from the commission to work on the house on Hawkins
16 Lane.

17 MR. HITCHENS: Okay. Now, let's take the Capitol
18 View one, that was for subdivision?

19 MR. HOOBLER: Uh-hmm.

20 MR. HITCHENS: Okay. And when you appeared before
21 the commission on that how many times did you appear before
22 the commission?

23 MR. HOOBLER: Actually, I didn't go before the
24 commission on that. The, the, the engineer did.

25 MR. HITCHENS: Okay. And --

1 MR. HOOBLER: I went before the commission only
2 for the house.

3 MR. HITCHENS: Okay. So, then, you subsequently
4 built --

5 MR. HOOBLER: Just one house there. The other lot
6 I sold and somebody else built the house.

7 MR. HITCHENS: Okay. So, when you built the house
8 did you appear before the commission with the proposal?

9 MR. HOOBLER: Yes, I did.

10 MR. HITCHENS: Okay. And how many times did you
11 appear?

12 MR. HOOBLER: I don't really remember.

13 MR. HITCHENS: Was it more than once?

14 MR. HOOBLER: I think so, yes.

15 MR. HITCHENS: Was it more than twice?

16 MR. HOOBLER: I don't believe so, but, I don't
17 remember.

18 MR. HITCHENS: Okay. Did you participate in a
19 preliminary consultation?

20 MR. HOOBLER: At this point I can't remember, but,
21 I think I did. I remember the staff person was Nancy
22 Witherall.

23 MR. HITCHENS: And then ultimately you got that
24 approved?

25 MR. HOOBLER: Yes.

1 MR. HITCHENS: Okay. And the work on Hawkins
2 Lane, what was that to do?

3 MR. HOOBLER: That was to basically raze, take the
4 low attic that was there and raze it up to get a second
5 floor in it and we re-sodded the house.

6 MR. HITCHENS: Okay. How many times did you
7 appear before the commission on that one?

8 MR. HOOBLER: I think it was just once. They
9 actually -- the vote was like split and I think staff
10 reminded them that if they didn't come up with a decision
11 within the 45 day rule or whatever that I would get a permit
12 automatically or something so that they instead of -- since
13 they couldn't get another meeting they sort of reconnoitered
14 and voted again and then I got the necessary vote.

15 MR. HITCHENS: Okay. So, you've had some
16 approvals in front of the commission they've approved, is
17 that correct?

18 MR. HOOBLER: Yes.

19 MR. HITCHENS: Okay. And you've had to re-work
20 some of your proposals when you've come before the
21 commission. Is that accurate?

22 MR. HOOBLER: Yes.

23 MR. HITCHENS: Okay. And you participated in at
24 least one preliminary consultation, is that right?

25 MR. HOOBLER: Yes.

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1 MR. HITCHENS: Okay. How many preliminary
2 consultations not related to this project that you've
3 participated in?

4 MR. HOOBLER: Well, if you count some of what we
5 had to do with Forest Glen, meeting with staff, probably
6 several.

7 MR. HITCHENS: Okay. And do you recall when, what
8 year you might have first participated in a proceeding with
9 the commission? I'm just getting at how long you've been
10 familiar with the Historic Preservation process.

11 MR. HOOBLER: I have to say it was about eight
12 years ago is my guess. Jared Cooper was there at the time.
13 I think that's his name.

14 MR. HITCHENS: Okay. And when you entered into
15 the contract with Mrs. Ahearn you were familiar that it was
16 in a historic district?

17 MR. HOOBLER: Yes.

18 MR. HITCHENS: Because you've included a
19 contingency for approval. Okay. And you're familiar with
20 the ordinance in general?

21 MR. HOOBLER: I think in general, yes.

22 MR. HITCHENS: Okay. Now, there was one other
23 topic we didn't talk about during what I'll refer to as the
24 St. Paul Street house.

25 MR. HOOBLER: Yeah. I did mention that.

1 MR. HITCHENS: Right. And that was in Kensington
2 as well, correct?

3 MR. HOOBLER: Correct.

4 MR. HITCHENS: And that was one that you got an
5 approval for?

6 MR. HOOBLER: That's correct.

7 MR. HITCHENS: And then you didn't build that
8 house?

9 MR. HOOBLER: That's correct.

10 MR. HITCHENS: And why was it that you didn't
11 build the house?

12 MR. HOOBLER: Because the, the, the owner wouldn't
13 put an extension in the contract for me to be able to
14 proceed with the financing that I needed.

15 MR. HITCHENS: When you say the owner, was that
16 the owner of the lot?

17 MR. HOOBLER: The owner of the lot. It had gotten
18 to be a pretty long process getting that permit. We had
19 come back several times and we even -- this has nothing to
20 do with it, but, we even met in the City of Takoma Park.
21 One of the meetings was actually in Takoma Park. It got to
22 be a fairly long process, so, the contract I had basically
23 came to a place where it was running out, or, had run out.

24 MR. HITCHENS: Okay. And that was on a lot that
25 had no house on it and there was another house next to it,

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1 correct?

2 MR. HOOBLER: That's correct.

3 MR. HITCHENS: And did the same person own both
4 those lots?

5 MR. HOOBLER: That's correct.

6 MR. HITCHENS: Okay. Were there any other lots
7 that that person owned? Was it two lots that he owned?

8 MR. HOOBLER: I believe it was two.

9 MR. HITCHENS: Okay. And ultimately that property
10 was sold and the new buyer bought both the vacant lot and
11 the --

12 MR. HOOBLER: I was not aware of that.

13 MR. HITCHENS: You were not aware of that. Now,
14 the plans that you developed for the St. Paul Street house,
15 do you have an architect developer/planner?

16 MR. HOOBLER: Yes, I do.

17 MR. HITCHENS: Okay. And did you submit those
18 same plans to develop this property at 3920 Baltimore
19 Street?

20 MR. HOOBLER: No, I didn't, but, I had them sort
21 of re-worked or looked over.

22 MR. HITCHENS: Okay. So, they're pretty similar?

23 MR. HOOBLER: Uh, I think it has some similarity.
24 I don't know what you mean by the word pretty.

25 MR. HITCHENS: When yesterday you talked about the

1 -- you made a statement that the ordinance and the master
2 plan don't specify that open space has to be preserved in
3 Kensington you're aware that the master plan speaks of a
4 victorian garden suburb, is that right?

5 MR. HOOBLER: Yes, I am.

6 MR. HITCHENS: Okay. And you're also aware of the
7 language in the master plan that says that the houses share
8 a uniformity of scale, setback, and construction materials
9 that contribute to the cohesive of the -- cohesiveness of
10 the district streetscape. This uniformity coupled with the
11 dominant design inherent in Warner's original plan of
12 subdivision conveys a strong sense of both time and place,
13 that of a victorian garden suburb. You're aware of that,
14 right?

15 MR. HOOBLER: Yes, sir.

16 MR. HITCHENS: Okay. And regarding the use of the
17 word scale, it says uniformity of scale. Now, do you think
18 scale excludes the open space?

19 MR. HOOBLER: Well, I think there it's referring
20 to the houses.

21 MR. HITCHENS: Okay. So, you do think it excludes
22 the open spaces? That scale of houses is just the houses
23 alone, doesn't involve the open spaces.

24 MR. HOOBLER: Well, it says the houses share a
25 uniformity of scale, setbacks, and construction materials.

1 I don't think that the lots would have a uniformity -- I
2 mean, share construction materials.

3 MR. HITCHENS: Okay. But, then, it refers to all
4 of those things contribute to the cohesiveness of the
5 district streetscape. Do streetscape include the open
6 spaces?

7 MR. HOOBLER: Yes. I think it does, but, I think
8 it's talking about how the houses, or, of similar sizes that
9 the setbacks -- actually, I asked George that question about
10 setbacks, what that refers to at the first hearing and he
11 said it was front yard setback and then the construction
12 material, most of what's in Kensington is framed.

13 MR. HITCHENS: You're aware, you said you're
14 generally aware of the ordinance and you've been working
15 with the HPC for just about 8 years. You're aware that the
16 definition of historic district -- not historic district,
17 historic resource includes the concept of appurtenances and
18 environmental settings?

19 MR. HOOBLER: Yes, I am.

20 MR. HITCHENS: Okay. And you're aware of the
21 definition of environmental setting that it includes, but,
22 is not limited to walkways, driveways, and trees, gardens,
23 lawns, rocks, pastures, cropland, and waterways?

24 MR. HOOBLER: Yes, I am.

25 MR. HITCHENS: Okay.

1 MR. HOOBLER: But, Chris, I didn't feel that that
2 was going to the place that they -- I mean, there's also in
3 that language about being able to subdivide as long as you
4 keep, or, that the minimum that one could reduce a resource
5 to would be what was the smallest allowed in that zone and
6 that would be a 6,500 square foot lot in itself for
7 Jeannie's house and I'm not even talking about re-
8 subdividing. I'm talking about what was the subdivision.

9 MR. HITCHENS: Okay. Now, were you aware of a
10 proposal to develop Ms. Ahearn's property before your
11 proposal?

12 MR. HOOBLER: Yes, I was.

13 MR. HITCHENS: Okay. And if I refer to that as
14 the Sterling Maron proposal is that an accurate description?

15 MR. HOOBLER: I believe so.

16 MR. HITCHENS: If you know, did he have a similar
17 contractual purchaser type of status?

18 MR. HOOBLER: I don't know that.

19 MR. HITCHENS: Okay. And you're aware that that
20 project was brought to the HPC for preliminary consultation?

21 MR. HOOBLER: Yes, I am.

22 MR. HITCHENS: Okay. And are you aware of what
23 the results of that preliminary consultation were?

24 MR. HOOBLER: Uh, I have really only glanced at
25 the opinion for that, or, not the opinion but some of the

1 stuff with that. I had been told by someone who was there
2 that a lot of commissioners said don't build anything on it.

3 MR. HITCHENS: Okay. So, when you put your
4 proposal in had you read the staff report?

5 MR. HOOBLER: That staff report I do not remember.

6 MR. HITCHENS: You're aware that all of your
7 proposals were bigger than the proposal that he submitted?

8 MR. HOOBLER: I would differ in what one sees as
9 bigger. That house as well as -- that house is actually
10 more similarity to the house a couple of doors down across
11 the street. So, massing is sort of two masses, a larger
12 gable and a smaller gable coming out of it, but, there's no
13 other, there's no other really break up there.

14 I mean, there is a porch, but, there isn't the use
15 that I tried to employ of balconies and other features that
16 sort of would -- it's a little more complicated and I think
17 would tend to make it look a little bit on the smaller side.

18 And my recollection is that this proposal was
19 wider than mine, so, what would one would see, I thought, on
20 my proposal would look better.

21 MR. HITCHENS: Okay. Now, in some of your other
22 dealings with the commission you participated in preliminary
23 consultations, is that correct?

24 MR. HOOBLER: I have some.

25 MR. HITCHENS: Okay. But, you didn't

1 participate -- you didn't ask for preliminary consultation
2 on this project, is that right?

3 MR. HOOBLER: That's right. I really felt that if
4 I did that I didn't think I was going to get -- I thought I
5 was going to expend sort of the same answers that Sterling
6 Maron got at his hearing and not sort of maybe parameters or
7 a sort of place to start with. So, I thought that if I
8 turned in a proposal that there would be something to mark
9 up and tell me what to do.

10 MR. HITCHENS: Okay. So, you had it in your mind
11 to use the process in a certain way. You felt there were
12 certain advantages to not submitting a preliminary
13 consultation?

14 MR. HOOBLER: I thought we'd fish and cut bait.

15 MR. HITCHENS: And, also, you're not suggesting
16 here that you've had some kind of discriminatory treatment
17 from the commission, are you?

18 MR. HOOBLER: Because of me personally?

19 MR. HITCHENS: Right.

20 MR. HOOBLER: No.

21 MR. HITCHENS: Okay. You're also not suggesting
22 that you ought to be able to build something that's
23 inappropriate just because you've gone through the motions
24 of submitting an application and coming back a few times,
25 are you?

1 MR. HOOBLER: No, sir.

2 MR. HITCHENS: Okay. Now, yesterday you mentioned
3 that felt there were no -- I think you said, to use the
4 phrase, no clear criteria for what to build here. Is that
5 an accurate and fair statement?

6 MR. HOOBLER: Yes. But, what I'm saying by that
7 is that, you know, I've gotten sort of the footprint
8 criteria, but, I don't feel as if there has been, unless I
9 still feel like from the last hearing that I really didn't
10 get a sense as to whether we're talking just one story, or,
11 one and half stories, or, two story. I mean, I don't feel
12 that that's really fair and I think that's a pretty critical
13 part missing.

14 MR. HITCHENS: Okay. So, even though you didn't
15 feel there were clear criteria you knew pretty much somehow
16 how to develop these parts here which list out the exact
17 footprint coverage and go into details on lot coverage and
18 you knew enough to put down the exact square footage of the
19 footprint as opposed to how much house was going to actually
20 -- what the massing was going to show the actual coverage
21 was going to be, right?

22 MR. HOOBLER: Well, that's me trying to put
23 together the way that I thought things were presented. The
24 footprint has always been a concern of staff and, but,
25 again, it's sort of, it's sort of like they have taken the

1 sort of statistics, if you will, and they sort of want to
2 look at that before they want to look at the house and so
3 they weren't talking about -- first off, they weren't
4 talking about the house on the right, Dr. Loessing's house
5 really at all. It was just sort of a mention that it was
6 there.

7 But, in terms of statistics about its size those
8 weren't presented and, so, I thought that was important.
9 They had only compared it against Jeannie's house and then
10 issues like sort of what the width was weren't presented and
11 all the proposals I had were narrower than that. So, I was
12 trying to give sort of an, you know, idea of sort of
13 statistics, I guess, that I felt had either missing a little
14 bit or whatever.

15 MR. HITCHENS: Okay. Let me talk about the charts
16 a little bit more. I just wanted to remember some of
17 yesterday's testimony. You mentioned Joe Brenneman when you
18 read a letter from Joe Brenneman.

19 MR. HOOBLER: Yes, I did.

20 MR. HITCHENS: He has a business. He has a
21 specific business focused on restoring or rehabilitating
22 historic structures, doesn't he?

23 MR. HOOBLER: I think it's more of a hobby really.
24 I mean, I don't -- he's a drywall contractor.

25 MR. HITCHENS: Okay. And he was -- how long was

1 he on the commission, do you recall?

2 MR. HOOBLER: That I don't know.

3 MR. HITCHENS: Okay.

4 MR. HOOBLER: I think the letter he said seven
5 years.

6 MR. HITCHENS: Okay. And he took -- are you aware
7 of any other actions that he took when he was on the HPC
8 that regulated people's use of property? He wrote it on a
9 lot of --

10 MR. HOOBLER: No.

11 MR. HITCHENS: -- historic area work permits,
12 didn't he?

13 MR. HOOBLER: I would assume. I don't know.

14 MR. HITCHENS: And Joe made a comment about that
15 he felt that the historic preservation ordinance did not
16 prevent someone from building on property, isn't that
17 correct? In the letter, doesn't he say that?

18 MR. HOOBLER: Uh, I believe so, yes.

19 MR. HITCHENS: Okay. Are you aware of the
20 commission ever taking somebody's property? Has that ever
21 been adjudicated?

22 MR. HOOBLER: Um, --

23 MR. HITCHENS: Has Montgomery County ever had to
24 pay anybody for property because the Historic Preservation
25 Ordinance?

1 MR. HUTT: Mr. Hoobler, if you know.

2 MR. HOOBLER: I'm sorry?

3 MR. HUTT: If you know.

4 MR. HOOBLER: I don't know of an instance like
5 that.

6 MR. HITCHENS: Okay. And do you think that the
7 commission regulating the size of the house that you could
8 build is saying that you can't build any house there?

9 MR. HOOBLER: I think it gets to a point where
10 what we're talking about becomes economically sort of
11 infeasible and unreasonable and also I think potentially can
12 get kind of goofy.

13 I mean, for instance, in this district, I mean,
14 the part that you were talking about before in the master
15 plan talks about a uniformity of scale to the houses and,
16 yet, what I'm being asked to do at least in the last
17 proposal is to get to a size where it doesn't look like a
18 house. So, I don't understand how it would be sharing that.

19 MR. HITCHENS: Yesterday when you were referring
20 to your proposal C you referring to that as a one and a half
21 story house. The staff refers to that as a two story house.

22 MR. HOOBLER: I believe I said one and a half to
23 two story house yesterday.

24 MR. HITCHENS: Looking at the north elevations
25 that you have -- let's look at the east elevation that

1 you've provided with that. You show numerous windows, a
2 second layer or a higher layer of windows. Doesn't that --

3 MS. TURNBULL: Which exhibit is that?

4 MR. HUTT: I think it's Exhibit 37 which talks
5 about options B and C.

6 MR. HITCHENS: Could be. It's part of Exhibit 37.

7 MS. TURNBULL: Thank you.

8 MR. HITCHENS: I'm looking at really the east
9 elevation and there's two rows of windows there. Now,
10 you're saying the house that has the two rows of windows is
11 a one and a half story house?

12 MR. HOOBLER: Well, the windows that you see on
13 the far right, the little triple windows on the far right on
14 the second level, those windows, the head height comes down
15 over those windows so that the head height upstairs and that
16 part is around about 5 feet so the ceiling is sloped in
17 there so it's not two story in the sense of, you know, you
18 walk around and there's 8 foot all around you.

19 MR. HITCHENS: What about over here at the other
20 end?

21 MR. HOOBLER: At the gable end?

22 MR. HITCHENS: You can stand up and look out those
23 windows?

24 MR. HOOBLER: You could at those windows, but,
25 again, if you go to the sides of the gable you would have

1 the same head room conditions.

2 MS. TURNBULL: Excuse me. Are there rooms up
3 there?

4 MR. HOOBLER: Yes, there are.

5 MR. HITCHENS: Your plan to have rooms up there in
6 the design?

7 MR. HOOBLER: Yes.

8 MS. TURNBULL: So, would they meet building code?

9 MR. HOOBLER: They would meet building code
10 because when you get to the center of the room you get
11 enough height that you would meet the average.

12 MS. TURNBULL: But, the definition between one and
13 a half story to two story when is that determined to be a
14 two story versus one and a half story?

15 MR. HOOBLER: Well, I guess maybe this is pointing
16 out I'm not the best person to tell you that, but, from my
17 sense was that we don't have a standard two story house
18 where the roof line runs the same all the way across. We've
19 lowered that some so that the roof is protruding onto the
20 second level.

21 The --

22 MS. MAYER: It's similar to a Cape Cod because
23 I've seen them advertised as one and a half story.

24 MR. HOOBLER: Yes, it is.

25 MR. HITCHENS: Going to your summary charts you

1 prepared yesterday, I notice that on all of the charts you
2 did a breakdown on the lot coverage, the footprint, and you
3 broke out the entire structure coverage including porches
4 and then without the porches. Now, did you distinguish that
5 because you felt the effect of a solid structure was
6 different from the effect of the porch structure?

7 MR. HOOBLER: Yes, and I think especially on the
8 front of the house because the bone of contention I had on
9 the first application.

10 MR. HITCHENS: So, you would say, yeah, a porch is
11 coverage there but it's not solid structure so you wanted
12 some recognition of that then?

13 MR. HOOBLER: Yes, sir, I did.

14 MR. HITCHENS: Now, would you say that the fact
15 that Dr. Loessing's glass greenhouses that are only one
16 story and that you can see through, would you say they have
17 a different affect to from a solid structure such as his
18 house?

19 MR. HOOBLER: Well, it depends on which
20 greenhouses you're talking about at Dr. Loessing's house.

21 MR. HITCHENS: Let's talk about those for a
22 second. Is that one greenhouse?

23 MR. HOOBLER: Well, no. It's, it's, it's, he has
24 the garage which is actually every time I've seen it
25 whatever doors there might be are open so you can see right

1 into it. It's a four bay garage.

2 MR. HITCHENS: You drew that, you submitted
3 another exhibit that has lot coverages. It has blacked in
4 lot coverages.

5 MR. HOOBLER: Yes.

6 MR. HITCHENS: Did you distinguish there between
7 parts of that structure, or, did you just class it all as
8 one structure?

9 MR. HOOBLER: I classed it all as one structure.
10 But, it's not just greenhouses that make up that sort of
11 conglomeration. There's -- I have some pictures of it that
12 would show you. First of all, you can see that there's a
13 greenhouse on the other side of the house is much darker.

14 MR. HUTT: Carey, let me just interrupt. Have any
15 of these pictures been introduced?

16 MR. HOOBLER: No.

17 MR. HUTT: If they haven't then I think we should
18 mark them as an exhibit so the board has a sense of what
19 you're talking about.

20 MR. HOOBLER: But, that's much darker than the
21 other part. You really can't see into that the same as you
22 would this open porch that you can see right next to it and,
23 also, sort of what gets attached to that there's a couple of
24 brick things. Then there's like a stucco building that then
25 goes on to that and then at the back of that stucco building

1 there's another sort of appendage. Here's another one.

2 And, so, that's a --

3 MR. HITCHENS: What's coming to my mind is that
4 really there are some real nuances of the massing out there.
5 Is that correct? In the buildings. It's not glass, it's
6 not all porches. They're just nuances in massing.

7 MR. HOOBLER: Right, and that's something that
8 I've tried to bring out in the charts.

9 MR. HITCHENS: But, you tried to bring that out in
10 your charts by indicating what was porches and what was
11 other stuff?

12 MR. HOOBLER: Yes.

13 MR. HITCHENS: Okay. Let's talk about how you
14 brought that out on the charts with regard to Mrs. Ahearn's
15 house. She has lots 26, 25, and 27, is that correct?

16 MR. HOOBLER: Yes, sir. I believe so. I believe
17 that's the correct numbers.

18 MR. HITCHENS: 27, that's where the porch
19 overhangs. Is that right? The porch crosses the lot line.

20 MR. HOOBLER: Well, that's enclosed and that's
21 part of her kitchen.

22 MR. HITCHENS: 26 is where the main house is. 25
23 is where the garage is.

24 MR. HOOBLER: Yes.

25 MR. HITCHENS: Is that right? Okay. So, you

1 listed the -- when you did your lot coverage for a house did
2 you lump lots 27 and 26 together?

3 MR. HOOBLER: Yes and no and I'm not sure where it
4 is. It may be on the top of one of the --

5 MR. HITCHENS: But, you combined them, right? You
6 viewed that for all intents and purposes as one lot.

7 MR. HOOBLER: Well, as you look at that she's just
8 hanging over onto that other lot a little bit. I did have,
9 at one point, that little bit broken out as a separate
10 coverage for that separate lot. Where that is now I don't
11 know.

12 MR. HITCHENS: But, you didn't include lot 25 in
13 the coverage of her property. In other words --

14 MR. HOOBLER: I was assuming that lot 25 was being
15 my, you know, the coverage of what I was doing. In my last
16 report before the HPC in February I did include what the
17 coverage would be if you added my house, her house, and all
18 different stuff together on those different lots.

19 MR. HITCHENS: Let's look at it this way --

20 MR. HOOBLER: My recollection was it was 10.7.

21 MR. HITCHENS: If you considered all three of her
22 lots together, including the lot that has the garage,
23 because after all you -- I mean, why did you not include
24 that lot with the garage? You included the lot with the
25 little tiny bit of the lot because the porch hung over.

1 Wouldn't it have been fairer representation to
2 present the size of her lot as not 17,000 square feet but
3 25,000 square feet?

4 MR. HOOBLER: Well, what I was trying to do was
5 compare what it was that I was producing. Staff had already
6 brought out what the coverages were to begin with.

7 MR. HITCHENS: If you include -- did you know if
8 you include the three lots and then look at the lot at the
9 percentage covered by structures it's about 6 percent?

10 MS. TURNBULL: I'm having a little problem with it
11 because if you include that then there's point for us to be
12 here. We're talking about lot 25 and, so, if we don't have
13 a comparison of what that lot would be with the two on one
14 side and the two on the other then I don't know where you're
15 going.

16 MR. HITCHENS: Well, I think where I'm going is
17 that it's kind of I think it misrepresents the lot coverage
18 to just forget about the garage and the lot with the garage.
19 Using that logic he could just forget about the other lot as
20 well.

21 MS. TURNBULL: I don't think so because the other
22 lot is part of the house is on the other lot, number one and
23 we're not talking about changing that. The only change
24 would be is if you add the garage from lots on the side.
25 And the whole purpose --

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1 the massing and the nuances of the massing that are out
2 there, is that right?

3 MR. HOOBLER: That's correct. That's why I
4 included photographs.

5 MR. HITCHENS: As far as proposal C goes, you said
6 that the width of that house is 22 feet, I think, and --

7 MR. HOOBLER: At the front.

8 MR. HITCHENS: At the front, yeah. How big is it
9 in the back?

10 MR. HOOBLER: The largest it gets is 30 feet wide.

11 MR. HITCHENS: So, somebody who lives on Prospect
12 Street back there --

13 MR. HOOBLER: Behind this lot?

14 MR. HITCHENS: Yeah.

15 MR. HOOBLER: Yes.

16 MR. HITCHENS: When they look up towards Baltimore
17 Street they're going to see a 30 foot wall, is that about
18 right?

19 MR. HOOBLER: Not today, sir.

20 MR. HITCHENS: If the house were built. If the
21 house were built there would be a 30 foot wide back wall of
22 the house, is that right?

23 MR. HOOBLER: Well, it's actually cut up a little
24 bit more than what you're describing in terms of how it's
25 massed. I tried to describe it some yesterday. But, you

1 really -- I mean, if we were to stand out there right now
2 you couldn't see anything on this lot from there and
3 probably even in the winter you wouldn't even see the first
4 story because the height of it is right behind it, the
5 ground still goes up a little bit. But, I went down on
6 Prospect Street to try to see in the wintertime and I could
7 make out just barely the roof of the auto house and I knew
8 sort of what to look for.

9 MR. HITCHENS: Now, I meant to ask you a little
10 bit about yourself. You're not an architect, is that right?

11 MR. HOOBLER: No, sir.

12 MR. HITCHENS: But, you have been a builder for a
13 number of years. How many years is that?

14 MR. HOOBLER: Since 1985.

15 MR. HITCHENS: Okay. When you -- have you ever
16 gone to an architect and said I'm trying to build a house in
17 Kensington, here are the guidelines, can you build a house
18 that's going to fit these guidelines?

19 MR. HOOBLER: I had staff meet with -- I mean, I
20 had my architect meet with staff in November to try to do
21 that. I, previous to that, met with staff saying these are
22 the things they've asked me to look at, can you build me a
23 house, you know, draw me up a house similar to that.

24 MR. HITCHENS: As a builder do you have in your
25 mind a square footage of the house that you need to build in

1 order to make it profitable?

2 MR. HOOBLER: It's not square footage as much as
3 sort of getting rooms that sort of work and meet what people
4 need. I mean, I'd have to say I've built some houses that
5 have been 1,800 square feet, but, the comments that I get
6 back from real estate agents is that they're too small, it's
7 too tight and I found that at least in the building some of
8 the closer-in houses that I've been building people want to
9 have houses that are really -- as much as everybody says,
10 you know, we just want a little house and this and that when
11 they get done with their list of what they want they want
12 3,000 plus square feet.

13 MR. HITCHENS: Do you -- if I asked you to build a
14 house of 2,000 square feet and told you the essential type
15 of house and structure it was would you have already in your
16 mind a cost to build that house by square foot?

17 MR. HOOBLER: Not really. I sort of count stairs.

18 MR. HITCHENS: Do you have a ratio in your mind of
19 the cost of land should be to the cost of building a house?

20 MR. HOOBLER: To the cost of building a house, no.

21 MR. HITCHENS: Now, you said yesterday that you
22 have proposed to build initially in your first proposal what
23 you want to do is build another big house that looked
24 victorian, is that correct?

25 MR. HOOBLER: Yes, it is, but, I think big is a

1 relative term. The big that's there -- in other words, what
2 I was proposing in my first proposal that was to be
3 victorian in style was a house that met the bigness of those
4 houses. There were bigger houses in Kensington.

5 MR. HITCHENS: Would you say that's all you need
6 to do to meet the criteria of the ordinance is build a house
7 that looks like the other houses that are there?

8 MR. HOOBLER: No. Unh-unh.

9 MR. HITCHENS: That's it.

10 MR. CAPUTO: I have some, Madam Chair. You had a
11 chart yesterday of the street and you referred to it. You
12 had a picture of the house across the street that was on a
13 50 foot lot.

14 MR. HOOBLER: Yes, sir.

15 MR. CAPUTO: Can we see that picture and my
16 question as you're getting it, is that the address of 3919
17 or am I in the wrong --

18 MS. AHEARN: 13.

19 MR. CAPUTO: 13.

20 MR. HOOBLER: Well, let me get the house up. I
21 was thinking you were talking about a different house.

22 MR. CAPUTO: I think 13 is the right number.

23 MS. AHEARN: The new house.

24 MR. CAPUTO: And that's in the historic district?

25 MR. HOOBLER: Yes, sir. It's across the street.

1 You see down, it's also --

2 MR. HUTT: Carey, bring it a little closer to the
3 board members so they can see the photographs.

4 MR. HOOBLER: It's listed as a primary resource as
5 is the lot it's on and the house that's next to it and it's
6 been noted as that first period of significance in the
7 master plan.

8 MR. HUTT: I don't mean to interrupt, point out
9 the house that we're talking about.

10 MR. HOOBLER: It's this one right here.

11 MR. CAPUTO: 3913?

12 MR. HOOBLER: That's correct.

13 MR. CAPUTO: It's on a 50 foot wide lot?

14 MR. HOOBLER: Yes, sir, and Mrs. --

15 MR. CAPUTO: It's caddy corner?

16 MR. HOOBLER: Yes, sir, it is.

17 MR. CAPUTO: And that had to go through the
18 Historic Preservation Commission?

19 MR. HOOBLER: It did, sir.

20 MR. CAPUTO: And they approved it?

21 MR. HOOBLER: Yes, sir, they did.

22 MR. CAPUTO: How many square feet in that house?

23 I know you -- since the owner is not on the stand.

24 MR. HOOBLER: Yeah. I think it's in the
25 information, but, I believe it's 1,176 first floor. That's

1 just the house. It's not including the porches. There's a
2 deck on the rear.

3 MR. CAPUTO: Is it a one story? You said 1,176 is
4 the footprint?

5 MR. HOOBLER: Yes, sir, of the house itself
6 without the porch that wraps around it or the deck that's on
7 the rear which this staff has been using as sort of where
8 they get their calculations from.

9 MR. CAPUTO: So, the Historic Preservation
10 Commission approved that house. The square footage is
11 probably half as much as your house. You said yours, plan
12 C, was 2,359.

13 MR. HOOBLER: No, no, that's including all floors.

14 MR. CAPUTO: Yeah, okay, what's all floors on that
15 house?

16 MR. HOOBLER: Well, I guess it would be just
17 doubling that.

18 MR. CAPUTO: So, that would be in excess of 2,000
19 square feet?

20 MR. HOOBLER: 2,362 actually.

21 MR. CAPUTO: That house?

22 MR. HOOBLER: Yes, sir.

23 MR. CAPUTO: And you told us yesterday your house
24 is 2,359.

25 MR. HOOBLER: Yes, sir.

1 MR. CAPUTO: Okay. And they denied you the right
2 to put that house up?

3 MR. HOOBLER: Yes, sir.

4 MR. CAPUTO: Even if you're going to put the auto
5 carriage or the auto house up front and restore it rather
6 than move it to another lot?

7 MR. HOOBLER: Yes, sir.

8 MR. CAPUTO: If we grant a special exception to
9 put that there?

10 MR. HOOBLER: Yes, sir.

11 MR. CAPUTO: Thank you.

12 MR. HITCHENS: Carey, do you know when that house
13 was approved across the street?

14 MR. HOOBLER: '87-88.

15 MS. MAYER: What is that on either side of that
16 house? Is that open space?

17 MR. HOOBLER: Between this house here there's
18 about 14 feet to the next house.

19 MS. MAYER: What about the other side?

20 MR. HOOBLER: The other side is more generous. I
21 don't know the exact -- actually, Mr. Wagner's here. That's
22 his house.

23 MS. MAYER: But, there is an open lot there?

24 MR. HOOBLER: An open lot, no.

25 MR. CAPUTO: Okay. Since the county attorney

1 asked the year it was built and you said --

2 MR. HOOBLER: '87.

3 MR. CAPUTO: -- '87 what's happened between '87
4 and '98 that the Historic Preservation Commission is
5 refusing to your proposal C? Is the rule changed since Mr.
6 Hitchens opened the door on that? Well, do you know of
7 anything that's changed since he opened the door.

8 MR. HOOBLER: In terms of the ordinance, no. They
9 have produced the Vision of Kensington as a guideline, which
10 I have some bones of contention with.

11 MR. CAPUTO: That's okay. Okay. Thank you.

12 MS. TURNBULL: Would you remind me, not you, but,
13 Mr. Hitchens, when was the Kensington guidelines --

14 MR. HITCHENS: Prepared? They were prepared I
15 think in '92 so they've been used by the commission since
16 '92 and they were included in the Historic Preservation
17 Commission's executive regulations by reference when those
18 regulations were passed this past Fall.

19 MS. TURNBULL: So, those are the ones that were
20 just passed this Fall?

21 MR. HITCHENS: The regulations were passed, yes.

22 MS. TURNBULL: Okay.

23 MR. CAPUTO: Fall of '97?

24 MR. HOOBLER: Uh-hmm.

25 MR. CAPUTO: And you applied in March of '97?

1 MR. HOOBLER: Yes, sir.

2 MR. HITCHENS: And the commission was using the
3 Vision of Kensington guidelines.

4 MS. TURNBULL: But, those are the same regulations
5 that had never been passed by Council until this Fall?

6 MR. HITCHENS: Right.

7 MR. CAPUTO: Okay. Thank you, Mr. Hitchens.

8 MS. BARRON: I guess then one thing with that.
9 The Kensington Master Plan Amendment, when was that?

10 MR. HOOBLER: 1986.

11 MS. BARRON: That was 1986. Now, my question is
12 you're familiar with this house, you're familiar with the
13 guidelines, you understand -- in other words, you understand
14 --

15 MR. HOOBLER: I'm familiar with the guidelines.

16 MS. BARRON: I mean, you've built homes there in a
17 historic district. You've been before --

18 MR. HOOBLER: When I --

19 MR. HUTT: Let's have the question be complete.
20 It might be easier for you to understand.

21 MS. BARRON: You said before and that was your
22 testimony.

23 MR. HOOBLER: Yes, ma'am.

24 MS. BARRON: So, my concern is if your testimony
25 that real estate agents want a house at least 3,000 square

1 feet and you're familiar with the guidelines why did you
2 pursue this particular lot? Why didn't you just choose
3 another lot if it's at odds with what you want to build
4 instead of what the commission feels should be more
5 ancillary to this particular bulk and streetscape and
6 location to this particular site and not another site closer
7 in, whether it' Kensington or Chevy Chase?

8 MR. HOOBLER: There's sort of a handful of answers
9 to your question. The first one is is that when I was
10 before the HPC before on St. Paul Street. I have no
11 recollection of the guidelines that are being talked about
12 now.

13 MS. BARRON: When was that? I didn't write down
14 the year?

15 MR. HOOBLER: I'm not sure. It's been a few years
16 ago, but, I would think it was around '92 or post that, but,
17 it has been a while. Chris, you may know better that date
18 if you've done the research.

19 But, I didn't, I didn't, I just didn't see those
20 guidelines as being that big of an issue. In fact, in the
21 first meeting with the HPC there was, in April, a lot of
22 discussion with some of the commissioners questioning the
23 guidelines and suggesting that if they're going to be using
24 these guidelines that they ought to somehow adopt them and
25 the Town of Kensington should get up and do the same kind of

1 thing. So, I mean, I was a little surprised by their import
2 in this case.

3 And the reason why I chose this lot, I drove by it
4 before I sort of got comfortable with it with Mrs. Ahearn
5 and the reason is because I do, not enough for the people on
6 the other side of this, but, I do see that there are two
7 sides to this and there are lots in Kensington that I would
8 feel uncomfortable with and you brought up one yesterday
9 really and that is the other side.

10 I'd have to be tearing down part of Mrs. Ahearn's
11 house. Of course, there would be a certain amount of
12 hullabaloo involved in that to build there and I think
13 that's quite different than building on this lot. In a
14 sense I'd almost be providing screening for Mrs. Ahearn's
15 house from the house next door.

16 MS. BARRON: But, my problem with your testimony
17 yesterday is that by the time we were wrapping up you had
18 gone from really making me think you were comfortable with
19 proposal C to really say proposal C was too small. Your
20 original proposal was really what you felt adequate which
21 really flipped me because I was under the impression from my
22 prior notes that even with proposal C you had a desire to
23 not go through the whole process, if my memory and notes are
24 correct, with proposal C and then just appeal it and come
25 here.

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1 So, that's what I've been hearing this morning.
 2 Your testimony is saying that your real estate agents said
 3 that it was just too small, I want a house of at least 3,000
 4 square feet and then you're presenting us with a house
 5 that's 3,913 with 2,300 square feet.

6 MR. HOOBLER: Well, let me try to answer that.
 7 The proposal C I felt was sort of fun in terms of concept.
 8 It's sort of strange and different. And there's a part of
 9 me that would want to build it just because it would be fun
 10 to do. But, the reason why I shelved it is that because it
 11 did get small and it also got so strange that I was afraid I
 12 wouldn't be able to sell it.

13 One reason why I proceeded with it was because I
 14 had somebody that came to me that I had actually been
 15 working with earlier and had said, well, could you do that
 16 for me. And, so, suddenly it was a hand and glove and I
 17 said, yes, you know, let's go for it. It's going to make
 18 everybody happy.

19 But, then, the one previous to that, the bungalow,
 20 --

21 MR. HUTT: That's proposal B?

22 MR. HOOBLER: That's proposal B. I had really
 23 thought that we could get the program to work inside that,
 24 sort of tuck in the roof the way sort of the bungalows are -
 25 - a cape cod is really fairly similar to that. And, so,

1 being tucked in we could do the same kind of thing. We
2 would be underneath those numbers that sort of real estate
3 agents hammer at you, but, I thought we could do, you know,
4 a house that would provide the things that they wanted.

5 But, that's still, I mean, the footprint's not --

6 MS. BARRON: I have to disagree in one area and
7 that if you go to the Town of Somerset, for example, if you
8 look at lower Cumberland, you're going to see an area of all
9 in-fill houses. Some of them literally, one of them is a
10 log cabin. It is very small and different. If you go look
11 at that and perhaps you're familiar with it already. It
12 never sell a market. That's how quickly it went. Many
13 people do choose communities and streetscapes and very
14 special places to live and I always felt that the prevailing
15 safety among real estate agents, not only location,
16 location, location, but, you don't want to own the most
17 expensive home on the block and, therefore, you are
18 protected in real estate value.

19 So, obviously, the most expensive home is usually
20 the largest so if you've got -- well, it isn't. I do
21 disagree with your statement that proposal C wouldn't sell.
22 And I also think, for instance, why are you pursuing it?
23 You should go somewhere else. Maybe another builder will
24 come in and build C and sell it and be happy.

25 MR. HOOBLER: C wasn't approved. And I didn't --

1 MS. BARRON: But, A and B wasn't, right?

2 MR. HOOBLER: None of them have been. I was
3 trying to show you what we've tried to do.

4 MS. BARRON: Good. Then would you finish for me
5 then why you didn't bring C before them? Is that what you
6 were just saying?

7 MR. CAPUTO: It went before us.

8 MS. TURNBULL: It went before the staff.

9 MR. CAPUTO: Yes.

10 MR. HOOBLER: It went before the board. What I'm
11 saying --

12 MR. HUTT: It went before HPC in February of this
13 year.

14 MR. HOOBLER: What I'm bringing to the board, you,
15 now is what I mean to say is to show you what I've tried to
16 do that has been turned down. And --

17 MS. BARRON: So, you wouldn't want us to consider
18 C, is that what you're saying? You're just using it to show
19 us what the process you went through, but, you would really
20 rather we consider only A and B?

21 MR. HOOBLER: Well, there's another element to
22 what you mentioned about location, location, location and
23 that is that when a location becomes farther and farther
24 back on the lot and you're out to make a house that looks
25 like a barn you do start to lose your market. I mean, it's

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1 one thing to be cute and small, but, to be cute, small, and
2 told not to be seen sounds like a bad child or a bad house.

3 MS. BARRON: It does sound like an ancillary
4 structure is what it sounds like to me.

5 MR. HOOBLER: Well, but, there are other ancillary
6 structures that are not back far on the lot. I've got some
7 pictures of a carriage house in Bethesda that doesn't sit
8 nearly far as back on the lot as anything that I've asked to
9 do here.

10 MS. TURNBULL: I'd like to ask a question. Going
11 back to B for a second. You said that the program doesn't
12 fit for the people who almost bought C. What's the program?
13 Do you understand what I'm saying? I mean, it sounds like
14 you took, you had a potential buyer, you worked with that
15 buyer, you set up a program basically, three bedrooms, four
16 bedrooms, whatever, and then you built the house around
17 their program.

18 Well, you don't have those people anymore. So,
19 the question is, what program are you trying to fit?

20 MR. HOOBLER: Well, the program that I'm trying to
21 fit is one that would appeal to most people and the way C is
22 set back on the lot, the way C is made to look would not
23 appeal to most people.

24 MS. TURNBULL: Okay. So, basically, --

25 MR. HOOBLER: And a 600-800 square foot house is

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1 not going to appeal to most people.

2 MS. TURNBULL: But, it's not a 600-800 square foot
3 house.

4 MR. HOOBLER: I'm saying that what the HPC has
5 directed me to --

6 MS. TURNBULL: But, even with what HPC is talking
7 about it's not an 800 foot house. It's at least a 1,200 to
8 1,800 -- it's two story.

9 MR. HOOBLER: I've never heard that from the HPC.

10 MS. TURNBULL: That's not what's coming?

11 MR. HOOBLER: I've never been told that it could
12 be two stories and have a footprint of 600-800 square feet.

13 MR. CAPUTO: I have a question. Several of us are
14 confused. If we were to decide on proposal C that your
15 attorney put in as an exhibit, you're telling us you
16 wouldn't build it, why waste our time approving C? This is
17 before us. Are you withdrawing it?

18 MR. HOOBLER: Okay.

19 MR. CAPUTO: We're coming down to the wire now.

20 MR. HOOBLER: I understand and I appreciate --

21 MR. CAPUTO: You may want to consult your
22 attorney.

23 MR. HOOBLER: I think proposal C that far back on
24 the lot has some problems to sell it. Also, I think the
25 issue of having the garage in front of it is hard for a

1 number of reasons. I had a buyer that was willing to go
2 with that. If there's somebody else in the room that's
3 willing to go for it I'm game.

4 MR. CAPUTO: What about your partner, the owner of
5 the three lots? Is she willing to go with C? Is Mr. Hutt
6 not representing her?

7 MR. HUTT: I represent her. She can answer the
8 question.

9 MS. AHEARN: I really feel because I have a
10 contract with him to build it would be up to him. I
11 personally, as far as the house next to me, would prefer B
12 because I feel it fits better with the streetscape and so
13 on. If he wants to build C and we feel that we have a buyer
14 -- he feels he has a buyer for it, it isn't me, then, you
15 know, that's --

16 MS. TURNBULL: I think that we wasted a lot of
17 time here on C. It was submitted to us as a possibility and
18 I thought it was a viable possibility. If you're taking --
19 if you're saying you wouldn't build C then let's just at
20 this point we're ignoring that.

21 And it's not, therefore, would be an option. So,
22 then what we have left is A and B and what you're saying and
23 I think not having discussed this with my colleagues A is
24 something that is large. The reason that there has been so
25 much opposition is because A is the original proposal and

1 this is what was proposed the Historic Preservation
2 Commission and it is too big, too overwhelming for the lot
3 size. That's my impression.

4 I don't know if there's other reasons.

5 MS. BARRON: That's my notes.

6 MR. HITCHENS: Madam Chair, I'd like to point out
7 I still had to put Ms. Zeik on for rebuttal testimony that i
8 wanted to bring before the commission. It sounded like you
9 were making a summary.

10 MS. TURNBULL: No. I'm just going and moving to a
11 different direction. And that A was too big. So, then what
12 we have here is B. If you want to talk about B we want to
13 hear about B, but, that is what you are proposing as what
14 you want us to consider.

15 The issue is we are only going to consider one
16 thing here at this point. We are going to consider what you
17 are wanting to build and it is my recommendation to you is
18 that A would probably be a problem with a lot of opposition
19 and, so, if you want to pursue B let's go with B and hear
20 what you have to say about it and if you're not going to do
21 C let's ignore it.

22 MS. MAYER: How does C compare to that house up
23 there?

24 MR. HOOBLER: This house here?

25 MS. MAYER: Yes.

1 MR. HOOBLER: It's -- this is a two and a half
2 story house. B is a one and a half story to two story
3 house.

4 MR. HUTT: Use your chart. Give them the
5 measurements.

6 MS. MAYER: I have B. I just wondered.

7 MR. HOOBLER: This house is 28 foot wide plus it's
8 got the side porch on it. B is 28 foot wide as well. It's
9 only 22-1/2 feet tall.

10 MS. TURNBULL: How tall is that house across the
11 street, approximately?

12 MR. HITCHENS: Madam Chair, I want to point out a
13 point of law that I think is important for your discussion
14 as you compare it repeatedly. We've discussed whether it's
15 a de novo hearing and, of course, everybody knows it's a de
16 novo hearing. I think we disagree on what are the full
17 ramifications of that, but, board member Caputo's question
18 about when the -- what happened between the time that house
19 was approved and now has certain relevance to it and I
20 wanted to point out that, yes, the Kensington guidelines
21 were passed, but, were adopted by the HPC regulations.

22 I wanted to also point out that, yes, the Vision
23 of Kensington was developed in 1992 and it wasn't adopted
24 into the commission's executive regulations until 1997.
25 But, I wanted to also point out and you made the comment,

1 commissioner, or, board member Caputo, that in April when he
2 was applying it hadn't been adopted at that point.

3 And if you believe that this is a de novo hearing
4 wherein any proposal can come in front of the commission now
5 is the important time line and those guidelines are adopted
6 now and it cures that.

7 MS. TURNBULL: I think -- Mr. Hitchens, I think
8 that it's a reasonable point from the standpoint if one
9 recognizes this is new, it's before us. While this is new
10 and it's before us then it's also the case that we can
11 totally ignore the Vision of Kensington regulation. But,
12 you're saying -- wait, wait -- if you're saying that we can
13 ignore the fact that when he applied for the -- came before
14 the Historic Preservation Commission that those had not yet
15 been enacted. I'm saying it's the same --

16 MR. HITCHENS: No, it's not at all. You are bound
17 to apply the law as it is now. You are the same as the
18 Historic Preservation Commission when you hear this. You
19 must use the same Maryland case law, the same administrative
20 procedures, the same executive regs, the same Vision of
21 Kensington guidelines.

22 MS. TURNBULL: But, then, that if that is a
23 disadvantage to the appellant in this from the standpoint of
24 it is a different standard than what was in fact in effect
25 when he applied.

1 MR. HITCHENS: It's not a different standard.

2 MS. TURNBULL: I believe it's a different standard
3 because they had not been enacted.

4 MR. HITCHENS: Well, he had notice of them. The
5 issue is notice and the board's own ruling in the Zegaye
6 case said that the fact that regulations in that case hadn't
7 been adopted by the executive regulations process did not
8 mean that they were invalid. So, --

9 MS. TURNBULL: On the other hand, we, in the
10 Zegaye case we did not uphold those regulations.

11 MR. HITCHENS: I believe you did.

12 MS. TURNBULL: No, we did --

13 MR. HITCHENS: That was a specific --

14 MS. TURNBULL: We rejected --

15 MR. HITCHENS: That was advanced by the appellants
16 that the failure of the commission to adopt those
17 regulations meant that the commission had no authority to
18 even require the historic area work permit application.

19 MS. TURNBULL: But, --

20 MR. HITCHENS: I'll clear it up in the closing
21 argument.

22 MS. MAYER: Could we go back to this comparison?
23 I'm just curious.

24 MR. HUTT: Why don't you go to the comparison and
25 we'll also address in closing argument. However, you're

1 hearing these elements because you keep hearing them. My
2 position will be that in terms of the guidelines that are in
3 the Vision of Kensington to the extent that they attempt to
4 control the same elements that Montgomery County Zoning
5 Ordinance regulates, lot coverage, setbacks, they cannot be
6 in violation of the county code and they are in violation of
7 the county code and the case law clearly says that the
8 county enjoys no inherent power to zone or rezone and they
9 exercise zoning power only to the extent in the manner
10 directed by the State legislature which is through the
11 county zoning ordinance.

12 So, as you hear the elements and you are thinking
13 or comparing them that will be the point that they're
14 taking. They are there, but, to the extent that you believe
15 that they are in conflict with Chapter 59 and what's
16 permitted and to the extent that they attempt to control the
17 same element as zoning, Chapter 59 prevails over anything
18 that's by an executive regulation.

19 And the County Council adopted those as
20 regulations, not as an ordinance, and the only thing in
21 zoning that can be done is by ordinance at a public hearing,
22 at the legislative sessions. These are executive
23 regulations that are adopted under a completely different
24 process in the county code.

25 So, I will go into greater detail at the time of

1 closing, but, since we're going to make -- he's trying to
2 clarify as a matter of law what the guidelines are or are
3 not keep that in mind and I will embellish that more at the
4 time of closing.

5 I apologize, but, I don't want you to be listening
6 to these measurements on one side of your brain and on the
7 right side you've got the Vision of Kensington guidelines.

8 MS. TURNBULL: Okay. And I think where we are too
9 is that I think we need to go back to where I was trying to
10 direct us and I think Ms. Mayer was asking questions having
11 to do with comparison between the house that was built, the
12 in-fill house of white, basically the 1987 in-fill house and
13 what this proposal is and that this issue having to do with
14 the Vision of Kensington, issue having to do with the zoning
15 ordinance will be issues that will be heard at the
16 appropriate time.

17 MR. HUTT: That's fine.

18 MR. HOOBLER: My estimate would be this house
19 would be about 25 or 26 feet tall from the first floor to
20 the top of the ridge. It might be as much as 27, but, --

21 MS. MAYER: Proposal B is 22.6?

22 MR. HOOBLER: Yes, ma'am.

23 MR. HOOBLER: It has 9 foot ceilings on the first
24 floor. I'm told that would pump it up. It would probably be
25 closer to the -- instead of being 25, 26, it's probably 26,

1 27 feet.

2 MS. AHEARN: I'm sorry, probably not.

3 MR. HOOBLER: Oh, probably not.

4 MS. AHEARN: One room is sunken with 9 foot
5 ceilings.

6 MR. HOOBLER: It would be 25 to 26 feet. And the
7 width of that house is 28 feet wide plus the porch adds
8 another 4 at the front.

9 MR. HUTT: And proposal C has a width?

10 MR. HOOBLER: 28 feet at the front with the porch
11 sort of the whole way.

12 MR. HUTT: And footprint of first floor footprint
13 again of the house across the street, 3913?

14 MR. HOOBLER: I believe just the house itself is
15 1,176. My recollection on the past records is there was
16 about 500 foot of deck and then the porch is something
17 additional for that. The porch -- I'm sorry, I told you
18 wrong. The deck is 264 square feet. The porch is 144
19 square feet. It would give you a total of 1,584.

20 MR. CAPUTO: Footprints?

21 MR. HOOBLER: Yes, sir.

22 MS. MAYER: So, it's 1,346?

23 MR. HOOBLER: Proposal B's first floor is --

24 MR. CAPUTO: 1,346.

25 MR. HOOBLER: Yes, sir.

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1 MS. TURNBULL: And this is coming from the tax
 2 records that was Exhibit 41.

3 MS. MAYER: Did that include any decking or
 4 porches, 1,346?

5 MR. HOOBLER: You know, I need to check to see.
 6 That's without the front porch. The front porch is 204
 7 square feet.

8 MS. MAYER: So, it would be about the same
 9 footprint.

10 MR. HOOBLER: Pretty close. But, it is a shorter
 11 house as well.

12 MS. BARRON: And you also said that 3913 had a
 13 deeper lot, didn't you?

14 MR. HOOBLER: Yes, it is a deeper lot. Same
 15 width, but, deeper.

16 MS. BARRON: So, there's more square footage to
 17 the lot?

18 MR. HOOBLER: Yes, there is. It's 9,000 or so I
 19 think.

20 MS. TURNBULL: Lower lot coverage percentage.

21 MR. HOOBLER: Yes. Probably.

22 MS. BARRON: And the difference between your
 23 original proposal and proposal B is .7 percent lot coverage
 24 as you go from a 24.5 to a 23.8.

25 MR. HOOBLER: That's right with including a two

1 car detached garage.

2 MS. BARRON: And according to my notes from the
3 original testimony at least on the 21st of April from a --
4 gee, I don't know it was Gwen Marcus or I, it said the house
5 was too big, the plan contained demolition of the other auto
6 house garage which in staff's opinion would not do. Now,
7 however, structure would stay. That's in my notes.

8 MR. HOOBLER: I didn't understand what you just
9 said. I'm sorry.

10 MS. BARRON: That the structure, which doesn't
11 appear here on either -- on your lot B.

12 MR. HOOBLER: Because it's been moved over to
13 Jeannie's far lot.

14 MS. BARRON: But, according to my notes from the
15 historic board member that was not a lot, correct?

16 MR. HOOBLER: Well, they had not approved moving -
17 -

18 MS. BARRON: Right, so, that would need to go back
19 on here, wouldn't it?

20 MR. HOOBLER: Well, to put any house on there we'd
21 have to move it.

22 MR. CAPUTO: You'd have to move it.

23 MR. HOOBLER: Any house that I propose has to have
24 a garage.

25 MS. BARRON: Except for plan C.

1 MR. HOOBLER: Even C has moved it up some so we
2 can get a comfortable backyard of 30 feet and get it away
3 from the tree. And right now it doesn't meet the macadam
4 anyway.

5 MS. BARRON: So, then 2.67 existing.

6 MR. HOOBLER: That's the garage.

7 MS. BARRON: I know. I'm just trying to follow
8 numbers and -- but, now, there's one then subtract that from
9 your 23.8?

10 MR. HOOBLER: No. The 23.8 is --

11 MS. BARRON: One would add that to 23.8?

12 MR. HOOBLER: If you were to put that garage back
13 there, keep the two car garage, you would add it to it.

14 MS. TURNBULL: So, the two car garage is 484 feet.
15 We decided this yesterday.

16 MR. HOOBLER: Yes, I think you're right. So, are
17 you asking me to subtract that from --

18 MS. TURNBULL: I have a question. This is another
19 option. Would you build without the detached garage with
20 the auto house where the proposed detached garage would be?

21 MR. HOOBLER: In the rear of the property and use
22 it as a garage or a garden shed or something? Yes, yes, I
23 would. I told you a few minutes ago that the front porch
24 was 204. It's 224 on that house, 224 square feet is the
25 front porch.

1 MS. BARRON: 3913? Where are we talking about?

2 MR. HOOBLER: I'm sorry. Of proposal B. I'm
3 sorry yesterday. I didn't mean to -- I was only trying to
4 give you background. I wasn't trying to propose C. I --

5 MS. BARRON: Oh, well, that's over, the day's
6 gone. I come up with a lot coverage of 20.8 I think for the
7 proposal that you just described.

8 MS. TURNBULL: 20.8 is without the detached
9 garage.

10 MR. HOOBLER: Yes.

11 MS. TURNBULL: But, with the auto house?

12 MR. HOOBLER: Yes. And includes the front porch.

13 MS. TURNBULL: Okay. If one takes out the auto
14 house what is it and puts it on Ms. Ahearn's as the proposal
15 calls for?

16 MR. HOOBLER: Okay. Let me -- 18.2 percent.

17 MS. TURNBULL: Okay. And that compares with --

18 MS. MAYER: Is that 18 percent over?

19 MR. HUTT: Total lot coverage would be 18 percent
20 for lot 25.

21 MS. TURNBULL: For 25 compared to the two lots, 26
22 and 27, that totaled 20.7 so it's really 10.35 for those two
23 lots and on the other side that would be 50 so it was 25
24 percent. And then what this would be would be 18.2, which
25 is very close to -- halfway between those two.

1 Does anyone have any further questions? No?
2 Anyone? Do you have any further questions of Mr. Hoobler?

3 MR. HITCHENS: No, I don't have any further
4 questions of Mr. Hoobler.

5 MS. TURNBULL: Any redirect?

6 MR. HUTT: No.

7 MS. TURNBULL: Okay. Your next witness then?

8 MR. HUTT: Jeannie Ahearn. Please identify
9 yourself for the record.

10 MS. AHEARN: I'm Jeannie Ahearn, owner of the lot
11 in question, specifically lot 25, 3922 Baltimore Street.
12 And I'm not going to have any testimony. All I would like
13 to do is introduce letters from the neighbors that were
14 interested in this case.

15 MS. MAYER: They're in support?

16 MS. AHEARN: That are in support, yes. They are
17 in support.

18 MR. HUTT: Where are these located?

19 MS. AHEARN: Okay. The first one actually is here
20 also who will give testimony, Mr. McCrory, but, he is
21 directly across from the lot.

22 MS. TURNBULL: He's actually the house that we're
23 talking about.

24 MS. AHEARN: No.

25 MS. MAYER: That's the house diagonal.

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1 MS. AHEARN: That's Mr. Schmidt. He's also here
2 and I have a letter from him. These letters were written
3 for hearings when they weren't able to come. So, I have
4 those two. Mr. Schmidt, of course, is the in-fill house.
5 Then I have a letter from Mrs. Davidson who is on this
6 Connecticut Avenue side of the in-fill house where there's
7 just 14 foot setback between the two of them.

8 MR. HUTT: Still Baltimore Street?

9 MS. AHEARN: These are all on Baltimore.

10 MR. HUTT: Is that next to Mr. Schmidt?

11 MS. AHEARN: Next to Mr. Schmidt's.

12 MR. HUTT: What's her address?

13 MS. AHEARN: Her address is 3911 Baltimore Street.

14 MR. HUTT: Okay.

15 MS. AHEARN: Then I have a letter from the renters
16 who are next to me on the Connecticut Avenue side and their
17 address is --

18 MR. HOOBLER: 3914.

19 MS. AHEARN: -- 3914 --

20 MR. HUTT: Baltimore Street.

21 MS. AHEARN: Baltimore Street. And then I have a
22 letter which this particular owner asked me to read. It's
23 from Mr. and Mrs. Thomas Fisher, Mary Jane and Tom Fisher,
24 who would be at 3923 Baltimore Street. They will be caddy
25 corner to the lot or to the house.

1 Dear members of the Board of Appeals: I am
2 writing this letter on behalf of my neighbor, Mrs. Ahearn.
3 I am appalled with the treatment she has received in her
4 attempts to build on her buildable lot. In my past
5 experience with the HPC I was unable to obtain any written
6 guidelines which gave specific information as to what can
7 and cannot be built.

8 I can appreciate the cry of in-fill, but, as you
9 have already noted, Mrs. Ahearn has every right to build on
10 her lot. Her proposal has been no more than has been
11 approved at least two times on lower Washington Street and
12 once here in the 3900 block of Baltimore Street.

13 Why are her rights any different than those? If
14 the rules have changed why was the community not notified?
15 I do favor historic preservation, but, not when the
16 standards are so subjective. It is sad to see a town as
17 lovely as Kensington pitting one neighbor against the other.
18 Will she not be allowed to do what three have done before
19 her because her opponents are -- -- or is it simply that
20 it's felt that three are enough.

21 Either goes against every right that Mrs. Ahearn
22 has as a citizen or homeowner in this town. It is totally
23 frustrating dealing with the historic preservation. One
24 family, the Pritchards, who are on the corner of Baltimore
25 Street and Detrick, which comes in there, received an award

1 from the National Historic Preservation for an addition to
2 their home which was done in such a way as to be unable to
3 distinguish the old from the new.

4 When my husband and I applied to add on to our
5 home we were told the addition was to be done in such a way
6 as to be able to distinguish old from new. Why do the
7 requirements vary? Each resident is to be treated equally.
8 I hope you will consider the rights of all involved and do
9 the right thing.

10 Sincerely, Mary Jane Fisher. And I have copies of
11 all of these letters for the board.

12 MR. HITCHENS: Madam Chairman, I'd like to note
13 that these are being submitted by a party to the case and I
14 haven't had a chance to see them. They're being submitted
15 as exhibits and I would like a chance to be able to respond
16 to them. I don't need to do it, you know, today. I can do it
17 in a written closing argument, but, I would like to get
18 copies of them to respond to them.

19 MS. AHEARN: And then in addition I have one other
20 letter which is from the vice-president of the Greater
21 Capital Area Association of Realtors, the 1997 president of
22 Montgomery County Association of Realtors, and the 1997
23 Realtor of the Year just addressing the impact as far as
24 real estate and that's included in your packet.

25 MS. TURNBULL: You have a letter by the Fishers, a

1 letter by the Davidsons, Reynolds, Schmidts, --

2 MR. HITCHENS: I'd just again note how
3 inappropriate it is to provide a letter like the one I have
4 on top from Long and Foster with specific real estate data
5 in there at this point. If this had been presented to me
6 earlier then I would have had the opportunity to rebut it
7 with the real estate witness that I have here, but, by not
8 having advanced knowledge I'm kind of precluded at this
9 point.

10 MS. TURNBULL: Okay. These are not addressed to
11 Ms. Ahearn. They're addressed to the Board of Appeals and
12 so that they could have arrived in the mail and I'm viewing
13 Ms. Ahearn in this case simply as a messenger, not as
14 providing this as her testimony and from that standpoint we
15 will make sure that you have time to respond to the written
16 record.

17 MS. AHEARN: Let me just point out that of the
18 eight most closely affected neighbors, six of these would be
19 in support of the building and the permit.

20 MS. BARRON: Are they in support -- what I was
21 hearing. I haven't had an opportunity to read them, but,
22 certainly in support, I would assume, every member of our
23 board of your being able to build on your lot. The question
24 is, what do you build?

25 MS. AHEARN: They have all seen the plans.

1 MS. BARRON: All the plans, plans A, B, and C?

2 MS. AHEARN: I believe B was the primary one.

3 MS. TURNBULL: And will that be clear, to your
4 knowledge, in the letter?

5 MS. AHEARN: I'm not sure that it's cited in the
6 letter.

7 MS. TURNBULL: We'll all have a chance to read
8 these letters. Do you have a copy of each letter, Mr.
9 Hitchens?

10 MR. HITCHENS: I have six letters.

11 MR. CAPUTO: That's right. Five from the
12 neighbors, one from the broker. I've plotted them on the
13 map.

14 MS. TURNBULL: Thank you. Okay.

15 MR. HUTT: That would include the appellant's
16 presentation.

17 MR. CAPUTO: You have no further witnesses?

18 MR. HUTT: We have no further witnesses, no.

19 MS. BARRON: I have to say this, this first one
20 from the real estate agent, the last sentence says, it is my
21 recommendation that the proposed dwelling be approved and
22 another family be allowed to enjoy the benefits of historic
23 Kensington. To me, it's a contradiction because if it's
24 historic it's historic because it has guidelines, but, to
25 keep it historic Kensington. Otherwise, it's Kensington.

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1 MS. TURNBULL: Okay. Is there anyone else here
2 who would like to testify? Okay. Why don't you come on up.

3 (Off the record discussion)

4 MS. TURNBULL: Mr. Hitchens?

5 MR. HITCHENS: One of the questions I'd like to
6 ask her because she really didn't testify. She didn't
7 testify to any substantial information that I would cross
8 her on.

9 MS. TURNBULL: Okay. If you could identify
10 yourself please?

11 MR. MCCRORY: My name is Jack McCrory. My wife
12 and I live at 3919 Baltimore Street directly across from the
13 proposed building site. We both love the way Baltimore
14 Street looks with lots of open space and would prefer to see
15 it stay that way. That preference, however, does not allow
16 to be comfortable with any governmental action to prevent
17 the owner from building a house there. Such an action would
18 be particularly unconscionable in view of the fact the lot
19 is zoned buildable and has been taxed assessed for many
20 years.

21 I gather from the testimony that Dr. Dennis agrees
22 that a flat out denial would not stand up in court and while
23 this is reassuring to me it is not enough. The process of
24 getting permission to build a particular house is proving to
25 be lengthy, cumbersome, and, in our opinion, somewhat unfair

1 and that turns out to be tantamount to a flat out denial.
2 This is because, of course, the builder wants approval for a
3 larger house which would be profitable and saleable and
4 would probably decline to take on a small one such as been
5 mandated by the HPC.

6 The small house requirement is consistent with the
7 commission's general approach that historic homes must be
8 protected by giving them prominent positions in the
9 streetscape. This prominence, they say, should be
10 implemented by making new homes smaller, plainer, and
11 farther from the street. This approach is, in our opinion,
12 and when I say our I'm speaking for myself and my wife,
13 wrong for a number of reasons.

14 I'll enumerate those reasons. Number one. The
15 notion that a large historic home will not stand up well
16 side by side with mature homes of similar design, size, and
17 setback is, in our opinion, false. There are examples on
18 Baltimore Street where newer homes are fairly close to older
19 homes and it looks fine to us.

20 Two. The commission's aesthetic judgment is no
21 better than yours, mine, or, anyone else's in this room and
22 has been flawed in the past. One need look no further than
23 the box-like addition on the back of the beautiful victorian
24 at 3918 Prospect Street to be assured of their availability.

25 Three. Adding small plain homes to a neighborhood

1 of larger homes would tend to create a hodge podge look and
2 cheapen the overall appearance of the neighborhood.

3 Four. The six closest neighbors on Baltimore
4 Street favor large by small for a new home in this
5 neighborhood as it would tend to provide a consistent look
6 as well as maintain property values.

7 Five. There are essentially no carriage house
8 type ancillary buildings on the west side of Baltimore
9 Street. I know there's one down at the corner of Detrick
10 and I've looked at it and it doesn't appear to me to be in
11 the same league as a livable dwelling. That's the reason
12 I'm saying essentially none. If this were to become the new
13 paradigm for homes in Baltimore Street for new homes in
14 Baltimore Street it would be creating a neighborhood
15 character which never existed historically.

16 Six. The commission would be guilty of achieving
17 a legally insupportable end that is preventing the home from
18 building on her buildable lot while occupying the moral high
19 ground; that is we will approve a proposal when we see the
20 right one but you haven't submitted it yet.

21 Please don't let the HPC nullify Jeannie Ahearn's
22 right as a property owner. Either approve one of the
23 proposals that are the subject of this hearing or make it
24 clear in your rulings that HPC must approve without delay a
25 different proposal for a new home of design, size, and

1 setback similar to the adjacent historic homes. Thank you.

2 MS. TURNBULL: Does anyone have any questions?

3 Mr. Hitchens, do you have any questions?

4 MR. HITCHENS: No.

5 MS. TURNBULL: Okay. Just, again, your address is
6 3919?

7 MR. MCCRORY: Yes, it is.

8 MS. TURNBULL: Okay. Thank you. Is there anyone
9 else who would like to come up.

10 MR. SCHMIDT: My name is Walter Schmidt. I live
11 at the infamous house at 3913 that you've all been hearing
12 about yesterday and this morning. I'm here to speak for my
13 wife and myself and show support for the construction of a
14 new home on Mrs. Ahearn's lot.

15 Before I get into my remarks though I would like
16 to offer you a little bit of historic background which may
17 be helpful to you. We moved into our house in December, on
18 December 20, 1987 and the original approval for our house
19 was not only for the house, but, also was approved was a
20 driveway that would have extended from the lot of our lot,
21 the back of our lot, and included a single car garage, a
22 double car garage. This was approved at the time.

23 We opted, my wife and I opted not to do that
24 because when we moved into our neighborhood all of the
25 backyards in our neighborhood were open. We wanted to be --

1 and we were very impressed with that neighborhood because of
2 the openness of the neighborhood.

3 Several years ago the Historic Preservation
4 Commission and the Board of Appeals approved a day care
5 center in our backyard. So, now, I have to have a fence at
6 my backyard which I never wanted to screen off the
7 activities of the day care center. What used to be open
8 space now on the other side is now another fence that
9 extends practically the entire length of my property with
10 trees that shut out the sunlight from my property.

11 So, this is what's happened to us during this
12 period of time. It's inconsistencies, I think, that are
13 bothering many of us. For example, we were not permitted to
14 have mullions on the windows in our house. Every house on
15 Baltimore Street has mullions on it. Why we were not
16 permitted, I don't know, but, that seems like an
17 inconsistency in terms of what the commission does. It
18 doesn't make any sense.

19 You, I think, had a question about real estate
20 values. Our real estate values have depreciated because of
21 the day care center and we were referred to as a Historic
22 Preservation Commission in a public forum as the big mistake
23 on Baltimore Street. I subsequently received a letter of
24 apology from the chairman of the commission at the time.

25 When you pay \$5,600 worth of real estate taxes you

1 don't like to be referred to as a big mistake. Dr.
2 Loessing, in the same meeting, he subsequently apologized
3 for his remarks to us, referred to us as having sneaked into
4 the neighborhood. This was testimony given at a Historic
5 Preservation Commission meeting. So, I thought maybe this
6 would give you a little bit of background in what we went
7 through.

8 Now, with your indulgence, I'd like to take about
9 two minutes and just read my letter to you if that would be
10 okay.

11 Number one is my understanding the testimony given
12 at a prior meeting that the lot in question was being used
13 by various neighbors as a right of way. We have experienced
14 the same problem. People simply look at the location of our
15 lot and use it to get to Connecticut Avenue.

16 My wife and I have seen neighbors known to us use
17 the lot as a thoroughfare. We suspect they do this because
18 we will own what is affectionately known as an in-fill
19 house. If we were to apply for a permit on our lot today
20 I'm sure that some neighbors would not want to lose what
21 they think is their right of way as to use our property for
22 their own personal usage.

23 Mrs. Ahearn's probable trespassing is similar to
24 ours. This loss of right of way may very well be a part of
25 the reason for some opposition.

1 Number two. A new home on Baltimore Street should
2 not be looked at as some type of transgression, or, blight
3 on the neighborhood. To the contrary. I believe it would
4 be an asset to the neighborhood as many other new homes in
5 Kensington Park in the past years have been an asset.

6 Our home, the in-fill house, this house has been
7 used in testimony to the Board of Appeals, has won an award
8 in our town for appearance. This should give you an idea a
9 little bit of the fact that we're not a blight on the
10 neighborhood. We have actually won an award for our house.
11 I don't have it with me, but, I can produce it for you if
12 you'd like it.

13 My house is thoroughly painted. It has no rough
14 exteriors showing an incomplete rehabilitation and the yard
15 is neat and nicely planted with trees and bushes and
16 flowers. We feel our house, contrary to some neighbors'
17 comments, is an asset to the neighborhood. The house to be
18 built on Mrs. Ahearn's lot will also be a similar asset.

19 It is interesting to note that for several years
20 after we moved into our new home this stunned me. We would
21 get a knock on the door and somebody would come up and say,
22 Mr. Schmidt, who did your rehabilitation. We had about six
23 people. I wish I'd asked their names so I could present
24 that to you, but, we actually had people come up to the door
25 wanting to know who did our rehabilitation.

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1 cannot be built. The idea that she should not be allowed or
2 permitted to do what is legally correct should have no
3 bearing. There's also a plus factor that can be considered
4 with respect to the construction of this home.

5 This home will increase the tax base for the
6 county and the Town of Kensington. I'm sure you're all
7 aware of the need to replace the town garage at the Town
8 Hall. We can use the revenue. Our real estate taxes are
9 currently in excess of \$5,000 a year and this home probably
10 will pay a similar tax.

11 Another plus will be that those families who
12 currently own homes on Baltimore Street will be prompted to
13 complete the rehabilitation of their home and perhaps spruce
14 up their yard and their out buildings.

15 A new home seems to set an example for the owners
16 of the older homes. It also appears that Mrs. Ahearn is
17 doing her very best to offer plans for this home which would
18 fit into the neighborhood. I believe that her
19 architect/builder is doing everything possible to come up
20 with a viable plan.

21 In listening to yesterday's testimony it appears
22 that the idea of delay is a major weapon used by some of the
23 opponents. Citizens should not have to be subject to a year
24 and a half delay which entails extreme costs. This is not
25 fair. I would like to thank the board for hearing my

1 testimony. Thank you very much.

2 MS. TURNBULL: Thank you so much. If you could
3 answer some simple questions for me. 3915 is who? And
4 you're Mr. Wagner?

5 MR. WAGNER: That's right.

6 MS. TURNBULL: Okay. And you also are going to be
7 testifying?

8 MR. WAGNER: No.

9 MS. TURNBULL: You're not going to be testifying
10 at all. Your wife is going to testify?

11 MR. WAGNER: She is.

12 MS. TURNBULL: Okay. Fine. Obviously you're the
13 newest neighbor or you're the newest house, but, could you
14 tell me about the people, the Davidsons. They were there
15 clearly before your house was built?

16 MR. SCHMIDT: Yes.

17 MS. TURNBULL: Okay. And the Wagners, were they
18 there before or they came after?

19 MR. SCHMIDT: We moved into our house December 20,
20 1987. To the best of my recollection they did not move in
21 until 1988.

22 MS. TURNBULL: Okay. And --

23 MR. SCHMIDT: Because they were constructing an
24 addition to that house which was the kitchen, I believe,
25 that was added to the house and that was still under

1 construction after we moved into the house.

2 MS. TURNBULL: Okay. And then Mr. McCrory, was he
3 there before you were there?

4 MR. SCHMIDT: No.

5 MS. TURNBULL: He came after you as well. Okay.
6 And let's see, the Fishers, do you know when they came?

7 MR. SCHMIDT: That house was owned by the parents.
8 They subsequently died and I believe what happened is they -
9 - I'm not too sure -- there were two brothers and the one
10 brother bought out the other brother's interest in the
11 house.

12 MS. TURNBULL: Okay. What about -- obviously Ms.
13 Ahearn has been there longer than you have. 3914, Reynolds.
14 Do you know?

15 MR. SCHMIDT: The Reynolds were there prior to us
16 moving. They've been there for a fair amount of time.

17 MS. TURNBULL: Okay. And we haven't heard from
18 the people who live at 3908 on either side. How long have
19 those people been there, do you know?

20 MR. SCHMIDT: This would be --

21 MS. TURNBULL: Next to the Reynolds. On the other
22 side.

23 MR. SCHMIDT: On the other side, they were there
24 prior to our moving into the neighborhood.

25 MS. TURNBULL: Okay. And the Loessings?

1 MR. SCHMIDT: Dr. Loessing. He had been there
2 prior to us moving into the neighborhood.

3 MS. TURNBULL: Thank you.

4 MR. SCHMIDT: May I add one more point?

5 MS. TURNBULL: Sure.

6 MR. SCHMIDT: It is my understanding that the
7 original house that Mr. and Mrs. Wagner live in were known
8 by -- it was owned by a family of the name of Farrell and in
9 conversations that I've had with Mrs. Davidson and Mr.
10 Davidson when he was alive, they were given the opportunity
11 to purchase that 50 foot lot where we currently live. And
12 this is what I have been told.

13 Whether this is accurate or not I don't know. All
14 I know is that in conversations I had with Charlie Davidson
15 when he was alive he said that they were given an
16 opportunity to do this and that's all I can relay to you.
17 The truth, from what he told me if it's other than that, I
18 apologize.

19 MS. TURNBULL: Catherine Davidson, in her letter,
20 in 1987 my husband was asked by the owners of 3915, which
21 would be the Wagners, if we had any objection to the family
22 selling their lot and home separately.

23 MR. SCHMIDT: Oh, that would be the Farrells. The
24 people that owned the house before we bought it.

25 MS. TURNBULL: Okay. Naturally we enjoy the trees

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1 and birds on the vacant lot, but, told the Farrells that
2 they should do what was best for them. They did own the lot
3 and had the right to do with it as they wished. We're aware
4 that Jim and Barbara Wagner, who then lived on Warner
5 Street, had sold off the back of their property to make it
6 possible for a home to be built on Freeman Street. It was
7 evident to us that anyone who bought the home and lot at
8 3915 Baltimore Street could and probably would sell off the
9 lot.

10 Our feeling was that the Farrells should have the
11 benefit of the sale of the lot.

12 Okay. So, what happened is it sounds like the
13 Farrells sold off -- is this what happened -- the Farrells
14 sold you --

15 MR. SCHMIDT: Sold it to our builder.

16 MS. TURNBULL: Sold it to your builder. Okay.
17 And so that's how that -- so, if they owned it then how
18 would they -- maybe I am confused here. What you have said
19 the Davidsons had said, okay, are that people are saying
20 didn't happen. How could that be? That's exactly what they
21 did. Isn't that what they did?

22 MR. SCHMIDT: There's the Farrells.

23 MR. WAGNER: The Farrells sold it to the realtor.

24 MR. SCHMIDT: Yeah, the Farrells sold it. I
25 didn't mean to imply that Mr. Wagner said that. No, I mean

1 to imply --

2 MS. MAYER: What did you say Davidsons said about
3 Wagner?

4 MS. TURNBULL: Okay. The Farrells sold the lot
5 before you bought -- the Farrells -- it wasn't available to
6 them. Okay.

7 MR. SCHMIDT: Yeah. Mr. Davidson told me all of
8 it or 25 feet of it was available for him to purchase and
9 Mr. Davidson said he turned it down. He turned that down.
10 That's what he told me. I have no way of proving that. All
11 I know, that's what he told me.

12 MS. TURNBULL: So, basically, the Farrells are the
13 people who sold the lot to you.

14 MR. SCHMIDT: I apologize to Mr. Wagner if that's
15 the impression I gave.

16 MR. HITCHENS: Madam Chairman, I had a question.

17 MS. TURNBULL: Sure.

18 MR. HITCHENS: I'm sorry, I can't remember your
19 name.

20 MR. SCHMIDT: Schmidt. Walter.

21 MR. HITCHENS: Mr. Schmidt, you said you moved in
22 on December 20, 1987?

23 MR. SCHMIDT: That's correct.

24 MR. HITCHENS: Do you recall around when you were
25 then appearing before the HPC to get your historic area work

1 plan approved?

2 MR. SCHMIDT: I didn't do that because it had
3 already been approved. The builder had done that. Carter
4 Wilson was the builder and he had already gotten the
5 approval to have the house built.

6 MR. HITCHENS: Okay. Do you remember when you
7 contracted to buy the house?

8 MR. SCHMIDT: It would have been in September of
9 that year.

10 MR. HITCHENS: Was it already built then?

11 MR. SCHMIDT: The basement footings were already
12 built. We had seen it there and we were looking for a home
13 in Montgomery County. We had been looking about a year.

14 MR. HITCHENS: Okay. Do you know if there's any
15 other house on that street -- well, how far is the wall of
16 your house away from the closest other house?

17 MR. SCHMIDT: Which wall?

18 MR. HITCHENS: The outside wall of either house --
19 of either side. How far is it?

20 MR. SCHMIDT: I've never measured it. I don't go
21 into somebody's yard without approval. I have no way of
22 knowing the difference between our house and Mr. Loessing's
23 house.

24 MR. HITCHENS: Okay.

25 MR. SCHMIDT: And on the other side I heard this

1 morning it was, I don't know, 14 feet.

2 MR. HITCHENS: Okay. Do you think it is 14 feet?
3 Does that seem about right to you?

4 MR. SCHMIDT: Seems reasonable, yeah.

5 MR. HITCHENS: Okay. Now, when you were buying
6 that house and when you looked up and down that street did
7 you see any other houses that were 14 feet from each other?

8 MR. SCHMIDT: I never even looked at another
9 house.

10 MR. HITCHENS: If we walked down that street today
11 would you find another house that's 14 feet from another
12 house?

13 MR. SCHMIDT: I don't know.

14 MR. HITCHENS: Okay. When -- but, you testified
15 that putting a garage in the back just seemed offensive to
16 you because it didn't fit in with the other properties.

17 MR. SCHMIDT: Well, it was not only that, it was
18 that it was totally open in the back which it is no longer
19 open. In other words, we're having to live with these
20 humongous fences in the back.

21 MR. HITCHENS: But, what I'm saying is, you didn't
22 put your garage in because you testified earlier today that
23 there weren't any other garages along the street that sat
24 back like that, is that correct?

25 MR. SCHMIDT: No, I didn't say that. I just

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1 thought that the concept of having 170 foot driveway going
2 down the whole length of your property with a garage at the
3 back just didn't appeal to either my wife or myself.

4 MR. HITCHENS: I thought you said that there were
5 no other circumstances like that, none of the other houses
6 had garages?

7 MR. SCHMIDT: No, no. I didn't mean to -- I would
8 like to have had a garage closer to the house. That would
9 have been fine, but, even at that point we said no. Just
10 from our standpoint of moving in just that we did not feel
11 it was appropriate to the overall positioning of the house
12 and everything else.

13 MR. HITCHENS: Again, even though there aren't any
14 other houses that are close to each other, 14 feet to each
15 other.

16 MR. SCHMIDT: None of them are, but, there's a
17 house very similar to ours over on Washington Street.

18 MR. HITCHENS: That was offensive to you to see
19 that your house was going to be 14 feet from another house?

20 MR. SCHMIDT: No.

21 MR. HITCHENS: Now, back to the day care center.

22 MR. SCHMIDT: We lived in Georgetown prior to
23 that.

24 MR. HITCHENS: Do you know if the HPC had anything
25 to do with the day care center? Did they grant any approval

1 regarding that day care center?

2 MR. SCHMIDT: Oh, my gosh, yes. My gosh, yes.

3 MR. HITCHENS: What did they do?

4 MR. SCHMIDT: I hate to take up your time, but, I
5 can take you through this litany if you want to really know
6 what happened there.

7 MR. HITCHENS: You might need to, but, let me ask
8 you this. Do you know if the HPC granted any type of permit
9 or approval to have a day care center there?

10 MR. SCHMIDT: Yes, they approved because there was
11 a substantial amount of reconstruction that had to go on and
12 now we're having to look at playground equipment in the
13 front of this house and they have been specifically ordered
14 by the county not to leave materials and toys and everything
15 else in the front yard when it's not in use and it's always
16 there. It's a disgrace.

17 MR. HITCHENS: So, you believe that the HPC has
18 the right to approve a use of a property as a day care
19 center or not, is that what you believe?

20 MR. SCHMIDT: No, I don't believe they have the
21 right.

22 MR. HITCHENS: Okay.

23 MR. SCHMIDT: But, they approved everything and it
24 was done the way HPC said it was to be done, which is
25 another point of contention.

1 MR. HITCHENS: Well, could it be that HPC didn't
2 approve or make any decision at all about having a day care
3 center there, but, that once that approval was made by
4 another board, perhaps the Board of Appeals, --

5 MR. SCHMIDT: The Board of Appeals gave the final
6 approval to it.

7 MR. HITCHENS: Right. Are you angry at the Board
8 of Appeals for having done that?

9 MR. SCHMIDT: What do you think?

10 MR. HITCHENS: I think you are. That's all I have
11 for Mr. Schmidt.

12 MS. TURNBULL: Mr. Schmidt, could you give us the
13 address or do you know what the address is of this day care
14 center?

15 MR. SCHMIDT: It would be probably the 10,000
16 block of Connecticut Avenue. I don't know the exact
17 address. It's interesting to note with this particular day
18 care center that the owner of the property misrepresented
19 the ownership to the HPC and to the Board of Appeals.

20 MS. BARRON: Grounds for a show cause.

21 MR. SCHMIDT: We pointed it out. We showed it to
22 them. That property is owned by a surfboard shop in
23 Rehobeth, Delaware.

24 MS. MAYER: When was that built, sir?

25 MR. SCHMIDT: Pardon?

1 MS. MAYER: When was that day care center built?

2 MR. SCHMIDT: About four years ago.

3 MS. BARRON: How many children?

4 MR. SCHMIDT: Twelve.

5 MR. HUTT: Just to clarify, the building was an
6 existing building. It was an existing.

7 MS. MAYER: That was an existing building.

8 MR. SCHMIDT: It was not an existing day care. It
9 was an existing single story building and they were ordered
10 to have people living in it because that was one of the
11 conditions and that house went vacant for the longest time
12 until we went up -- Charlie Hallowell who lives right in
13 back of them, we went up to the county and sat down -- I
14 can't remember the gentleman's name -- and pointed this out
15 and finally they brought us in and Mrs. Heintz is the owner
16 of the day care center, brought us in and we sat there and
17 she started going off and he stopped her dead in her tracks
18 and he looked at her square in the eye and said, Ms. Heintz,
19 your house, this place is a mess, quote, unquote. Exactly
20 what he said.

21 MS. TURNBULL: Mr. Schmidt, basically, what I
22 would like to suggest to you is for you to -- make sure that
23 we get a copy of the documents that exist with that case.
24 If we see there are problems in the way it's being -- with
25 enforcement, please write us a letter and -- --.

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1 MR. SCHMIDT: I didn't mean to bring that up here,
2 but, it's --

3 MR. CAPUTO: Has the Town of Kensington been aware
4 of this?

5 MR. SCHMIDT: The Town of Kensington -- that's
6 another story for you. That's another story for you.

7 MS. TURNBULL: Okay.

8 MR. SCHMIDT: We were accused in a public forum at
9 a Town of Kensington Council meeting --

10 MR. CAPUTO: Four people are talking at once.

11 MR. SCHMIDT: My wife and I, we were accused in a
12 public forum by Mrs. Heintz of being racists. We were
13 reported to the Bethesda Police Department as having used
14 binoculars to spy on their goings on. And the Town Council
15 and the Mayor sat there and did nothing while this was going
16 on, not a word to defend us. We had asked for permission to
17 do this.

18 MS. TURNBULL: Obviously not wanting to condone
19 behavior like that, I just want you to know that you are not
20 alone and what's unfortunate in our county is that we have
21 many people who become so concerned about issues in their
22 neighborhood that frequently all reason is lost and we
23 apologize for your experience and it's possible that the
24 Board of Appeals -- it came to us on administrative appeal
25 because there were only 12 people. We'll take a look at it

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1 if it's one of ours and hopefully that your future
2 experience and your experience before this board will not be
3 one that will be fodder for future stories.

4 MR. SCHMIDT: You have been most kind in demeanor
5 considering the way that we've been treated in a number of
6 places in the past. I have a genuine concern, not just for
7 Mrs. Ahearn. I mean she's a neighbor, but, I think the
8 basic concern just from here is a matter that if you have a
9 piece of property and the law permits the fact that you may
10 build on your property you should be able to do so.

11 My point to simply follow that up with is it's
12 subject to the guidelines. I don't know of any guidelines
13 the historical committee has. She should be allowed to put
14 up a structure, but, it should be one that meets all the
15 criteria and all the scrutiny of the commission and you so
16 that it is appropriate.

17 I would not want to see, for example, another day
18 care center going in across the street. I don't think
19 anybody on Baltimore Street would approve of a day care
20 center across the street or if Mrs. Ahearn decided that's
21 what she wants to use it for.

22 MS. BARRON: Actually, in your letter you do say
23 it should not be within our rights to deny Mrs. Ahearn the
24 privilege of constructing the new home, only to express an
25 opinion as to how it should look. That is the only way to

1 view the situation, which, as you said, was in the
2 guidelines.

3 MS. TURNBULL: Okay. Does anyone else have any
4 questions of Mr. Schmidt?

5 MR. CAPUTO: No.

6 MS. TURNBULL: Thank you very much. Okay.

7 MR. HITCHENS: There are no other witnesses for
8 the petitioner I had just a few questions to ask Robin Zeik
9 in rebuttal. This would be in response to --

10 MS. TURNBULL: Can I ask before we start if we
11 could just take a few minutes break and then we'll be able
12 to continue on until we finish.

13 MR. HITCHENS: This shouldn't take any longer than
14 a half hour.

15 MS. TURNBULL: Okay. Because we do have a case at
16 1:30.

17 (Off the record discussion)

18 MS. MAYER: You think it's going to take that
19 long, a half hour?

20 MR. HITCHENS: I don't really think it's going to
21 take long but I think because of everything we've done here
22 ended up taking longer than any of us thought it would be.
23 Just that's my outside that I think. It may only take ten
24 minutes.

25 MS. TURNBULL: Do you guys want to put closing

1 arguments in writing, or, do you want --

2 MR. HITCHENS: I prefer to put it in writing
3 because there have been these extra documents that have come
4 in and there are some other legal issues that have come up
5 today.

6 MS. TURNBULL: Okay. And your preference is the
7 opposite. Would you like to -- since you are the appellant,
8 if possible, you could do your closing statement and then
9 get something in writing from Mr. Hitchens and then you
10 could respond to that.

11 MR. HUTT: I'd suggest if one side's going to do
12 it in writing or it's going to go that way I'll submit it in
13 writing and then we'll exchange the arguments and then, you
14 know, there can be a response to each of ours. It makes no
15 sense just to do mine now and have to repeat it in writing
16 at a later time.

17 MS. TURNBULL: Okay.

18 (Off the record discussion)

19 MS. TURNBULL: What we're going to do is take a
20 break. We'll be back just before one, I think. How about
21 ten of? We could do ten of. We'd be back ten of and then
22 we'll go until we finish.

23 (A brief recess was taken)

24 MS. TURNBULL: During the break I added to the
25 file two things. One is a memo from James Wagner,

1 councilman, Town of Kensington, regarding John Loessing.
2 Spoken with a forester in Montgomery County that the
3 champion red bud tree in Montgomery County has a score of
4 75.75. The forester has translated Dr. Loessing's
5 measurements into 83.25. The forester will be contacting
6 the owner of the property, Ms. Jeannie Ahearn, to officially
7 measure the tree so that may be reflected as a Montgomery
8 County champion.

9 Okay. The next one is also a memo from Barbara
10 Wagner dated May 5th and this is a memo regarding
11 rehabilitation of historic property. There are several
12 copies of it, I guess. So, I will make copies of this
13 available to board members. Okay. And that will be Exhibit
14 No. 47.

15 Okay. Mr. Hitchens?

16 MR. HITCHENS: Okay. I'd call Robin Zeik for
17 rebuttal testimony. Would you state your name for the
18 record?

19 MS. ZEIK: My name is Robin Zeik. I'm Historic
20 Preservation Commission planner with Maryland National
21 Capital Park and Planning Commission and I serve on staff to
22 the HPC.

23 MR. HITCHENS: Robin, can you tell the board when
24 the Kensington Master Plan was adopted?

25 MS. ZEIK: Sure. The Master Plan was adopted July

1 7, 1986.

2 MR. HITCHENS: Okay. And when it was adopted were
3 there any guidelines for new construction, rehabilitation,
4 working, you know, in Kensington on historic property?

5 MS. ZEIK: No, there weren't. The amendment
6 described the overall character of the historic district,
7 pulling out what is important about the district, but, does
8 not have district specific guidelines. I believe at the
9 point when that amendment, and there were several other
10 earlier historic districts that were designated, I believe
11 that the commission was considering county-wide guidelines
12 and subsequently they decided because the districts are all
13 so different that that would be very, very difficult to do,
14 really not to the point.

15 The commission did adopt a Secretary of the
16 Interior's standards for treatment of historic property in
17 March of 1987. Those are ten very general guidelines and
18 that does apply on a county-wide basis, but, they decided to
19 approach each district to have district specific guidelines.
20 We see that happening with later amendments such as Takoma
21 Park or Chevy Chase where there are district specific
22 guidelines in the actual amendment.

23 MR. HITCHENS: You just mentioned that the Council
24 adopted the master plan for Kensington. You picked a date,
25 July 7th.

1 MS. ZEIK: 1986.

2 MR. HITCHENS: Okay. And I'm noting in the
3 abstract attached to the amendment itself that on the front
4 cover it says October 1986 and inside it says date of
5 adoption 17 -- September 17, 1986. Do you --

6 MS. ZEIK: The discrepancy for the dates have to
7 do with the route that the amendment goes from the
8 commission through the Planning Board, the County Council,
9 comes back to the HPC -- I'm sorry, back to the Planning
10 Board for a final reading and adoption with changes that
11 would come in through the County Council and we actually
12 show in our papers all those dates and that would be the
13 discrepancy.

14 MR. HITCHENS: The latest date when it may have
15 finally become effective was October 1986, correct?

16 MS. ZEIK: Correct.

17 MR. HITCHENS: Okay. Now, you heard testimony
18 this morning from Mr. Schmidt that he built his house, moved
19 in in December 1987, is that correct?

20 MS. ZEIK: That's what he testified.

21 MR. HITCHENS: So, isn't it likely that when his
22 historic area work permit was considered it was one of the
23 first historic area work permits to be considered for work
24 independent within the historic district?

25 MS. ZEIK: Right.

1 MR. HITCHENS: Is that correct?

2 MS. ZEIK: Right.

3 MR. HITCHENS: Now, a minute or two ago you
4 mentioned that there weren't any district guidelines adopted
5 with this master plan. Nowadays, recent master plans have
6 been adopted, do they include guidelines with them at the
7 time of adoption?

8 MS. ZEIK: Yes, they do.

9 MR. HITCHENS: Can you give an examples of that?

10 MS. ZEIK: Yes. In Takoma Park and in Chevy Chase
11 in most instances which are our most recent historic
12 districts the HPC staff has worked with the community to
13 devise guidelines that could be incorporated in the specific
14 amendments for the specific historic districts.

15 MR. HITCHENS: Okay. Now, you heard the testimony
16 that Mr. Schmidt moved in in 1987. Are you aware of the
17 approximate date of when the matters which we referred to as
18 the Avery/Flaherty matters came before both the HPC and the
19 Board of Appeals?

20 MS. ZEIK: Yes. It's approximately 1989.

21 MR. HITCHENS: Okay. So, that was after as many
22 as maybe two years after the Schmidts moved in.

23 MS. ZEIK: Yes.

24 MR. HITCHENS: And their project was approved, is
25 that correct?

1 MS. ZEIK: Correct.

2 MR. HITCHENS: To your knowledge was the criteria
3 for the approval of the Avery/Flaherty properties related at
4 all to the approval of the Schmidt's house?

5 MS. ZEIK: No.

6 MR. HITCHENS: Okay. Are you aware of any
7 specific connection between the property at 3913, the new
8 house there, Mr. Schmidt's house and Vision of Kensington
9 document?

10 MS. ZEIK: I'm sorry?

11 MR. HITCHENS: Are you aware of any specific
12 connection between 3913 Baltimore Street and the Vision of
13 Kensington?

14 MS. ZEIK: No, not specifically.

15 MR. HITCHENS: Okay. You aware of any general
16 connections between them?

17 MS. ZEIK: It's listed in the document as all the
18 properties. There are 181 properties in Kensington
19 approximately at the point of the development of the Visions
20 of Kensington.

21 MR. HITCHENS: When the HPC commissioned the
22 development of the Kensington guidelines was 3913
23 specifically mentioned?

24 MS. ZEIK: It shows up. There's only one page in
25 the -- two pages which list property addresses and it's

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1 listed as one of the property addresses under that 181
2 figure.

3 MR. HITCHENS: Okay. And was there any mention of
4 the need for guidelines such as the Vision of Kensington
5 document in relationship to construction that had already
6 occurred in the district?

7 MS. ZEIK: Well, that doesn't show specifically.
8 I would have to review. I know that the development of the
9 Vision of Kensington involved a very public process and
10 public hearings and there's a review of that in the back of
11 that document and so that, you know, whether that
12 specifically showed up in the public hearing or not, the
13 development of the Kensington vision planning study I don't
14 know, but, one of the commissioners at that time when the
15 HPC paid to have the Vision of Kensington study done, they
16 commissioned for the historic district study at the same
17 time as we heard Emily Eig testify because those were early
18 districts that didn't have any guidelines for assisting both
19 the community and the commission in reviewing the proposals.

20 And the commissioner testified that this was
21 Barbara Wagner, who was an HPC commissioner at the time when
22 the HPC commissioned the planning studies she testified
23 before the HPC as one of the reasons they realized it was so
24 important to have district guidelines was to be able to
25 provide to the community consistency for that they could

1 understanding what they might expect when they came to the
2 commission, everything should be spelled out. Guidelines as
3 we all understand are not -- they're like a recipe.

4 They're guidelines that give you general
5 understanding of what is valuable of what you're trying to
6 protect.

7 MR. HITCHENS: Was Barbara Wagner one of the
8 commissioners who approved the historic area work permit for
9 --

10 MS. ZEIK: 3913?

11 MR. HITCHENS: -- 3913?

12 MS. ZEIK: I believe so.

13 MR. HITCHENS: Okay. Did she express any opinion
14 as to whether the commission at that point had had adequate
15 guidelines when they approved it?

16 MR. HUTT: I would just like to get a
17 clarification before she answers his question. Was she
18 there in 1987? Have you established that she was on the
19 commission staff?

20 MS. ZEIK: It was my understanding that she was.

21 MR. HUTT: No, you.

22 MS. ZEIK: Oh, no, but, she testified before the
23 commission that she was. She testified --

24 MS. TURNBULL: That's not the question.

25 MS. ZEIK: Was I there in 1987? No.

1 MR. HITCHENS: Did Barbara Wagner testify before
2 the HPC relating to Carey Hoobler's appeal that she had an
3 opinion regarding whether she had sufficient guidelines or
4 not?

5 MS. ZEIK: She testified at an HPC hearing for his
6 first proposal.

7 MR. HITCHENS: And were you on the staff of the
8 commission then?

9 MS. ZEIK: Yes.

10 MR. HITCHENS: Okay. Thanks. Yesterday, Robin,
11 Carey described a covenant that he had found governing Ms.
12 Ahearn's property. And this was a covenant that mentioned
13 the requirement to build a substantial house. I think there
14 was a value attached to it. Are you familiar with that
15 covenant?

16 MS. ZEIK: Yes, I am.

17 MR. HITCHENS: Do you know whether any of the
18 other properties in the neighborhood have that same covenant
19 on those?

20 MS. ZEIK: Yes they do.

21 MR. HITCHENS: Okay. And you're familiar with the
22 ownership of lots 27, 26, and 25?

23 MS. ZEIK: Yes, I am.

24 MR. HITCHENS: Okay. Would you tell the board the
25 history of the ownership from June -- from the point where

1 they were transferred from Mr. Warner?

2 MS. ZEIK: The first deed from Warner and his wife
3 Mary to Arthur Hendricks, June 12, 1899 for lots 26 and 27
4 for the amount to Arthur Hendricks for \$3,500. There are no
5 covenants at that point.

6 August 1, 1903, lot 25 is conveyed to Ida
7 Hendricks who is, I'm assuming, his wife. It says
8 subsequently the deed goes to other Hendricks after Arthur
9 and Ida both died. So, Ida Hendricks buys lot 25 for the
10 sum from Warner for \$500. There are covenants on that.
11 They stipulate a house of no less than \$2,500 to be built.

12 The first instance I was able to find of these
13 covenants which become standard practice for Warner in his
14 sale of the lots to Kensington Park is in July 15, 1899,
15 approximately a month past the date when Arthur Hendricks
16 bought it.

17 MR. HITCHENS: Okay. Let me just ask you. The
18 price for lots 27 and 26 was \$3,500, is that correct?

19 MS. ZEIK: Correct.

20 MR. HITCHENS: Okay. Price for lot 25 in 1903 was
21 \$500, is that correct?

22 MS. ZEIK: Correct.

23 MR. HITCHENS: And do you know when the house
24 built on lot 24, Mr. Loessing's house, do you know when that
25 house was built?

1 MS. ZEIK: Approximately 1901.

2 MR. HITCHENS: Okay. So, at the time that Mrs.
3 Hendricks bought that lot in 1903 it has houses on either
4 side of it?

5 MS. ZEIK: That's correct.

6 MR. HITCHENS: And the price was \$500?

7 MS. ZEIK: That's correct.

8 MR. HITCHENS: The covenants, are there any
9 covenants similar to them in the county that you're aware
10 of?

11 MS. ZEIK: Yes. I looked to see. In Chevy Chase,
12 when they were selling the lots for the development of
13 houses at the Chevy Chase Village subdivision by the Chevy
14 Chase Land Company they also used covenants and they also
15 stipulated a minimum cost for houses there and I think it's
16 interesting the comparison that the stipulated houses along
17 Connecticut Avenue would be at least \$5,000 in costs,
18 substantial amount, and the side streets, \$3,000 in cost
19 which I think compares very well in the sense that Warner
20 was trying to establish a high class subdivision in
21 Kensington at \$2,500.

22 But, he also has -- the covenants vary from lot to
23 lot in his sales to people and what really varies is the
24 price of the house in Kensington Park and on Baltimore
25 Street he's done \$2,500, but, block 13, which includes

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1 Washington Street, two blocks away, it has a cost stipulated
2 at \$700.

3 And I saw the price vary from \$700 to \$2,500 and I
4 believe that while this would take a lot more research it
5 seems to show that Warner intended different status areas
6 within his own community, Baltimore Street being a high
7 status area. Washington Street would be seen in his
8 development as not being an area with smaller houses on
9 smaller lots. And that differentiation may indeed stem from
10 Warner's development sales.

11 MR. HITCHENS: That's it, Madam Chair.

12 MS. TURNBULL: Okay. Does any board members have
13 any questions? Mr. Hutt, any questions?

14 MR. HUTT: Yes. Robin, I think your testimony was
15 that 3913 came before the Historic Preservation Commission
16 that obviously from a time frame it predates 1992 and the
17 Vision of Kensington.

18 MS. ZEIK: That's correct.

19 MR. HUTT: But, Chapter 24-A, which is the
20 historic preservation chapter was still in effect?

21 MS. ZEIK: That's correct.

22 MR. HUTT: And is it not correct that one of the -
23 - for the review of historic area work permits that in fact
24 the Historic Preservation Commission looks at the
25 environmental setting of the proposed construction?

1 MS. ZEIK: That's correct.

2 MR. HUTT: So, that was in existence when the
3 Schmidt property was being reviewed?

4 MS. ZEIK: That's correct.

5 MR. HUTT: I have no other questions.

6 MS. TURNBULL: No other questions? Okay. And we
7 will accept --

8 MR. HITCHENS: Madam Chair, is the board going to
9 have a transcript prepared of these hearings?

10 MS. TURNBULL: Yes.

11 MR. HITCHENS: Okay.

12 MS. TURNBULL: I believe all members of the board
13 have been present for most of the hearings. We have
14 transcripts on previous portions of this hearing. Okay.
15 Now, as far as scheduling is concerned. Today is May 6th.
16 What we would like is if we would have closing arguments in
17 two weeks.

18 MR. HITCHENS: How long do you think it would take
19 to get the transcript, the last transcript?

20 MS. TURNBULL: I think it's five working days.

21 MS. OSIAS: It will be next Wednesday afternoon.
22 Takes a whole week, well, five working days.

23 MR. HITCHENS: I prefer to have at least two weeks
24 after we get the transcript.

25 MS. TURNBULL: Okay. That would take us to the

1 27th of May.

2 MR. HUTT: Could we have one week after that just
3 to file any kind of rebuttal if we wish to respond to
4 anything either of us have said?

5 MS. TURNBULL: Okay. Well, I would like to see
6 happen is that we have a work session on June 2nd.

7 MR. HUTT: Okay. We'll stick with the 27th.
8 That's fine.

9 MS. TURNBULL: Okay. And we'd like to be able to
10 handle this at the work session on the 2nd of June.

11 MR. HUTT: That's fine.

12 MS. TURNBULL: So, if anyone wishes to submit
13 anything after the 27th I think we need it by Friday the
14 29th.

15 Now, is there anything else that needs to be --
16 you may have an addition to a closing statement to respond
17 to the letters that were submitted this afternoon or this
18 morning.

19 MR. HITCHENS: I would include it.

20 MS. TURNBULL: Okay. Then that's it. For the
21 record, testimony has been submitted. We'll close the
22 record on this case today and we will keep the record open
23 only for receipt of closing arguments. Thank you.

24 (Whereupon, at 1:27 p.m. the hearing was concluded.)

25

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

A-4771

By:


Beverly Jason, Transcriber

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