

1 BOARD OF APPEALS
2 for
3 MONTGOMERY COUNTY

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5 :
6 ADMINISTRATIVE APPEAL OF CRAIG HOBBLER :
7 :
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9
10 A hearing in the above-entitled matter was held on
11 April 21, 1998, commencing at 11:00 a.m., at the Stella B.
12 Werner Council Office Building, 7th Floor Hearing Room, 100
13 Maryland Avenue, Rockville, Maryland 20850 before:

14
15 BOARD MEMBERS

16 Susan Turnbull, Chairman
17 Angelo Caputo
18 Louise Mayer
19 Donna Barron
20 Wendell Holloway

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22 APR 21 1998

23 BOARD OF APPEALS
24 MONTGOMERY COUNTY, MD.

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T E S T I M O N Y

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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:

Gwen Wright, HPC	7
Robin Ziek, HPC	47
Emily Eig	101
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TESTIMONY ON BEHALF OF TOWN OF KENSINGTON:

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P R O C E E D I N G S

1
2 MS. TURNBULL: This is the administrative appeal
3 of Carey L. Hobbler and Jeannie Ahearn. It's for historic
4 preservation work permit and it's a denial of a historic
5 area work permit. The appellants charge administrative
6 error on the part of the Historic Preservation Commission in
7 denial of the historic area work permit leading to the
8 denial of a building permit dated May 8, 1997 contending
9 that Section 24-A of the Montgomery County Code, as amended,
10 was misinterpreted.

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

14 Okay. Now, I can remember who you are.

15 MR. HUTT: Just for the record, I'm Marty Hutt
16 with the firm of Lerch, Early, and Brewer representing the
17 appellants.

18 MR. HITCHENS: I'm Christopher Hitchens, also
19 County Attorney.

20 MS. TURNBULL: Okay. So, this is a continuation
21 of a hearing held March 11, 1998. Mr. Hitchens, I believe,
22 right?

23 MR. HITCHENS: Right.

24 MR. HITCHENS: Just to go over a couple of
25 scheduling issues to bring to the board's attention, I had

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1 originally asked the board if we could schedule the hearing
2 today as follows until about 12:30 and then break because I
3 had some other witnesses who are scheduled to come about
4 1:30 and that is still the schedule that would be suitable
5 for the county in light of scheduling our witnesses.

6 And I just wanted to bring it to the board's
7 attention that there are numerous members of the community
8 and also the Town of -- a representative from the Town of
9 Kensington who had been granted intervenor status to appear.

10 So, just to reiterate, I think the board had
11 indicated that this order of the presentation of the case
12 would be the county and then Mr. Hobbler and then any
13 intervenors and then the community, is that correct?

14 MS. TURNBULL: Yes.

15 MR. HITCHENS: Okay. The witnesses that we have
16 for the morning session are Gwen Marcus, Robin Ziek, and
17 Emily Eig. Gwen Marcus is a member of the staff of the
18 Commission as is Robin Ziek and Emily Eig is a commissioner
19 and she also was one of the authors of a report that we have
20 mentioned a few times in the hearing called A Vision of
21 Kensington and she's going to testify as to how that report
22 was developed and what she -- what principles were used and
23 what are the findings of that report and then Gwen and Robin
24 are going to address some of the features of Kensington.

25 Robin has some slides to show of the neighborhood

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1 and then the afternoon witnesses, one of the witnesses are
 2 here. He is Stephen Dennis. He's an expert in historic
 3 preservation law and the former director of the Center for
 4 Preservation Law and he is here in response to some of the
 5 concerns that the board had regarding the relationship of a
 6 Historic Preservation Commission with the zoning function
 7 that other county agencies fulfill.

8 So, I have him available to testify on that issue
 9 and then I also have Carol Mitten coming and she is a real
 10 estate appraiser who has a specialty area of historic
 11 properties and, again, she is here to testify in response to
 12 some of the concerns that were raised by the board regarding
 13 the issue of viable use of the property and the takings
 14 issues.

15 So, those are the witnesses that we have in mind
 16 for today and we can start right off then with Gwen Marcus.

17 MR. HUTT: Before you start, and maybe the
 18 Chairman would like to reserve it until the gentleman who's
 19 been called as an expert to tell, revise, or, opine to the
 20 board his relationship between Historic Preservation
 21 Commission and the Historic Master Plan and the zoning
 22 ordinance, I have read the prior transcript, at least for
 23 the first day, and that was one point that I clearly wanted
 24 to express and get clarification on, because my reading of
 25 the first day is that there were questions relating to the

1 effect of master plan relating to Chapter 59 of the County
2 Zoning Ordinance and Vision of Kensington guidelines to the
3 extent that there's portions of that vision that proposes
4 development standards that are more restrictive than Chapter
5 59 and as to which, in terms of a hierarchy of law, which
6 prevails over one over the other.

7 We can do it now, or, if Mr. Hitchens would rather
8 wait until his expert witness testifies, because I think
9 that's a question of law, not necessarily a question of
10 opinion. So, we can defer to Mr. Hitchens as to what time
11 he'd like to take that up, but, that is an important issue
12 that I think, at least I gather from the questions and
13 answers that assuming to be answered, I did not find,
14 personally find a clearer statement of what is in fact the
15 hierarchy of rules, regulations, and laws that the board
16 should consider and what order, what conflicts, and what
17 supersedes one over the other.

18 MR. HITCHENS: I prefer to address it when Mr.
19 Dennis testifies.

20 MR. HUTT: That's fine.

21 MS. TURNBULL: We're going to proceed that way.

22 MR. HITCHENS: All right, Gwen, if you'd just
23 identify yourself for the record.

24 MS. WRIGHT: My name is Gwen Marcus Wright. I'm
25 the historic preservation coordinator at at the Maryland

1 National Capital Park and Planning.

2 MR. HITCHENS: Gwen, can you give a little
3 information about your background?

4 MS. WRIGHT: I have degrees in architecture and
5 architectural history from Yale University. I'm been working
6 in the preservation field for approximately 18 years now. I
7 worked previously in Galveston, Texas and I was working for
8 the Galveston Historical Foundation and now for the last,
9 close to 11 years, I have worked for Montgomery County in
10 their Historic Preservation office.

11 MR. HITCHENS: Okay. And are you familiar with
12 this appeal?

13 MS. WRIGHT: Yes, I am.

14 MR. HITCHENS: What was your involvement with the
15 case?

16 MS. WRIGHT: I was not the design reviewer on this
17 case. Robin Ziek actually was the person who reviewed this
18 case, but, I'm Robin's supervisor, and I kept apprised of
19 the case. I also had been involved with other similar cases
20 that had come before the HPC and the Board of Appeals in the
21 past and advised Robin and the Commission on prior actions
22 that had been taken on similar cases.

23 MR. HITCHENS: Okay. And with regard to some of
24 those similar cases, can you identify those?

25 MS. WRIGHT: Sure. I mean there have been several

1 They, at that point, Avery/Flaherty ended up
2 losing the property and the property ended up being sold to
3 a resident in Kensington.

4 MR. HITCHENS: Okay. When you say the denial was
5 upheld based on the sizing and the massing, are you saying
6 that the sizing and the massing were determined to be an
7 inappropriate effect on the historic district?

8 MS. WRIGHT: That's correct.

9 MR. HITCHENS: Okay. And is that the same, is
10 that standard from the ordinance?

11 MS. WRIGHT: The ordinance lays out criteria for
12 denial of a historic area work permit and one of those
13 criteria is that it would be detrimental to the
14 preservation, the character of the resource, whether it be a
15 district or an individual site.

16 MR. HITCHENS: Okay. Then with regard to
17 Avery/Flaherty, the specific analysis that was going on was
18 the size issue and how the structures would fit into the --

19 MS. WRIGHT: That was the critical issue.

20 MR. HITCHENS: Is that the critical issue in this
21 appeal by Carey Hobbler?

22 MS. WRIGHT: It is the critical issue in this
23 appeal and it's been the critical issue in other cases heard
24 by the Commission. The other one I wanted to mention is a
25 case that I think some of the members of this board remember

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1 which was the Flemming case, which was a situation where a
2 new house was actually approved on a vacant lot, but, very
3 critical part of that approval was the size of that new
4 house and in that particular case it was a height issue. It
5 was an issue of saying the house had to be a particular
6 height, which happened to be lower than the height allowed
7 by our zoning and building code.

8 It was an important factor in having that
9 structure fit in with the character of that part of the
10 historic district. And that was on Washington Street.

11 So, size, massing, height, and that was also, I
12 should say, appealed to this board and the board upheld the
13 HPC's approval in that case of a new house, but, with very
14 specific criteria about the size and height of the house
15 that would be built.

16 So, size, massing, height, have always been
17 really, really important criteria in all new construction
18 cases and, most particularly, in Kensington.

19 MR. HITCHENS: You just mentioned that the house
20 on Washington Street, the Flemming case, was a situation
21 where the zoning ordinance of the county would have
22 permitted a higher building structure, yet the HPC, in order
23 to fit the structure into the surrounding houses,
24 recommended a --

25 MR. HUTT: I object. I don't mind a little bit of

1 leading, but, you're testifying for Ms. Marcus and I think,
2 you know, let her answer the question rather than you. That
3 was what the HPC considered. Does she know the answer in
4 terms of what the criteria they were using, fine, but, I
5 have to object to the form of your question.

6 MR. HITCHENS: You're familiar with the zoning
7 ordinance in Montgomery County, is that correct?

8 MS. WRIGHT: Yes.

9 MR. HITCHENS: Okay. And in the Flemming case
10 that was, that you just described, the height of the
11 building was higher than the zoning code permitted, is that
12 correct?

13 MS. WRIGHT: The height was --

14 MR. HITCHENS: The height of the building was
15 lower.

16 MS. WRIGHT: The height of the building was lower
17 and that was a requirement of the Historic Preservation
18 Commission. Initially, when Mr. Flemming had come in he had
19 proposed a house that was taller. I believe it was as tall
20 as was allowed by the zone and the Commission required him
21 to lower that height. And that is not at all atypical of
22 Commission review of cases.

23 Height is one issue. At times setbacks. A
24 setback that is allowed under the zone might be 8 feet, a 5
25 yard setback, let's say, but, the Commission might say

1 really that would impact negatively on the next door
2 neighbor, it would impact negatively on trees, it would
3 impact on a variety of issues and, thus, the setback has to
4 be greater than 8 feet.

5 And that has been an action that has been taken by
6 this Commission probably since it came into existence in
7 1979.

8 MR. HITCHENS: And in those instances where the
9 HPC imposes more restrictive requirements has been upheld,
10 is that correct?

11 MS. WRIGHT: When it has -- the few appeals that
12 have taken place and I believe the court appeal of
13 Avery/Flaherty is the only court case where the HPC has had
14 an appeal of one of their historic area work permits, but,
15 yes. The short answer is yes. We've only had one court
16 case and then we've had several Board of Appeals cases.
17 They've generally understood and upheld that sometimes in an
18 historic area you have to have a more restrictive
19 architectural, size, or, massing look than the zoning
20 allows.

21 MR. HITCHENS: Okay. And is the law the same now
22 as when Avery/Flaherty was heard?

23 MS. WRIGHT: I mentioned the only thing that
24 changed would be the appeal process. The first time that
25 Avery/Flaherty came through twice. The first appeal was to

1 court. The second -- between the first and second the
2 ordinance was changed, not in changing any of the criteria
3 for approval or disapproval, but, simply in changing the
4 appeal process being Board of Appeals and then if an
5 aggrieved party wants to appeal going on to Circuit Court.

6 So, yes, the law changed in the sense of the
7 appeal, but, not in criteria.

8 MR. HITCHENS: Now, when the Commission is hearing
9 one of these cases, how does it know what is too big, what's
10 too small? What does it use for guidelines?

11 MS. WRIGHT: Well, the Commission uses a variety
12 of things for guidelines. In fact, in the executive
13 regulations that were approved by our County Council last
14 November it specifically says that the Commission shall use
15 certain documents as guides. It includes the ordinance
16 criteria in 24-A. It includes the, any applicable master
17 plan and that would be comprehensive area master plan, or,
18 master plan amendments, amendments to the master plan for
19 historic preservation.

20 It also says that the Secretary's standards and
21 guidelines, that is the Secretary of the Interior's
22 standards and guidelines, shall be used in making decisions.
23 It also notes specifically that there are special studies
24 that have been done for different historic districts, like
25 the Vision Plan for Kensington Historic District that was

1 done in 1992 and, in fact, the executive regulations
2 specifically note those, the Vision Plan for Kensington,
3 Clarksburg, Hyattstown, and Boyds.

4 MR. HITCHENS: Now, you're familiar with the
5 denial that the Commission issued in terms for this proposal
6 by Mr. Hobbler, correct?

7 MS. WRIGHT: Yes.

8 MR. HITCHENS: Can you relate the denial to the
9 guidance that's found in the master plan and in the Vision
10 of Kensington?

11 MS. WRIGHT: Well, couple of things I would say.
12 First, the master plan amendment, the amendment to the
13 master plan for historic preservation, which created the
14 Kensington Historic District, was perhaps different than
15 other historic district amendments in that there was a
16 strong emphasis, not only on the architecture, but, on the
17 open space and on the character of the spacial relationships
18 of buildings within the historic district. It was called a
19 victorian gardens suburb. And it was, you know, unlike a
20 master plan amendment that designates perhaps one individual
21 property that focuses on, well, this property was built in
22 1820 and it's federal style and it's made of brick and it's
23 this, this, and this.

24 In the Kensington Master Plan amendment there was
25 a great emphasis on not just the fact that there are very

1 nice houses in Kensington, but, their relationship to each
2 other and the fact that as a whole and with the houses and
3 the spaces between the houses as a whole they create this
4 victorian gardens suburb.

5 So, that was very important guidance for the
6 Historic Preservation Commission in all of their decisions
7 on historic area work permits in Kensington. In addition,
8 the Vision Plan for Kensington talks a lot about this same
9 issue of the open space in Kensington and it talks about
10 primary historic areas and transitional areas and secondary
11 historic areas and peripheral historic areas.

12 I mean, it sort of creates a hierarchy. I believe
13 it's called the historic residential core which is sort of
14 the primary area and then the peripheral residential area,
15 which is secondary. And it does provide some strategy for
16 how to best preserve those areas within the district.

17 And, again, these are strategies and guidelines.
18 They are not a law in and of themselves. But, it talks
19 about strategies that in the historic residential core there
20 should be a maximum lot coverage of 10 percent --

21 MR. HITCHENS: Can you hold on just a second,
22 Gwen. The commissioners all have --

23 MS. WRIGHT: Copies of this plan.

24 MR. HITCHENS: If you could refer them to that
25 page if you want to.

1 MS. WRIGHT: Well, if you want. I mean, what I'm
2 reading from right now is actually not -- because it's what
3 I have in front of me is the staff report that was done for
4 this historic area work permit rather than the actual vision
5 plan. It's on page 57 of the vision plan. 57 and 58 of the
6 vision plan, in fact, is helpful.

7 But, on page 58 of the vision plan it talks about,
8 as, again, a strategy that should be a minimum of two lots
9 of 1,500 square feet of lot area for construction of a
10 single family dwelling, a maximum lot coverage of 10
11 percent, minimum front yard setback of 35 feet, and side
12 yard setbacks of 25 feet.

13 There's also a strategy to establish historic and
14 open space easements. Another strategy is to establish
15 special protection for important landmarks. Another
16 strategy is to establish tree preservation and vegetation
17 guidelines.

18 So, this plan doesn't only address the new
19 construction issue. It really address that there are a
20 variety of strategies to achieve the goals mentioned in this
21 plan and the overall goal is preservation of the historic
22 development pattern and open space pattern found in
23 Kensington.

24 So, these are all things that have factored in to
25 Historic Preservation Commission's decisions on specific

1 historic area work permits.

2 I think it's certainly the Commission's
3 understanding that they are, you know, bound to be fair and
4 equitable to all property owners within the district and to
5 try to achieve solutions perhaps that will meet the goals of
6 preservation and meet the goals of property owners.

7 MR. HITCHENS: Now, the denial that generated this
8 appeal was denial from April '97 and you're familiar with
9 that denial?

10 MS. WRIGHT: Yes.

11 MR. HITCHENS: Okay. And could you say briefly,
12 but, specifically what it was about that proposal that did
13 not comport with these guidelines?

14 MR. HUTT: Objection. Was Ms. Marcus there?

15 MS. WRIGHT: In April of 1997?

16 MR. HUTT: Right.

17 MS. WRIGHT: Yes. I was there and was working
18 with -- supervising Robin in her review of this case. I
19 mean, it may be that's a more -- I don't know if that's a
20 more appropriate question to ask Robin, but, I can tell you,
21 you know, my perspective on what it was as her supervisor.

22 MR. HUTT: Thank you.

23 MS. WRIGHT: Okay. My perspective was to put it
24 as clearly as possible that the house that was proposed for
25 this lot through this historic area work permit was too big.

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1 And the other secondary issue was that that particular
2 historic area work permit included demolition of the
3 existing auto house, which is the historic structure within
4 the Kensington Historic District. And, so, I know that's
5 changed, but, in April of '97 the proposal included
6 demolition of the house, the auto house, and a house that
7 was in the judgment of the Historic Preservation Commission
8 and of staff, frankly, was too big for this particular lot.

9 MR. HITCHENS: And you're familiar with another
10 proposal that Carey Hobbler submitted to the board in late
11 November '97?

12 MS. WRIGHT: Uh, --

13 MR. HITCHENS: Submitted to the Commission.

14 MS. WRIGHT: -- there was a preliminary
15 consultation in November of 1997 and I know that that was
16 also reviewed by the Commission. I actually was not at that
17 specific HPC Commission meeting. So, it may be better for
18 Robin to testify on that.

19 But, one thing I should mention is prior to the
20 November HPC meeting on the preliminary consultation, Mr.
21 Hobbler came in and we had what I'd like to call a sort of
22 shirette. We spent a full day and that included myself, Mr.
23 Hobbler, Robin Ziek, Mr. Hobbler's architect, and also
24 George Koutsoulas from the HPC. We had Mr. Hobbler's
25 attorney at that time and also Christopher Hitchens, who was

1 in and out, sort of of this full day shirette, and we talked
2 about what kind of solution could be developed that would be
3 at least from a staff recommendation standpoint approvable
4 because we, again, our goal in this is to try and find
5 solutions that will meet both preservation goals as well as
6 the property owners or contract purchaser's goal.

7 And we spent a whole day with Mr. Hobbler and his
8 architect. They stayed in our offices after meeting with us
9 and sketched designs and we talked about those designs at
10 length. The designs that they developed were for a small
11 house set back on the lot. I believe the footprint was in
12 the 800-900 square foot range, which is what we had
13 recommended. I don't remember exactly because there were
14 rough drawings in a shirette format and at the end of that
15 day we looked at the drawings and we said this is going much
16 more in the direction of what could be approved.

17 It did not require moving or demolition of the
18 historic auto house. The new house was sort of set in a way
19 almost behind the historic auto house and we were pleased
20 that it seemed to be moving in a positive direction.

21 However, those specific drawings have specific
22 proposals to my knowledge have never come before the HPC.
23 The preliminary consultation was not for that proposal and
24 the -- -- in February -- I have read the staff report for
25 that -- was not for that proposal either. In both cases

1 they were for houses that were substantially larger than
2 what we talked about in our day long shirette.

3 MR. HITCHENS: Returning to the issue of the
4 executive regs for a minute, could you say how the Council
5 came to include the guidelines in the Commission's regs?

6 MS. WRIGHT: These particular executive regs were
7 not rubber stamped by the Council in any way, shape, or,
8 form. They were happening during the time we were talking
9 about Chevy Chase. It was a very, very controversial case.
10 The Executive Branch were tied in with that. The County
11 Council looked at these regs in great detail. They had two
12 full fledged work sessions on them and a full Council work
13 session on them.

14 They suggested numerous changes, wording changes,
15 to the regs which were made. These were -- these regs are
16 approximately 24 pages long. They were not at all sort of
17 just simple regs, but, were rubber stamped by the County
18 Council.

19 The issue of guidelines was talked about by the
20 Council because some of the folks from Chevy Chase Village
21 were saying that guidelines and categorization of properties
22 and other issues should be not in the regs, but, should be
23 in the ordinance. We should actually amend the ordinance to
24 include these, and, so, the Council talked a lot about the
25 role of guidelines and where they thought guidelines should

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1 be.

2 Ultimately, they decided that the appropriate
3 place for guidelines was in master plans and special studies
4 and that they should be referenced in the executive regs.
5 There should not be an actual revision to 24-A to include
6 guidelines. They talked about the guidelines that were
7 mentioned in these executive regs that are the Secretary of
8 the Interior's standards and guidelines and the master plan
9 amendments to special studies noted in the regs.

10 They did not go through the Secretary's standards
11 and guidelines line by line. The booklet is about this
12 thick and the Council wasn't going to do that. So, there
13 was discussion of that and, in fact, one Council member said
14 I think we're getting to the point of micro managing here,
15 let's not do that. The important thing that was
16 communicated to me, and I have to say what I took away from
17 the Council's discussion, was that they wanted guidelines
18 because they wanted for property owners in an historic
19 district to understand what the rules of the game are and
20 for decisions made by the HPC or any other body to be
21 consistent with those guidelines.

22 What they felt was most important -- again, this
23 is my read of this -- was that the citizens who live in
24 historic districts have written down for them what the rules
25 are and that the decisions are then made based on those

1 rules so that no one is taken by surprise and that was the
2 main thrust of the Council's discussion about guidelines.
3 They did not get into saying we want to decide what each of
4 the guidelines are because they acknowledged they weren't
5 the experts on historic preservation.

6 But, what they said was, we want there to be
7 guidelines. We want them to -- and that's why in the
8 executive regs why they said the Commission shall use these
9 things to make decisions. They didn't say may. They said
10 the Commission shall use these guidelines in making their
11 decisions on historic area work permits because they wanted
12 the rules of the game to be clear to everyone.

13 MR. HITCHENS: And with regard to the Vision Plan
14 for Kensington that was used, how long had the Commission
15 used that, those guidelines?

16 MS. WRIGHT: We had them since 1992 and have been
17 using them since 1992. They've also been adopted by the
18 Town of Kensington and when -- I should mention when the
19 vision plan was developed it was not just done in a vacuum.
20 It was done with a series of meetings in the town with
21 citizens, with the town government to develop that vision
22 plan.

23 There were public hearings held in the Kensington
24 Town Hall. People came in and talked about what they felt
25 was important for their community and what they were

1 concerned about and those ideas were incorporated into the
2 vision plan. But, it -- you know -- and it has existed
3 since 1992 and has been utilized by the HPC since 1992.

4 MR. HITCHENS: Returning to the shirette that you
5 described, did you discuss at that in addition to the size
6 and the massing issues also the issue of the actual
7 architectural design details of the homes, the structure
8 that would go on that lot?

9 MS. WRIGHT: We basically said architecturally you
10 should work to make the property appear to not compete with
11 the primary historic resources on either side. You really
12 should look at very, very simple architectural features that
13 will make sure the building does not compete and what was
14 developed was a very -- we were actually -- a lot of
15 progress was made in developing a very, very simple facade
16 that would not compete.

17 But, we emphasized to Carey and to his attorney at
18 that time, I know I said this at least three times, that you
19 can't just design away the size of this house; that not only
20 do you have to make some architectural -- use architectural
21 tools to make the house not compete, but, the house must
22 truly be a smaller house. It does not work to just design
23 it away with architectural tools.

24 And I remember because I've worked with Carey on
25 many other cases and I wanted to be as clear and as friendly

1 with him as possible that I tried to be very, very clear in
2 saying you really -- I think the words I used were a 2,500
3 square foot house with, you know, four bedrooms and two
4 bathrooms is not going to fit on this lot. You need to look
5 at doing a smaller house and, in fact, we gave him some
6 drawings that had been submitted by other applicants in the
7 past who had looked at designing for these 50 foot wide lots
8 in Kensington with smaller houses.

9 And we talked about, you know, the issues related
10 to that, but, I emphasized for him that no one was saying
11 that you couldn't build anything on this lot, but, that a
12 typical builder house of 2,500 square feet, four bedrooms,
13 two bathrooms, I mean, they're built all the time in this
14 county was going to be too big for this lot.

15 MR. HITCHENS: When you say too big for this lot
16 do you mean that it would have a negative effect on the
17 surrounding properties?

18 MS. WRIGHT: Yes. It would end up competing with
19 and overwhelming the primary historic resources in the
20 district; that it would negatively and detrimentally affect
21 the streetscape of the historic district and the historic
22 development pattern and those are some of the crucial things
23 that make Kensington an historic district.

24 MR. HITCHENS: That's all the questions I have.

25 MS. TURNBULL: Any questions by board members?

1 Mr. Hutt, do you have any questions?

2 MR. HUTT: Gwen, with respect to the
3 Avery/Flaherty, two cases, one and two, both of which were
4 denied by the HPC and one, in fact, denied by this board,
5 did you ever review the board's opinion?

6 MS. WRIGHT: Quite a long time ago. I have not
7 reviewed it recently.

8 MR. HUTT: In those, at least the one before the
9 Board of Appeals, the Board of Appeals was concerned, you
10 indicated, with the size of the proposed house, its
11 footprint, its height, its massing compared to the primary
12 resource that it was being compared to. Do you recall that
13 part of the opinion?

14 MS. WRIGHT: I may. Do you have a copy of the
15 opinion that I could look at?

16 MR. HITCHENS: Madam Chairman, I notice on the
17 exhibit list that you made a reference at number 19 to the
18 opinions in the board's cases A-31 and 32 and then there's a
19 note that says not in file and I thought I brought those
20 along and gave them to the board the last time.

21 MS. TURNBULL: That's what I'm confused. I saw
22 that this morning as well and hadn't had an opportunity to
23 speak to someone about that. I thought you did as well
24 because I can picture marking them. Obviously, we would
25 have those in our file, so, we'll -- do you have an extra

1 copy? As a matter of fact, I think you actually had copies
2 of those -- .

3 MR. HITCHENS: That's what I thought.

4 MS. TURNBULL: -- for other board members as well.

5 (Off the record discussion)

6 MR. HITCHENS: Thank you.

7 MS. WRIGHT: Yes?

8 MR. HUTT: We call the board's findings on page 15
9 where I'm quoting. "In upholding the Commission's denial of
10 the two HAWP's we wish to go on record as stating that we
11 will not countenance an endless series of HAWP denials when
12 the size of a building reaches a point which we believe the
13 purpose of the historic district has been met. To that
14 extent, we suggest to all sides they make serious efforts to
15 reach an accord recognizing that much of the controversy
16 deals with nuances and perceptions. We hope that this board
17 can exercise a positive influence in bringing this matter to
18 a satisfactory conclusion."

19 And that was 1990.

20 MS. WRIGHT: Uh-huh.

21 MR. HUTT: Regarding the Flemming appeal --

22 MS. WRIGHT: Was that a question about that?

23 MR. HUTT: Is that not what the board said?

24 MS. WRIGHT: Yes, that is in the record.

25 MR. HUTT: In regard to the John Flemming case,

1 which was a permit for new construction, therefore, that
2 implies to me at least it was construction that would be on
3 a vacant lot?

4 MS. WRIGHT: That's correct.

5 MR. HUTT: And who was the appellant in that
6 particular case if you recall?

7 MS. WRIGHT: The first time it came through the
8 Board of Appeals it was the Kensington Historical Society
9 appealing the HPC's approval of the house.

10 MR. HUTT: And do you recall that the Kensington
11 Historic Preservation Commission, one of their concerns
12 related to the loss of open space?

13 MS. WRIGHT: Kensington Historical Society.

14 MR. HUTT: Yes.

15 MS. WRIGHT: Yes.

16 MR. HUTT: And at that point in time the Historic
17 Preservation Commission did not accept that argument and
18 granted the historic area work permit for construction of a
19 house which became a subject of the appeal before the Board
20 of Appeals, is that correct?

21 MS. WRIGHT: That's correct. And that decision
22 was based on the guidance and strategies in the 1992 vision
23 plan because Washington Street was considered a peripheral
24 historic area rather than the historic residential core.

25 MR. HUTT: Okay. Have you -- let me show you a

1 copy of the Board of Appeals' decision in that case.

2 MR. HITCHENS: That's a pretty big opinion, can
3 you be specific?

4 MR. HUTT: Sure. Would you read on page 6, the
5 fourth paragraph?

6 MS. WRIGHT: Uh-hmm.

7 MR. HITCHENS: I'd object to reading out loud
8 portions of it. The board members have it and if you want
9 her to read it and want to ask her a question about that I
10 think that would be a better way to proceed.

11 MR. HUTT: That's fine.

12 MS. WRIGHT: Do you want me to summarize it?

13 MR. HUTT: I want you to read it. It's not that
14 many lines.

15 MS. WRIGHT: Okay. "The logical conclusion of
16 some of the testimony of appellant's witnesses is to
17 prohibit any construction on the vacant lot. For example, if
18 certain houses such as the historic resource of 3808
19 Washington are scaled to two 50 foot wide lots, how can any
20 structure be approved at 3806, whether it's a garden setting
21 or any characteristic of the Kensington Historical District
22 is to be preserved, doesn't that goal lead to the
23 requirement for 3806 left vacant as the garden of 3808.
24 While the board appreciates the -- -- preservation of these
25 elements there's no way for the public sector to prevent

1 development on the vacant lot."

2 MR. HUTT: Do you concur with that conclusion?

3 MS. WRIGHT: Yes. And I think that, again, two
4 important points to make are --

5 MR. HUTT: I just asked if you agreed, that's all.
6 And as with the Avery/Flaherty appeal, would you also agree
7 that the Flemming case, what Historic Preservation
8 Commission considered and also what the Board of Appeals
9 considered was in terms of what we propose for the vacant
10 lot and they were looking at height of the proposed
11 residence, correct?

12 MS. WRIGHT: That was one thing they looked at.

13 MR. HUTT: Setback?

14 MS. WRIGHT: That was another thing they looked
15 at.

16 MR. HUTT: Footprint of the proposed structure?

17 MS. WRIGHT: That was another thing, yes.

18 MR. HUTT: And compared those elements of the
19 proposed structure to the primary resource that it was next
20 to?

21 MS. WRIGHT: That was one element of the analysis.
22 It's not the full analysis.

23 MR. HUTT: But, it was part of the analysis?

24 MS. WRIGHT: Yes.

25 MR. HUTT: And in terms of executive regulations

1 that you spoke to, primarily I think you were referring to
2 Section 1.5, which is criteria for approval?

3 MS. WRIGHT: That's correct.

4 MR. HUTT: In terms of the paragraph that refers
5 to district specific studies, it says the Commission shall
6 be guided in their review of historic area work permits
7 applications by, one is 24-A, two is the Secretary of the
8 Interior's standards and guidelines for rehabilitation,
9 three, pertinent guidance in applicable master plans, sector
10 plans, or, functional master plans and, four, pertinent
11 guidance in historic sites for historic district specific
12 studies.

13 Now, it does not say in the executive regulations,
14 or, define what is pertinent guidance in such a document.
15 That's being left up to the Historic Preservation
16 Commission.

17 MR. HITCHENS: Let me object to this question
18 because it seems to me that it's testifying rather than
19 asking a question.

20 MR. HUTT: Is the term pertinent guidance defined
21 in the executive regulations?

22 MS. WRIGHT: No, it's not.

23 MR. HUTT: Is it defined in the Vision of
24 Kensington?

25 MS. WRIGHT: No.

1 MR. HUTT: Is it, therefore, not a fact that what
2 is considered pertinent, or, not pertinent is depending upon
3 the reader of the document?

4 MS. WRIGHT: I think pertinent depends on the
5 case. It's guidance about trees and it's not a case about
6 trees you wouldn't use that guidance. You know, a document
7 includes guidelines about trees and thirty different things
8 and you have a case about one of those thirty things, you
9 wouldn't use all the other guidelines. You'd only use what
10 was pertinent.

11 MR. HUTT: Okay. Do the guidelines for the master
12 plan amendment for Kensington speak to terms such as
13 ancillary structure, or, ancillary structures?

14 MS. WRIGHT: I believe they do. I couldn't cite,
15 you know, the page where ancillary structures are discussed,
16 but, in all of our historic districts it's understood that
17 you have houses and you have ancillary structures which are
18 very important.

19 MR. HUTT: Okay. In terms of the guidelines, or,
20 the master plan amendment, is there something that you can
21 point to that says new construction should have the
22 appearance of a secondary, or, an ancillary structure?

23 MS. WRIGHT: I don't believe so.

24 MR. HUTT: Okay. Thank you. I believe it was
25 your testimony that in terms of the executive regulations

1 when they were being reviewed by the County Council that I
2 think your testimony is they did not want to decide what was
3 in each called special study?

4 MS. WRIGHT: Right, and they did not review any
5 line of the Secretary of the Interior's standards and
6 guidelines either. They said they didn't want to get to
7 that level of micro management, but, they wanted there to be
8 guidelines.

9 MR. HUTT: They wanted there to be guidelines,
10 but, they didn't get into a line by line review of the
11 Vision of Kensington or the Secretary of Interior's
12 guidelines?

13 MS. WRIGHT: No.

14 MR. HUTT: No. Okay. With regard to the series
15 of meetings that the Vision of Kensington went through in
16 the Town of Kensington, did you attend those meetings?

17 MS. WRIGHT: I did.

18 MR. HUTT: Okay. What was the general number of
19 people in attendance?

20 MS. WRIGHT: There were a variety. The one I
21 remember most clearly, which was in the Kensington Town
22 Hall, probably had 25, maybe close to 30 people there.

23 MR. HUTT: Do you have any idea what the total
24 population of the Town of Kensington is?

25 MS. WRIGHT: No, I don't.

1 MR. HUTT: Would you consider it's greater than 25
2 or 30?

3 MS. WRIGHT: Oh, yes, certainly.

4 MR. HUTT: With regard to the shirette that you
5 had with Carey Hobbler and his architect, I believe sometime
6 in November '97, it was your testimony that what he was
7 proposing at that time was an 800 square foot?

8 MS. WRIGHT: I don't remember the exact square
9 footage. It was small.

10 MR. HUTT: Could it have been 1,150 square feet?

11 MS. WRIGHT: I don't think so, but, I don't
12 remember specifically.

13 MR. HUTT: That's fair enough. I have no other
14 questions of Gwen. Thank you.

15 MR. HITCHENS: I had some redirect as well. Gwen,
16 Mr. Hutt just referred you to a portion of Avery/Flaherty
17 decision that was heard by the board and in particular one
18 of the conclusions and asked you if you concurred with that
19 conclusion and you said that you did. Why do you concur
20 with that conclusion. Do you recall?

21 MS. WRIGHT: Well, the Avery/Flaherty one, you
22 asked me if I concurred with Flemming conclusion.

23 MR. HITCHENS: Pardon me.

24 MS. WRIGHT: But, on Avery/Flaherty, basically the
25 Board of Appeals we don't want endless series of these

1 cases. That was one of the reasons why the HPC took up
2 developing this vision plan. It was specifically because
3 the Board of Appeals said do something to solve this
4 problem, we don't want to have an endless series of cases.
5 What the HPC tried to do to solve the problem was have a
6 community dialogue about the issue and try to develop a
7 series of guidelines in the vision plan, which is the
8 documents that are there.

9 I think that they've been -- again, this is my
10 own, simply my opinion that the fact that there hasn't been
11 another case like this before the Board of Appeals since
12 1990, or, whatever the date of that was, I think they met
13 the board's goals not having an endless series of these
14 cases come before the board.

15 On the Flemming case, I think it is because the
16 Commission in setting up guidelines tried to differentiate
17 between portions of the district where the streetscape was
18 already essentially one house per 50 foot lot with maybe
19 just one or two empty lots and that's what they called the
20 peripheral residential historic area versus the historic
21 residential core where there are still this pattern of open
22 space and house, open space, and house.

23 And on the Gunning case, the Historic Preservation
24 Commission in permitting that house said, I think, very
25 clearly that the reason they were permitting the house in

1 that location was because it was not in the historic
2 residential core and I believe their approval talked about
3 that, but, it was in what was considered a poor peripheral
4 area; that it was on a streetscape where essentially it was
5 sort of the only vacant lot left on Washington Street in
6 that area and that putting a house -- and they're all non-
7 contributing structures across the street, so, putting a
8 house on that particular lot would not detrimentally affect
9 the streetscape which was already one house per 50 foot lot.

10 So, the Kensington Historical Society, I think,
11 had hoped the Commission would be stricter, but, the
12 Commission also recognized that you can't deny the use of
13 the property and in this particular case, the size house on
14 that particular lot was not going to be detrimental to the
15 streetscape of the historic district.

16 MR. HITCHENS: Mr. Hutt asked you a question
17 which, I believe, went like this. He said, is there
18 anything in the guidelines that says new construction should
19 appear ancillary. Do you remember that question?

20 MS. WRIGHT: Correct.

21 MR. HITCHENS: Doesn't that question mix up and
22 misdirect what the principles are about new construction in
23 historic districts?

24 MS. WRIGHT: What I want to emphasize is that one
25 way -- the goal that is to be achieved is to make sure new

1 construction does not compete with the primary historic
2 resources in the district, nor, act in a detrimental way to
3 the overall streetscape and character of the historic
4 community. One way that has been discussed with other
5 applicants of achieving that has been to build a structure
6 that perhaps architecturally uses some of the same tools as
7 historic ancillary structures.

8 That is not the only way necessarily to achieve
9 that goal. So, there are times you hear can't you make it
10 look like a carriage house and the goal is not -- there's
11 nothing in the guidelines saying all new houses in a
12 historic area have to look like carriage houses, but, in
13 striving to achieve some design solutions the idea of making
14 a building architecturally look like an ancillary structure
15 has come up.

16 The goal is to build something that doesn't
17 compete with the primary historic resource.

18 MR. HITCHENS: And when you use the term,
19 ancillary, what's the primary feature of ancillary as you're
20 using the term?

21 MS. WRIGHT: Well, ancillary structures were
22 structures that were secondary to the primary structures
23 that were generally smaller than and less prominent than the
24 primary structures along the streetscape.

25 MR. HITCHENS: That's all the questions I have.

1 I'd point out to the board that there is another party to
2 this case which is the Town of Kensington. I don't know
3 that they want to participate in this proceeding in the same
4 way that the county and Mr. Hobbler are participating, but,
5 I felt that we didn't offer them the opportunity to question
6 George Koutsoulas at the last hearing and so I just thought
7 I'd mention it.

8 MS. TURNBULL: Do you have questions? Come on up.

9 MR. HITCHENS: And this would be for the purpose
10 of questioning Ms. Marcus.

11 MS. TURNBULL: If you could identify yourself for
12 the record.

13 MR. RITZMANN: I'm Robert W. Ritzmann, Council
14 member of the Town of Kensington Town Council at 3710
15 Mitchell Street, Kensington, Maryland.

16 I, at some time, would like to make a statement,
17 but, I think with the excellent questioning and excellent
18 testimony that's being presented here today, I'm not about
19 to enter into cross-examining. But, I would like at some
20 time to make a statement.

21 MS. TURNBULL: Thank you. I just have a couple of
22 quick questions that have come up.

23 When we're talking about the Flemming case, are we
24 talking about the case before the height case, right? Was
25 it only one case? It was all one case? No, there were two

1 cases?

2 MS. WRIGHT: It came to the Board of Appeals
 3 twice. It came to the Board of Appeals first because the
 4 overall approval of the height was appealed by the
 5 Kensington Historical Society. And then -- and the whole
 6 design of the house was debated at that particular Board of
 7 Appeals hearing and the issue of the fact that the roof
 8 needed to be low to fit in with the streetscape was
 9 discussed. Then, Mr. Flemming built the house and he built
 10 a roof pitched taller. Had a stop work order issued which
 11 he appealed and that came back to the Board of Appeals and
 12 the Board of Appeals reiterated their feeling that the
 13 height of the roof was very important and that it had to be
 14 lowered to meet what had been in the original height
 15 approval.

16 MS. TURNBULL: So, in the context of this case,
 17 what we're really -- we're not talking about the height at
 18 all. We're really just talking about whether or not the
 19 structure that he was choosing to build in the first place?

20 MS. WRIGHT: In the Flemming case the HPC approved
 21 construction of a new house.

22 MS. TURNBULL: Right.

23 MS. WRIGHT: I think the reason I mentioned it was
 24 simply to say that there are times in approving new
 25 construction in a historic district that a building isn't

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1 going to be compatible, isn't going to meet the maximum of
2 building allowed by the building code.

3 If Mr. Flemming had built that structure to the
4 maximum height allowed by the zoning and building code, it
5 would have been too tall for that streetscape. So, the HPC
6 and the board both said you have to make the house lower
7 than the zoning and building codes require to make it fit
8 in. That's sort of the main analogy of that case.

9 MS. TURNBULL: The other question that I have sort
10 of is related to that is, and listening to what the
11 questioning has been so far this morning, as far as this
12 house that we're talking about, which portions of the
13 criteria do you feel are the most critical?

14 Obviously, if the house is meeting the setbacks
15 and meets certain things, which portions are those that it's
16 not meeting in your eyes?

17 MS. WRIGHT: I think that size and massing are
18 very hard terms to look at in an absolutely sort of cookbook
19 way, what is, you know, what is too big. You can move the
20 setback a few feet and make the house the right size, that
21 kind of thing.

22 So, I wouldn't say in this particular instance,
23 and, again, I'm most familiar with the original proposal and
24 I think subsequent witnesses can testify better than I on
25 the preliminary consultation and the second historic area

1 work permit, but, the basic idea is that a house which is in
2 terms of total square footage equal essentially in size to
3 the primary resources is too big a house to be viewed as not
4 competing with those primary resources.

5 MS. TURNBULL: I have -- I drove over to Baltimore
6 Street this morning just to get a sense and I guess part of
7 my problem right now is some confusion because where is this
8 house going to be in relation to the, to what you described
9 earlier as the historic car auto house?

10 MS. WRIGHT: Well, it depends on which proposal
11 ultimately is made. One proposal was for demolition of the
12 auto house completely. Another one proposed moving the auto
13 house 16 feet forward and then building the house behind it.
14 I believe that's the most current proposal.

15 The proposal we looked at in the shirette, which
16 has never been before the HPC or this board, kept the auto
17 house where it was and built the house essentially behind
18 the, almost connected to it. So, it really -- part of the
19 problem is we don't know really what proposal is before us
20 right now. There's been -- there have been several.

21 But, the original ones includes just demolition of
22 it and building the new house essentially in the same front
23 yard setback as the houses along the street.

24 MS. TURNBULL: The house -- the street has a
25 number of different -- has some different styles of

1 architecture as well and different sizes. There's clearly a
2 difference between the homes that have the large porches
3 wrap around, size, bulk, massing, and some of the smaller
4 homes from my observation, but, it also seemed to be the
5 case that a number of the homes did have accessory
6 structures of some variety in the neighborhood.

7 But, the size of those clearly was significantly
8 smaller than the adjoining house. Is that what is part of
9 this whole issue?

10 MS. WRIGHT: Well, I think there is a historic
11 development pattern of having primary resources, which are
12 the house, up along the street and then having at times
13 secondary ancillary out buildings that are farther back and
14 are generally smaller. Some of them are not that small. I
15 mean, a three car garage ends up being -- I mean, what would
16 that be, something like 20x60, something in that range,
17 20x50. I mean, that's 1,000 square feet.

18 So, sometimes, you know, a two car garage -- a
19 three car garage can be quite large also. But, yes, there
20 is a pattern of primary larger structures towards the front
21 and smaller out buildings, or, ancillary structures towards
22 the back.

23 MS. TURNBULL: The other thing is that I was
24 finding that the historic auto house, although it was glass,
25 because there was so many different lights to it, --

1 MS. WRIGHT: That's the next door neighbor's
2 house.

3 MS. TURNBULL: Okay.

4 MS. WRIGHT: It's the glass greenhouse is the next
5 door neighbor's.

6 MS. TURNBULL: Because that's why I was so
7 confused because I pictured it between the house with the --
8 between the house with the large, very large automobile
9 structure and the house closer to Connecticut Avenue really
10 where the site is going to be, right?

11 MS. WRIGHT: That's correct.

12 MS. TURNBULL: Okay. But, the -- well, I guess,
13 now in our conversation I guess I'm clarified on that. The
14 automobile house, although it was just the glass one,
15 although it was just glass I was really struck by how big
16 that seemed even though it was glass and so it goes to your
17 point on how it's all -- you can't really determine scale
18 and bulk. Sometimes we have, for example, before this board
19 variances where someone will come in for a sun porch where
20 it's just the patio enclosure kinds of things with posts,
21 but, because of the size and the height of the automobile
22 house it just was sort of out of character, but, it can't be
23 out of character because that was probably -- that's clearly
24 a historic resource.

25 MS. WRIGHT: Well, it was built sometime prior to

1 the designation of the district. I don't really know how
2 old it is. But, I think it is a good point and that's why
3 even in talking about like two car garages, I know this
4 proposal in addition to a house and the historic auto house,
5 talks about also building on the property in addition to
6 that a two car garage. That -- even though that may be an
7 ancillary structure, it does add mass to the overall
8 property. It does start to fill up the lot.

9 MS. TURNBULL: There's something in the historic
10 work permit regulations having to do with the types of --
11 the ancillary structures period having to reflect the
12 character of the homes that they are with because it seemed
13 as if that most of the sheds were other -- what appeared to
14 be sheds on both that street and Prospect Street seemed to
15 almost mirror in some respects some of the details of the
16 homes.

17 MS. WRIGHT: No. There's no requirement. The
18 main thing with out buildings, or, ancillary structures is
19 that they don't compete size-wise with the primary resource.

20 MS. TURNBULL: The only other question I had had
21 to do with something you talked about a little bit before
22 having to do with the issue of the differences between the
23 HPC approval and the zoning ordinance standards.

24 Were you saying that in the Flemming case there
25 was discussion about which standards were applicable?

1 MS. WRIGHT: No. I was simply saying that the
2 Commission has put restrictions on historic area work
3 permits at times that are more restrictive than the zoning,
4 whether it be height, setback, a, you know, total lot
5 coverage, those kinds of things and that this board, when
6 those restrictions have been put in place so as to preserve
7 a specific feature of the historic district, or, historic
8 resource, this board upheld those more restrictive
9 requirements.

10 MS. TURNBULL: Okay. Are there any other
11 questions?

12 MR. HUTT: I have just one follow up question.
13 Actually, two, although I'm not sure if this map is origin
14 because I'm trying to locate something where the Flemming
15 property is.

16 But, first of all, if the guidelines in the vision
17 were applied, one wouldn't -- the minimum lot size for new
18 construction under the Vision of Kensington is 15,000 square
19 feet.

20 MS. WRIGHT: In the historic core, not in the
21 peripheral.

22 MR. HUTT: Fine. But, the subject property is
23 located, it's in the historic core, under the guidelines new
24 construction requires a 15,000 square foot lot, minimum
25 15,000 square foot lot.

1 MS. WRIGHT: That is the strategy for achieving
2 the goal in the vision plan, yes.

3 MR. HUTT: So, if that strategy is applied then we
4 wouldn't have to worry about whether it had the appearance
5 of a secondary or ancillary building. The subject property
6 does not in fact qualify.

7 MS. WRIGHT: Uh-hmm.

8 MR. HUTT: Okay. Do you -- I don't know if the
9 county had -- do you have a map or anything? The only thing
10 I have is like one of the maps of the Kensington Historic
11 District. I'd like to try to find out where the Flemming
12 property is.

13 MS. WRIGHT: I can show you if you'd like.

14 MR. HUTT: Maybe we can use your copy, having
15 xeroxed that page as an exhibit so we just have a sense.

16 MR. HITCHENS: This is a page from the Vision of
17 Kensington. It's page 57.

18 MS. WRIGHT: It's where that "x" is.

19 MR. HUTT: Okay.

20 MS. WRIGHT: You can see the pattern on that.

21 MR. HUTT: Do you have page 11? The reason I'm
22 saying page 11 is because at least it has a legend that
23 shows primary resources.

24 Again, does anyone have a -- I'm talking out loud.
25 It's just my copy --

1 MS. WRIGHT: It's very fuzzy.

2 MR. HUTT: I don't know if that has dots on it
3 that would say it is a primary resource.

4 MS. WRIGHT: This is a primary resource.

5 MR. HUTT: It's next to the primary resource?

6 MS. WRIGHT: Yes.

7 MR. HUTT: Okay. I'm sorry. The subject property

8 --

9 MS. WRIGHT: Is next to the primary resource.

10 MR. HUTT: Okay. The Flemming property that you
11 marked in yellow --

12 MS. WRIGHT: Yes.

13 MR. HUTT: -- is next to a primary resource?

14 MS. WRIGHT: Yes.

15 MR. HUTT: Okay. Okay. So, at least we do know,
16 it's next door to a primary resource.

17 MS. WRIGHT: That's correct.

18 MR. HUTT: Okay. Thank you. I have no other
19 questions.

20 MS. TURNBULL: Okay.

21 MR. HITCHENS: Trying to keep to the schedule of
22 breaking at 12:30, I think we could -- I just want to
23 consult with Robin and see what she thinks.

24 (Off the record discussion)

25 MR. HITCHENS: Okay, Madam Chairman, we've been

1 speaking about the site itself and then we've also spoken
2 many times about the effect of the proposals on the historic
3 districts. I asked Robin Ziek, the staff person there to
4 bring some slides that would illustrate the characteristics
5 of a district and I believe we'll have time to go through
6 the slides and questions.

7 MS. ZIEK: I thought this might just help again
8 and sort of focus on the specific property and then the
9 town, the character of the town. This is about what we're
10 talking about significant about Kensington and designated in
11 the amendment to the master plan has to do with the fact
12 that it was established as a railroad community, a railroad
13 suburb, and we've got the railroad line along Howard Avenue
14 and because the developer, whose name was Brainard Warner,
15 hired somebody in the victorian manner to design a
16 picturesque garden community with a curb and linear street
17 because it's a very distinctive layout for the town.

18 It's not designed as a very big town and actually
19 obviously the metropolitan area of Kensington is larger.
20 The outlines of the historic district are in gold.

21 Some of the streets we've been talking about, this
22 is the site that Brainard Warner developed as his home along
23 Carroll Place. This is Washington Street, which is sort of
24 at the south edge of the district and this is the subject
25 property we've been talking about as the Flemming case.

1 Anyway, as you can see in terms of how the street
2 was developed, these sections in particular excluded from
3 the historic district are regulation because these were all
4 new homes developed in the 50's and 60's. Clearly, outside
5 of the general ambience of the district and, yet, I even
6 have slides to show that they're not the -- -- of the
7 district as the garden suburb development -- -- linear
8 street with the trees and the gardens landscape.

9 Baltimore Street and Prospect is another one of
10 the major streets. The Avery/Flaherty case involved this
11 house with its side lots here and here. So, those are sort
12 of the markers we've been talking about. We can only pull
13 this map back if you need to refer again to it.

14 This is just the streetscape along Baltimore.
15 First, I've got to show you real quickly some slides of the
16 subject street and site and that will just, you know, focus
17 on that. We're looking on the north side of Baltimore
18 Street across from the subject property just giving you a
19 sense of how the streetscape was developed, the sidewalks
20 here. The trees, the mature trees, the space in between the
21 houses.

22 This is the south side of Baltimore Street. This
23 is the -- -- property here with a side lot. This is
24 Connecticut Avenue we're looking on, the east side of the
25 house and this is the subject property with the empty side

1 yard. This is the adjacent property to the west with the
2 large greenhouse that was put on prior to the designation of
3 the district. These are the auto house. There's another
4 picture of the subject property that would be built on it,
5 the first application.

6 As Gwen noted, this was proposed for demolition
7 and a new house would have been built with the same setback
8 as the primary resources right in here. This is again just
9 walking in on the site just to give you a sense of what is
10 there. This is a mature -- --. This is to give you a sense
11 of spacing as you look through the yard to Prospect Street
12 and other primary resources and this is a variety of
13 ancillary structures on, or, appurtenances on the property.
14 The idea being that a district includes everything that is
15 there at the time of designation and probably this was
16 actually taken for the April application, '97, -- --.

17 The view from Lamont looking out. The
18 environmental setting of the district includes all of the
19 trees, the garden, access to the lawn as specified in
20 Chapter 24-A, the mature trees behind, and that's the
21 specific description.

22 MS. BARRON: Can I ask you a question about the
23 last one? I'm just not sure. Is the blue house there, we
24 had a witness who testified who lived across the street. Is
25 that the house?

1 MS. ZIEK: Yes, that's the house that they were
2 talking about.

3 I thought I would show you a little bit about the
4 town. The whole idea is that it is a historic district,
5 what is foremost in consideration is the impact of the
6 construction of the quality that characterized a historic
7 district as a whole. Kensington is remarkable because in a
8 sense it was planned as a little suburb, but, unlike the
9 subdivisions that we see planned today, this is planned as a
10 small town and functions as a small town. It has its own
11 government and with a range and variety, again, within the
12 original plan as the town -- -- to a small town.

13 The government center is on Armory, the town hall.
14 The major commercial area is along Howard Avenue and I would
15 say everything else -- I'm sorry, along Howard and into
16 Montgomery and then also the town, outside of the district,
17 major commercial development and light industry along
18 Metropolitan and then more residential on St. Paul in the
19 historic district, but, that kind of character I would see
20 as a town, how it developed.

21 This is the train station. It was a little town
22 before the B&O, Metropolitan Branch stopped here, but, it
23 was with the development of the B&O Railroad line and they
24 were the first, they were the earliest, they're foremost in
25 the country, they were the first train, railroad company in

1 the nation to carry passengers as a primary focus.
2 Metropolitan Branch was instrumental in developing a lot of
3 suburbs in Montgomery County.

4 And this is the home of Brainard Warner which is
5 now a nursing home facility. He purchased a block composed
6 of 18 or 19 individual lots, pulled together to have a grand
7 center of the town as you can see from the plan. This is --
8 --. There weren't many planned houses in Kensington because
9 of the railroads. People that need -- the only people that
10 needed them were the doctor who needed a carriage and
11 Brainard Warner needed a carriage, a few other people like
12 that.

13 The Noyes Library, the children's museum, is a
14 prominent historic site in the county right on Manor Circle.
15 This is the subject property that was sold off with the --
16 to Avery/Flaherty and there are side lots on either side for
17 the case that we have discussed at length and these people
18 were eventually able to purchase the side lots so the land
19 is still associated as the garden space.

20 This is also the corner house on Carroll Place.
21 Again, just to show you that part of the characteristic of
22 Kensington is the garden vistas as one property you can see
23 some property through to the next property that you can
24 look, you know, the skyscape in a sense with the mature, the
25 mature trees, the houses, the pinnacles of these roofs,

1 these towers that reach across, they're markers that you see
2 through town.

3 That's just a close up. The commercial
4 development along the railroad tracks on Howard Avenue has
5 developed through time and that's one of the issues that the
6 Commission works with, how we place it or not, museums per
7 se, they change through time, and that's one of their jobs.

8 For instance, on the other side, the north side of
9 the tracks, St. Paul Street, it's a very narrow little
10 street that's included in the district because it has all
11 the character, the quality and the characteristics of
12 victorian really focusing on the sense of the open spaces.

13 This is a house on Fawcett which, again, is the
14 early 20th Century house. It has garden setting. This is
15 the house on Prospect. I'm trying to show that even with
16 time, these little 20th Century houses, with their own
17 little ancillary structures, the pattern of development has
18 been consistent as the architectural styles have changed
19 through time.

20 This is the property back on Baltimore Street at
21 the corner. I wanted to show a range again of what the
22 important elements in the district are. -- -- aside of
23 those houses that were on Carroll Place that were not
24 subject to regulation. This is a few of them and those
25 houses are not subject to the regulations and are not on

1 smaller lots and they have opportunity for the garden -- -- .

2 This is a house on Kensington Parkway. Again,
3 it's the sense of not just the recourse as the facility or
4 structure, but, the resource of the house as well-defined
5 and pertinent in the environmental setting.

6 This is to show you one of the contrasts of the
7 streetscape on Washington Street that we talked about.
8 Actually, this is the house that Mr. Flemming built after
9 the -- and it was finally sold and occupied. You can see
10 basically what the rhythm is is that the houses are single
11 houses on individual lots and on the other hand, this is the
12 basic streetscape on Baltimore Street with the pattern being
13 a house with plenty of garden space being between another
14 house, early 20th Century.

15 Again, garden opportunities and landscaping,
16 primary importance. This is a small bungalow on Prospect
17 Street. This is actually a new house that was built on
18 Prospect Street but on a lot that was provided with
19 sufficient lot size for meeting all the standards for a new
20 house on a site that would meet the environmental setting of
21 the historic district.

22 This is also Baltimore Street and the west end and
23 this is again just a little bit to show you the mix of
24 resources, the ancillary structures, the mature trees,
25 mature gardens, the carriage house, the rear of the yard.

1 This is well screened -- -- and this is the glass house that
2 everybody has been talking about in terms of becoming a
3 large footprint that -- --. It's not an overwhelming
4 structure, the gardens, and the -- -- structure of the
5 property.

6 Questions about any of the slides, or, if anybody
7 would like to see anything else.

8 MS. TURNBULL: One point about the -- there was a
9 house that was built, a new house, fairly large house and it
10 fit the standards.

11 MS. ZIEK: On Prospect Street.

12 MS. TURNBULL: On Prospect Street. What are those
13 standards in your eyes?

14 MS. ZIEK: Those are the standards that are
15 presented in the Vision of Kensington, Secretary of the
16 Interior's standards, the ordinance, everything we have to
17 follow.

18 MS. TURNBULL: And what way do you see a house on
19 that lot of the size that Mr. Hobbler has --

20 MS. ZIEK: That lot had over 100 feet long
21 frontage along the road -- 122 feet road frontage. That's
22 more than twice the 50. I mean that sort of says it right
23 there. There was the opportunity for an individual house to
24 be placed in the middle of this lot with sufficient space
25 between the next house, that house and the next house to

1 provide the garden opportunity.

2 MS. TURNBULL: Could you go back to the very first
3 slide which is the map that's part of the Vision of
4 Kensington?

5 MS. ZIEK: Sure.

6 MS. TURNBULL: And could you describe to us going
7 back to Baltimore, I realize that we went through this to
8 some degree during our last hearing, but, just the
9 placement, what appears to be the case is that a number of
10 the homes are over lot line, is that right?

11 MS. ZIEK: Some of them are, yes.

12 MS. TURNBULL: Okay.

13 MS. ZIEK: This house, this house, this house, and
14 the -- -- house actually has a portion that goes over that
15 side yard, that house.

16 MS. TURNBULL: Are there any -- well, I guess at
17 the curb there appear to be houses on both sides of the
18 street where there's a house on the lot without some --
19 without a vacant space between them. Is that --

20 MS. ZIEK: The pattern is that, as I pointed out
21 in the staff report, the pattern on Baltimore is that the
22 houses were consistently built on more than the individual
23 lots where the lots were 50 feet road frontage and people
24 aggregated those lots so that they've have more than 50 foot
25 road frontage.

1 Once you started the turn the curve, people did
2 different things and have a house on one lot at that point
3 still fit the pattern of spacing of houses because the lot
4 provides, you know, it's an odd shape, it's larger lot.

5 MS. TURNBULL: And could you point out again on
6 that map exactly where the house would be?

7 MS. ZIEK: That we're talking about? Right here.

8 MS. TURNBULL: Okay. Is there -- it also seems to
9 be the case, and I haven't focused on this before, that from
10 Baltimore to Prospect, typically, the houses are not behind
11 each other, is that right? I mean, from this angle.

12 MS. ZIEK: I think that's where they are, but, I
13 know that there's some residences on Prospect Place that --
14 --. I think that, you know, the experiences that there's a
15 house behind a house even though if you took a straight edge
16 this would line up, so, they're backyard neighbors.

17 MS. TURNBULL: But, if you look lot to lot in the
18 lot that we're talking about here there is no house on the
19 lot behind that.

20 MS. ZIEK: It's open space.

21 MS. TURNBULL: It's open space.

22 MS. ZIEK: Garden space, open space. It's -- --.

23 MS. TURNBULL: And that that was part of the plan
24 to have that open space back there is what you're saying?

25 MS. ZIEK: I'm saying that effectively that's what

1 happened. When a district is designated you designate it at
2 the moment. You value it at what's there and then that's
3 what's designated. Then, you know, research can go on
4 forever into why it was developed that way. It doesn't -- -
5 --

6 MS. TURNBULL: And the other half of Baltimore
7 Street, actually Washington Street, and the way it backs to
8 Prospect, would be the same?

9 MS. ZIEK: Right. I showed you a picture of one
10 of the little bungalows. Baltimore Street is they have had
11 houses built on the south side and much less on the north
12 side of a new house that we were talking about in terms of
13 this particular lot.

14 MS. TURNBULL: Right, and that has actually --
15 that house has two garages?

16 MS. ZIEK: No, it doesn't. It has a single
17 garage, but, it's neighboring garage -- its neighbor's
18 garage is here, so, you might have seen it here.

19 MS. TURNBULL: When I drove there I had thought
20 there was one house that seemed to be at the edge of
21 Prospect Street at Baltimore that had two garages.

22 MR. WAGNER: One's for Baltimore Street house and
23 one's for Prospect.

24 MS. TURNBULL: But, I did see two garages and one
25 driveway, right?

1 MR. WAGNER: Right.

2 MS. TURNBULL: Okay. And on Washington Street it
3 doesn't have the same kind of pattern. A couple of places
4 don't have that, but, are the homes -- I didn't go on
5 Washington Street, but, are the homes on Washington Street
6 significantly smaller than homes along -- the larger homes
7 on Baltimore? Is that how that works?

8 MS. ZIEK: Well, the -- -- houses are typically
9 smaller because the lot sizes -- they're built on smaller
10 lot sizes and I think that also -- -- peripheral area -- --
11 smaller -- --.

12 MS. TURNBULL: How does the size of those houses
13 on Prospect and Washington compare to the size proposed by
14 Mr. Hobbler?

15 MS. ZIEK: They -- my understanding hasn't
16 measured -- measured houses in Kensington that are smaller
17 and I measured a house on Prospect that was 600 right here.
18 It was 600 square feet, also one story. The size of the
19 house is a combination of its footprint and its mass, so,
20 some of these houses would be two story on a small
21 footprint, or, they might be a larger footprint, but, one
22 and a half stories, or, even one story, so, there is quite a
23 range and that's one of the values of the little town -- --.
24 One house has -- -- quite a range.

25 MS. TURNBULL: Thank you.

1 MR. CAPUTO: I have a few questions. Mrs.
2 Ahearn's house that's been pointed out, where is the
3 carriage house? The auto house.

4 MS. ZIEK: The auto house is right here.

5 MR. CAPUTO: It's not on the map?

6 MS. ZIEK: It's not on the map.

7 MS. TURNBULL: And what I think of is the auto
8 house is not on the drawing either, right?

9 MS. ZIEK: Uh-hmm.

10 MS. TURNBULL: The big glass one.

11 MS. ZIEK: The auto house is right here. These
12 maps were prepared as part of the designation and they stay.
13 You know, we made some updates -- --. I made some updates,
14 but, we're -- -- with these -- -- designation.

15 MS. BARRON: That would have been in 1989 or 1990?
16 When were --

17 MS. ZIEK: When they were officially designated.

18 MS. BARRON: Right, but, --

19 MS. ZIEK: 1986.

20 MS. BARRON: And then you say between '86 and '90
21 the garage you're speaking of, the glass garage, was added?

22 MS. ZIEK: As part of '86.

23 MS. BARRON: But, that was after this --

24 MS. ZIEK: Prior to the designation. I understand
25 from the owner that --

1 MS. BARRON: Because I'm just wondering why it
2 doesn't appear.

3 MS. ZIEK: Um, I don't know.

4 MS. BARRON: If that's your snapshot in time why
5 isn't it there?

6 MS. ZIEK: I don't know.

7 MS. BARRON: Thank you.

8 MS. TURNBULL: Any other questions?

9 MR. PEOPLES: That ancillary building --

10 MR. HUTT: Excuse me. With all due respect, we
11 can't have people testifying from the rear. It should come
12 in sequence. If the Chairperson would like to recognize
13 someone I can't object to that, but, I certainly can object
14 to someone just standing up and wanting to testify on behalf
15 of Ms. Ziek. She either knows the answer or she doesn't
16 know the answer and someone else can come up later and
17 answer unless the Chairperson wants the question answered at
18 the present time.

19 MS. TURNBULL: There is no answer because there is
20 no question at the present time. Are there any other
21 questions?

22 MR. HITCHENS: When we resume, I'd like to ask a
23 few questions.

24 MS. TURNBULL: Sure.

25 MR. HUTT: I have no objection.

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MS. TURNBULL: Okay. We'll take a break and be back at 1:30.

(A luncheon recess was taken at 12:30 p.m.)

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A F T E R N O O N S E S S I O N

1:30 P.M.

MR. HUTT: Just a few housekeeping questions if we can determine where we're going to be later in the afternoon and when we break, because my preference would be because I don't know if the county will finish today. If the county doesn't finish today that's fine. I just didn't want to start like at 4:00, 4:30 in the afternoon with Mr. Hobbler. I'd rather come back on a third day then go for a half hour or so and come back.

MR. HITCHENS: Well, I'm sure the county can finish today.

MS. TURNBULL: Okay. So, basically, what we're assuming is the county -- we'll go today until the county finished and then we'll schedule another day.

MR. HITCHENS: There may be some time -- if there's some extra time at the end certainly some residents who are here who do not wish to come back certainly can come forward at that time and do their stating to the board.

MS. TURNBULL: That would clearly be our intention.

MR. HITCHENS: Okay. Thank you.

MS. TURNBULL: Thank you.

MR. HITCHENS: I have a few questions I'd like to ask.

1 MS. TURNBULL: As a matter of fact, if there are
2 any people here who at some point feel the need to leave
3 please let us know and then we'll be happy to accommodate
4 you at that time. Okay, go ahead.

5 MR. HITCHENS: Just a few questions to ask Robin
6 Ziek and, Robin, could you arrange to have the slides
7 available because I have a couple of questions about your
8 slides.

9 MS. ZIEK: Sure.

10 MR. HITCHENS: Ready to go. The one with the map
11 on it.

12 MS. ZIEK: Sure. Okay. Here's the map.

13 MR. HITCHENS: Okay. Now, referring to the slide
14 with the map on it and you indicated Baltimore Street
15 several times for the board. I'd like to ask you about
16 Baltimore Street. Is there anything about Baltimore Street
17 that you could identify as a special feature of Baltimore
18 Street within the Kensington Historic District?

19 MS. ZIEK: Baltimore Street is notable in the
20 sense that it's very clearly tied in with the development
21 around Carroll Place in the sense of maintaining a victorian
22 garden character. On that leg of Baltimore Street there's
23 almost three structures, three houses that haven't been
24 designated primary resources.

25 MR. HITCHENS: And just for the board's

1 information, could you distinguish a primary resource from
2 other types of resources?

3 MS. ZIEK: Sure. The primary resources are time
4 qualification, there are two distinct time periods that were
5 1890 to 1910 and 1910 to I think 1930 and then secondary
6 resources would be after that particular time period and
7 then there would be some resources that I pointed out that
8 are just new ones that are out of period entirely, that
9 section of the district that's been exempted from the
10 restrictions.

11 MR. HITCHENS: I was going to say, on Baltimore
12 Street, all except three of those houses were built during
13 the time period, and what was the time period?

14 MS. ZIEK: It's 1890 to 1930 basically. And of
15 those three, two of them are new, one is after 1930.

16 MR. HITCHENS: Next question goes to the idea of
17 the pattern of building that has developed along Baltimore
18 Street and I want to ask you, it's correct, isn't it, that
19 the lots are not all the same width?

20 MS. ZIEK: That's correct.

21 MR. HITCHENS: Okay. So, that you do have
22 sections of Baltimore Street where there are houses on
23 consecutive lots, is that correct?

24 MS. ZIEK: Correct.

25 MR. HITCHENS: Okay. But, is there still the

1 pattern of open space despite the fact that they're on
2 adjacent continuing lots, or, contiguous lots?

3 MS. ZIEK: Well, as I pointed out before lunch,
4 where that occurs is generally where the street starts to
5 curve so that contiguous lots are still larger, have larger
6 frontage and have larger square footage.

7 MR. HITCHENS: Okay. So, for example, then, I'm
8 going to show you one block in this area right here on the
9 curve. Is the effect of the spacing between the houses the
10 same as over in this area where there's actual vacant lots?

11 MS. ZIEK: Yes, there is. There are still
12 positions spaced between the houses to provide for the
13 garden opportunity, the landscaping.

14 MR. HITCHENS: Okay. Now, regarding the specific
15 proposals that came before the Commission, did you review
16 each one of those?

17 MS. ZIEK: Yes, I did.

18 MR. HITCHENS: And do you have slides of -- that
19 would summarize each one of the proposals?

20 MS. ZIEK: Yes, I do.

21 MR. HITCHENS: Okay. Which you put up a slide of
22 an elevation of the April '97 proposal if you have it.

23 MS. ZIEK: What I have are, you know, as with
24 everything, they have to be submitted by the applicant, the
25 drawings I have are the perspectives that the applicant

1 provided. These are planned and the first, number one, was
2 the application submittal and 1-A was that the applicant
3 showed us at the meeting for the split plan after our, after
4 some discussion, you know, in a short time period between
5 having submitted the application and showing it to the
6 Commission.

7 MR. HITCHENS: Okay. So, that's a plan that shows
8 the footprint of the house.

9 MS. ZIEK: Right, and you want to see the second
10 drawing?

11 MR. HITCHENS: Yes.

12 MS. ZIEK: Okay. That's what the perspective
13 drawing would be. Ms. Ahearn's property is on the left.

14 MR. HITCHENS: Okay. About this house, we've had
15 a lot of discussion about footprints. Do you remember what
16 the footprint of that house was?

17 MS. ZIEK: Yeah. It was approximately 1,700 as
18 provided. 1,716 square feet as information provided by the
19 applicant.

20 MR. HITCHENS: Okay. And that's on the first
21 floor, correct?

22 MS. ZIEK: That's correct.

23 MR. HITCHENS: Okay. Now, can you describe that
24 house? That 1,700 square feet of footprint, that's one
25 description of it, one way of describing it, but, from the

1 information that was submitted to you, can you tell us what
2 this three dimensional house was going to contain?

3 MS. ZIEK: Sure. Well, the applicant in this
4 particular case provided floor plans, a site plan, an
5 elevation so that we were able to have a better
6 understanding about the house. It's a -- --, which he did.
7 It's a 2-1/2 story framed structure which was proposed to
8 have five bedrooms with three on the second floor and two in
9 the attic story plus a third room in the attic which was
10 being called a playroom. The first floor had the general
11 public rooms and a porch. There was -- so, you know, it was
12 a well-sized, -- -- sized single family house.

13 MR. HITCHENS: You described it as a 2-1/2 story
14 house. How, in terms of storage, tall are the houses on
15 either side of it?

16 MS. ZIEK: The -- it's larger, it's higher, taller
17 than the house, Ahearn's house on the left. I think it's
18 comparable to the house on the right. I've never gotten a
19 measurement on the house on the right, but, in terms of the
20 size and the scale of it, it's comparable in terms of
21 height.

22 MR. HITCHENS: Okay. And how wide is it compared
23 to the house on either side?

24 MS. ZIEK: It's -- it's comparable again. The
25 house maxed out the envelope since it had the 30 feet

1 across, 10 feet side yard setback, and I could have -- --
2 the drawings, but, that's my recollection is that it pretty
3 much maxed out.

4 MR. HITCHENS: And did the applicant provide what
5 the total square footage of the three dimensional house
6 would be?

7 MS. ZIEK: Well, not literally. I could add it
8 together basically. In other words, I had the floor plan
9 for the second attic storage so it would have been helpful.
10 I never did that per se because anybody could do that. I
11 wasn't provided with that number.

12 MR. HITCHENS: Okay. Now, do you have a slide
13 similar to that for the November proposal?

14 MS. ZIEK: This is one of the -- this is one of
15 the proposals for preliminary consultation where the
16 applicant in a preliminary consultation we expect to have
17 drawings of less complexity and, in fact, that's what he
18 has. There's no floor plans provided. Basically, schematic
19 elevations and schematic site plans, so that you can get a
20 sense of what the applicant is proposing and the Commission
21 can make comments about whether that's suitable or not.
22 This is proposal B and it had 1,370 square footprint, 1-1/2
23 story house, but, other than that, I don't know. Actually,
24 I have the total -- no, that's the footprint. I don't know
25 what the footprint of the exact square footage of the house

1 is because I was never provided that information.

2 MR. HITCHENS: Can you --

3 MR. CAPUTO: Is there any difference between plan
4 A and plan 1 and 1-A? Same house?

5 MS. ZIEK: Yes. For the first and middle it was
6 the same house, but, the plan was split.

7 MR. CAPUTO: Okay. Thank you.

8 MR. HITCHENS: You were able to describe the April
9 '97 proposal as a three dimensional structure and say it had
10 five bedrooms, three of which were on the second floor. Can
11 you do that with this structure here where you're given
12 sufficient information? Were you given a floor plan to tell
13 what it had?

14 MS. ZIEK: No, I was given elevation and a site
15 plan only for two different proposals, but, I was not given
16 any floor plans.

17 MR. HITCHENS: Okay. Can you describe this house
18 a three dimensional entity?

19 MS. ZIEK: Only in the schematic sense, only in
20 the sense of understanding a house as a cartoon. There's
21 information there, certainly, and it's a concept and that's
22 quite distinct from having a real sense of what the windows
23 open up onto, you know, what the front door, does it lead to
24 a hall, does it lead to a living room, where's the back
25 door, is there a family room where -- you know -- I can't

1 talk about it as I would walking through the building. It's
2 just a sketch, it's not a three dimensional object.

3 MR. HITCHENS: Do you have an elevation for the
4 February proposal?

5 MS. ZIEK: Yes.

6 MR. HITCHENS: Now, how about that house, how does
7 it compare height with the other two?

8 MS. ZIEK: In terms of the height, it's lower. It
9 was 26 feet, 2-1/2 inches high to the ridge line, according
10 to the applicant. It's slightly lower.

11 MR. HITCHENS: Slightly lower than --

12 MS. ZIEK: Within two -- approximately two to
13 three feet lower than the height of Ms. Ahearn's house,
14 probably a bit more than that lower than the house on the
15 adjacent side.

16 MR. HITCHENS: Okay.

17 MS. ZIEK: Instead of two story, it's a two story
18 house.

19 MR. HITCHENS: And how about the width?

20 MS. ZIEK: The width in the front is significantly
21 narrower than the width of the front of the other houses,
22 but, it was at the back. It reached the regular 30 foot
23 width, 22 feet at the front, 33 feet at the rear, so, it,
24 it's still a large house. The relationship, typically, you
25 might have the wide part in the front and have the rear

1 additional that's slightly narrower than your house in a
2 sense.

3 MR. HITCHENS: And did you get floor plans for
4 this one?

5 MS. ZIEK: No.

6 MR. HITCHENS: So, you, again, don't know what
7 would be inside this three dimensional structure?

8 MS. ZIEK: Correct.

9 MR. HITCHENS: Now, could you, if the Commission
10 had wished to approve that design and location, could --
11 would they have been able to approve it that night?

12 MS. ZIEK: They could approve it in concept, but,
13 what we do is before, prior to anybody's submission for a
14 building permit we have to stamp the permit or the
15 Department of Permitting Services will not accept the
16 drawings for the application for a building permit.

17 The concept drawings here are not of that quality.
18 It's a sketch again and, so, the condition has in the past
19 been two different ways. If they felt the concept was
20 sufficient to develop they might delegate the staff the
21 ability to review the building set with the concept and if
22 they're similar then staff can stamp it, or, they might
23 request that the applicant come back with the developed plan
24 so that they can really see what it is that they are
25 approving, you know, a three dimensional object. A

1 translation from drawings, which are two dimensional to a
2 three dimensional object is a difficult, you know, thing to
3 grasp and when new construction in our historic district we
4 have found that it's very important to pay attention to the
5 details, such as grading, necessary grading in relationship
6 of the new house to finished grade, the grading plans, and,
7 you know, just we need to understand the house three
8 dimensional.

9 MR. HITCHENS: Okay. And you did staff reports on
10 all three of these proposals?

11 MS. ZIEK: Correct.

12 MR. HITCHENS: And you weren't able to recommend
13 approval of any of them, is that correct?

14 MS. ZIEK: Correct.

15 MR. HITCHENS: And could you summarize your
16 reasons for not being able to recommend approval?

17 MS. ZIEK: Sure. In each case, the basic, the very
18 basic premise is that this proposed construction would have
19 a deleterious affect on historic district in the fact that
20 it would -- of course the original proposal was proposed
21 demolition of the structure. That's always very difficult
22 for the Commission to approve and the demolition of the
23 environmental setting which is the major consideration for
24 the historic as an overall resource in the county and what I
25 basically said was that the new construction was

1 substantially too large and would have an impact on the
2 immediate resources and on the entire district in terms of
3 the environmental setting, the open space, the garden, the
4 side yard, the way the house would sit in the district in
5 terms of the building pattern that's been well-established
6 in Kensington on Baltimore Street specifically.

7 You know, I think that in every application we
8 have worked very hard with the applicant. We've worked
9 closely with the applicant trying to work to express what
10 the concerns are from the point of view of historic
11 preservation and we have seen some movement on the
12 applicant's part and I think in each case, you know, we've
13 been able to say this is responsive, this is better, but,
14 it's not there yet.

15 MR. HITCHENS: Okay. I wanted to ask you one
16 question going back to the applications that you had in
17 front of you. Were all of them complete applications?

18 MS. ZIEK: Well, the first application was -- one
19 of them had grading plans. They're not complete
20 applications. I requested floor plans for this hearing in
21 February and the applicant said no, he would not provide
22 them. So, I guess the answer is no.

23 MR. HITCHENS: That's all the questions I have.

24 MR. HOLLOWAY: I did want to get some better
25 understanding of your evaluation of each of the homes. How

1 do you weight exterior versus interior in making your
2 determinations? For example, is your determination made 80
3 percent on the basis of the outside appearance of the place,
4 or, is it a 50/50, 50 interior? You mentioned details, so,
5 I'm curious as to how you weight your evaluation.

6 MS. ZIEK: Okay. Sure. I guess the thing is that
7 a structure is three dimensional. I'm an architect and one
8 of the things that, you know, I try to present to the
9 Commission is an understanding of a building as a three
10 dimensional object, which means that I may make suggestions
11 about what happens on the interior in terms of how it has an
12 effect on the exterior and I may also be able to explain why
13 an applicant has done a certain -- has made a certain design
14 decision that shows up on the exterior based on what happens
15 on the interior.

16 So, in terms of how I use my understanding of the
17 interior of a structure, it's clear that the Commission will
18 review the exterior of a structure. That's, you know, our
19 guidelines are out there and very often I go on to cite and
20 I can tell people I don't even have to come to your house.
21 You know, if somebody wants to do some changes, change a
22 window or something like that, because, you know, it's how
23 the effect is on the exterior.

24 But, in terms of trying to understand a whole
25 building, this isn't just a facade, this is a three

1 dimensional object, it's hard to understand it. You just
2 can't get a sense of where anything is or why certain
3 decisions were made. It's just not an understandable --
4 it's like looking at a toy with -- you know -- a toy train
5 with your eyes closed. You know, you just don't have the
6 sense of what it is.

7 MS. TURNBULL: So, is part of the issue that
8 you're only seeing the front elevation? Did the concept
9 plan include all four elevations?

10 MS. ZIEK: He had all four elevations, but, I had
11 to call the applicant and say what does this line mean, what
12 does that line mean, and the applicant, you know, provided
13 that information for me so that I could put some notation on
14 the drawing because, as I say, it's so schematic, a line has
15 three dimensional meaning, but, if you just draw a line on
16 the page and you don't know what it is, so, I didn't know
17 what they were, and that's really in contrast to
18 understanding the proposal and understanding -- and being
19 able to say to the Commission, you know, the idea, as, you
20 know, I have followed the progression, say, of these
21 applications that the applicant has been responding on
22 certain issues, but, it's still -- I could still say to
23 staff, it's my experience that this project will have a
24 deleterious effect on the overall district.

25 If I had the floor plans I might be able to say,

1 you know, maybe you could -- I might be able to do a little
2 bit more staff work with the applicant. I can't do that.

3 MS. TURNBULL: Okay.

4 MR. HITCHENS: I'm not answering your question.

5 MR. HOLLOWAY: No. And what --

6 MS. TURNBULL: The charge is the exterior only.

7 MS. ZIEK: Well, no, because the building is a
8 three dimensional -- okay --

9 MR. HOLLOWAY: I understand, I understand.

10 MS. ZIEK: Let me just say, this is a balloon and
11 somebody came in with a balloon and blew it up that big and
12 I could say I'm sorry, let the air and it will only be this
13 big then I can approve it, recommend approval, we could do
14 that and in a sense that's how it's being treated, as a
15 concept. It's a balloon, you know, and I know nothing else
16 more about it to -- would it help me to personally as an
17 architect? I think it would.

18 MR. HITCHENS: I may have misdirected the board's
19 attention with my questioning about the interior of the
20 building. My goal in asking her the questions was merely to
21 enable you to visualize three different entities, three
22 dimensionally, as opposed to just looking at the front
23 pictures, and my way of asking her to describe them was a
24 way to get you to think of, in your mind, what is a five
25 bedroom house.

1 But, just I'm going to recognize that the interior
2 is not -- I don't want to get us off on regulating the
3 interior because we would acknowledge that HPC doesn't
4 regulate the interior.

5 MR. HOLLOWAY: I think you're getting to my point
6 now. Where I was taken aback because I was trying to
7 understand if the exterior is the predominant feature that
8 is governing how this will appear in Kensington, you know, I
9 was, you know, somewhat at a loss to try to understand how
10 you're evaluating things so that you can come to a
11 conclusion and I just wanted to see if there's a percentage,
12 or, just what.

13 MR. HITCHENS: It could be a completely empty
14 house and have no partitions, walls of any kind on the side.

15 MS. TURNBULL: Let the witness answer the
16 question.

17 MS. ZIEK: One thing is that in terms of what
18 people provide us, models would have been probably helpful
19 in this case again because that deals with massing, size,
20 massing, location, all of those features which is the
21 substance of what we're looking for which hasn't been
22 provided.

23 MS. MAYER: However, your charge is only for the
24 exterior is what we're trying to --

25 MS. ZIEK: Correct.

1 MS. TURNBULL: To go along with the comment about
2 the model, typically when you're reviewing structures are
3 you getting models?

4 MS. ZIEK: We get them a lot.

5 MS. TURNBULL: And what was lacking in this
6 structure that you have seen repeatedly, if there was
7 anything lacking, in other structures to determine the
8 impact? Clearly, as an architect you would recognize --

9 MS. ZIEK: Well, I can answer that in this one
10 way. If -- let me just say that this application as a, you
11 know, concept application to the Commission was sufficient
12 for us to go ahead, we have turned applications back, I
13 think that part of the reason was that this had been the
14 first time we had seen this application. Again, it's really
15 the preliminary consultation stage, what we're seeing, but,
16 there was a lot of background and, so, this third, the third
17 time this applicant came before the Commission it was
18 accepted as a full blown historic area work permit when, in
19 fact, as I say, I couldn't stamp these concept drawings.
20 There's just no way in terms of the approval they were
21 seeking from the Commission, so, that's problematic.

22 MS. TURNBULL: So that basically the staff
23 recommendation to the Historic Preservation Commission was
24 that this concept was something that they could have acted
25 on favorably?

1 MS. ZIEK: My recommendation is denial; that this
2 application, this application, this particular design is too
3 large in this site.

4 MS. TURNBULL: Maybe --

5 MS. ZIEK: It would have been helpful if the
6 applicant had provided floor plans because it would have been
7 helpful to understand the object, but, the recommendation
8 doesn't change.

9 MS. TURNBULL: Okay. Your recommendation was that
10 this was too big. But, you just -- I thought you just said
11 that the concept plans was okay.

12 MS. ZIEK: No. What I said was that the concept
13 was sufficient developed as a concept that I thought that
14 the Commission would understand it as a concept to be able
15 to make a decision, which they did.

16 MS. TURNBULL: Okay. And the decision was the
17 denial.

18 MS. ZIEK: Correct.

19 MS. TURNBULL: Okay. That clarifies that. Other
20 denials of other applications, and I'm sure you've had them,
21 have they -- is there a situation different from other
22 situations in what information they have provided to you?

23 MS. ZIEK: Not denials or approvals. Yeah. The
24 information that has been provided to the Commission is I
25 feel sufficiently is less than what the Commission usually

1 looks at and these are less developed.

2 MS. TURNBULL: One of the things that was said and
3 you were just talking about is how there was history, a lot
4 of history at this site with different concepts that had
5 been presented and the question that I have is, was each --
6 that this was the only one that went beyond staff level and
7 went to the Commission, is that right?

8 MS. ZIEK: All right, let me clarify this, because
9 that's incorrect.

10 MS. TURNBULL: Okay.

11 MS. ZIEK: This is so important and one of the
12 reasons this whole application seems confusing. They've
13 come to the Commission three times. They initially came to
14 the Commission in April of '97 and were denied for the first
15 application. Simply, the Commission, you know, reviewed it
16 and denied the application.

17 Then the applicant came back with two other
18 proposals on a preliminary consultation basis and in a
19 preliminary the HPC doesn't vote, but, they have a dialogue
20 with the applicant and they say what appears to be good
21 about the project, what appears not to be good about the
22 project and changes that could be made if they wanted to get
23 approval, which we feel is a very useful meeting with the
24 Commission.

25 The third time the applicant came to the

1 Commission they pressed us to come in again as a historic
2 area work permit application even though I pressed them to
3 come in as a preliminary because of my feeling that there
4 wasn't sufficient information to go forward with the
5 historic area work permit and we had this denial being
6 scheduled before the Board of Appeals. They pressed us to
7 go as a historic area work permit so the Commission had to
8 take a vote and the Commission had to vote on that.

9 I think that you have the minutes from that.

10 MR. HITCHENS: If I could just interject there too
11 because there was at that point in February the denial had
12 been filed and it had come up for hearing. The appeal had
13 been filed. It had come up for hearing. It had been
14 continued to try to get it worked out. We were continuing,
15 you know, to meet with the two parties and try to work out a
16 solution that would be acceptable and, as Robin said, the
17 applicant and the applicant was represented by Wilkes Artis
18 at the time, pressed to have this -- another historic area
19 work permit and we discussed the issue of how can you have a
20 historic area work permit application for the same property
21 when there's one already pending, an application for this
22 project already pending before the board.

23 And the significance of a historic area work
24 permit application versus the preliminary consultation is
25 that when a historic area work permit application comes in

1 the board can, or, the Commission can vote on it and approve
2 it that night. When it's a preliminary consultation it's
3 got to be advertised again and more months go by.

4 They were very anxious to try to get something
5 approved. So, in the interest of getting that before the
6 Board we agreed to let it go in as a historic area work
7 permit application and to advertise it that way so the
8 members of the community could come and respond to it.

9 And we were also cognizant of the board's hearing
10 this matter de novo appeal and that the several proposals
11 were likely to be considered for the appeal and not just --

12 MS. MAYER: I have a little bit of a question. If
13 you had gotten more information and you had gotten floor
14 plans you still would have denied it based on the area?

15 MS. ZIEK: The Commission, sure. I mean, you
16 know, I can't speak for the Commission. My sense is that it
17 didn't not change -- it's not changing a proposal, but, a
18 lot of the questions, if you read the minutes from the
19 hearing, were that the Commission was trying to understand
20 what they were being asked to vote on whereas if they had
21 provided the information up front they don't have to spend
22 all the time in the meeting asking those questions. They
23 just have the information.

24 MS. TURNBULL: Mr. Hutt?

25 MR. HUTT: Robin referred to one of the maps that

1 you showed which basically was the 1986 map that you used as
2 the basis for the designation for the historic district.
3 One of the board members asked you where on that map was
4 located the auto house and I believe your testimony was said
5 that it's not on that point.

6 Does that drawing also reflect additional
7 buildings on Dr. Lossing's property?

8 MS. ZIEK: No, it doesn't.

9 MR. HUTT: What other properties in the historic
10 district does it not reflect today what's on the site?

11 MS. ZIEK: From my understanding with some
12 discussion with local citizens there that there are a lot of
13 ancillary structures. The smaller out buildings were not
14 put on that drawing.

15 MR. HUTT: You have not personally done an
16 inventory of historic -- have you personally gone out into
17 the field to update that drawing?

18 MS. ZIEK: On Baltimore Street I made a survey and
19 I basically did a photograph. They did not update the
20 drawing and have really subsidized the information from the
21 amendment with slides and some of which you saw today.

22 MR. HUTT: So, clearly, their -- what one would
23 see today on Baltimore Street, on Prospect Street, with
24 regard -- is different than the drawing that you presented
25 with the slide of the historic district in 1986?

1 MS. ZIEK: In detail, yes.

2 MR. HUTT: Okay. With regard to either two
3 primary resources on either side of the subject property,
4 have you gone into either of those two houses to determine
5 what their interior layout is with regard to number of
6 bedrooms?

7 MS. ZIEK: No, I haven't. What I did have from
8 Mrs. Ahearn's house was a plat that had dimensions for each
9 leg and I was able to compute the footprint of her house
10 based on the plat which was actually provided by a different
11 contractor in 1995 and that was information used and we, you
12 know, tend not to disturb people in their homes if we don't
13 have to.

14 MR. HUTT: So, for Dr. Lossing's house next door
15 you -- did you have a house location survey to --

16 MS. ZIEK: No, I did not.

17 MR. HUTT: Okay. So, you had --

18 MS. ZIEK: I had no graphic information on his
19 house specifically but through photographic and, you know,
20 documentation being on the site. It's a large house and
21 that's as far as I could go.

22 MR. HUTT: Okay. Now, behind the subject property
23 is there a residence?

24 MS. ZIEK: Yes. Ms. Helen Wilkes lives in one of
25 them and her property -- I mean, I think if you're asking

1 the same question as Ms. Turnbull then you had the same
2 answer already which was that effectively there are
3 neighbors behind the property.

4 MR. HUTT: Okay. I understand there are neighbors
5 behind the property. My question is, you have a lot 25 on
6 Baltimore Street. Behind it is a lot that fronts on
7 Prospect Street. The lot behind that fronts on Prospect
8 Street --

9 MS. ZIEK: It's an open garden.

10 MR. HUTT: It's an open garden.

11 MS. ZIEK: It's an open garden.

12 MR. HUTT: It's an open garden meaning it's a
13 formal garden, or, it's an open vacant lot?

14 MS. ZIEK: It's part of somebody's house.

15 MR. HUTT: Okay. I'm not a historian, so, you're
16 using the terminology garden.

17 MS. ZIEK: You know, vacant lot brings together an
18 image which, in my mind, is sort of like a vacant lot in the
19 District that has brick on it or something.

20 MR. HUTT: That's not the context that I'm trying
21 to -- I will repeat myself. You used the term, it's a
22 garden. Is it improved as a garden?

23 MS. ZIEK: Sure.

24 MR. HUTT: Does it have flowers, trees?

25 MS. ZIEK: Berms, trees, flowers.

1 MR. HUTT: Okay. Okay.

2 MS. BARRON: Could I follow up on that? Would it
3 be fair to say that it's a buildable garden lot that will
4 always be a garden lot?

5 MS. ZIEK: I don't know.

6 MS. BARRON: I mean, could it be -- could the
7 owner of that property come to you with a plan for
8 development?

9 MS. ZIEK: Actually, the owner has an easement on
10 that lot. It will not be built upon while they're on it,
11 so, while they're on his lot it will not be built on by law.

12 MR. HUTT: By the easement?

13 MS. ZIEK: By the easement.

14 MR. HUTT: And it expires when they no longer own
15 the property?

16 MS. ZIEK: When they no longer own the property at
17 which case, and at any point, it would come under the same
18 restrictions that Ms. Ahearn's property comes under.

19 MS. TURNBULL: The easement would lapse physically
20 when the owner of the property that the easement is -- we're
21 not talking about any other sale, right?

22 MS. ZIEK: When the property changes hands. In
23 other words, --

24 MS. BARRON: Maybe she's saying -- if I'm with
25 you, what you describe as garden, I'm seeing the home next

1 to it that the owner I assume is this person, it's an
2 extension of their home, the person who owns it, or, in
3 other words, is the person who owns the home adjacent to
4 this land or just the land?

5 MS. ZIEK: No. There's a home --

6 MS. BARRON: A structure?

7 MS. ZIEK: -- adjacent to --

8 MS. BARRON: Adjacent?

9 MS. ZIEK: -- this particular lot.

10 MS. BARRON: Right. And when this person, when it
11 lapses, --

12 MS. ZIEK: There's another house --

13 MS. BARRON: They have to sell their residence --

14 MS. ZIEK: You probably should ask the owners
15 that.

16 MS. BARRON: So, it would be attached, in other
17 words and then whoever would re-buy it wouldn't be bound by
18 the same easement.

19 MS. ZIEK: You probably should ask the owner about
20 the very specific of how that easement works, but, I know
21 when they bought their property they agreed with the person
22 they bought the property from to put an easement on it
23 restricting any building potential while they owned the
24 property.

25 MS. BARRON: Thank you.

1 MR. HUTT: With regard to one of the guidelines in
2 the Vision of Kensington for new construction is a minimum
3 lot of 15,000 square feet.

4 MS. ZIEK: In the historic core.

5 MR. HUTT: In the historic core.

6 MS. ZIEK: One of the suggested strategies.

7 MR. HUTT: With that map that you have, could you
8 show us which lots qualify in the historic core that you
9 have criteria?

10 MS. ZIEK: Well, I don't have measurements.
11 Probably two contiguous lots. Mrs. Ahearn's lots are each
12 8,000 some, so, any two lots that are contiguous would meet
13 that requirement.

14 MR. HUTT: Now, her house, I think your testimony
15 was that her house straddles the lot line?

16 MS. ZIEK: Correct. That's her testimony.

17 MR. HUTT: I'm not disagreeing. Okay. It
18 straddles the lot line.

19 Now, --

20 (Off the record discussion)

21 MR. HUTT: Now, in order to meet the 15,000 square
22 foot guideline criteria there would have be a re-subdivision
23 of two contiguous lots if each was 8,500. I mean, you're
24 using this as 8,500.

25 MS. ZIEK: You might not have to do a re-

1 MR. HUTT: It's 25 feet.

2 MS. ZIEK: 25 feet.

3 MR. HUTT: Okay. And the width of the typical lot
4 along Baltimore Street, typically the 800 parcels, are 50
5 foot across?

6 MS. ZIEK: Right.

7 MR. HUTT: So, if you had to setback 25 feet from
8 the one side yard that would leave a side lot line and if
9 you don't re-subdivide that would mean that the width of
10 your house would be 25 feet?

11 MS. ZIEK: Well, actually, you couldn't do it
12 because with a 50 foot side setback of 25 feet on either
13 side you don't have any dimension at all left for a house.

14 MR. HUTT: Okay. That's correct.

15 MS. ZIEK: Correct. You would have to re-
16 subdivide according to that scenario, but, there are lots of
17 cores in Kensington such as the house on Prospect with 122
18 foot load frontage where you could do a 25 foot without a
19 subdivision. I'm saying it's not a requirement at every
20 instance because the lots really vary in Kensington.

21 MR. HUTT: Of course, my leading question was how
22 many current vacant lots, side by side, to equal the 15,000
23 square feet as the guidelines suggest are there and --

24 MS. ZIEK: And I would have to say I haven't made
25 that survey. If you wanted me to do that and, you know, we

1 could do that.

2 MR. HUTT: But, the fact of the matter is, you
3 haven't done it as of today?

4 MS. ZIEK: Right.

5 MR. HUTT: Okay. Secondly, with regard to the
6 Ahearn house, for new construction there would have to be a
7 demolition of the existing house?

8 MS. ZIEK: What? To meet this guideline?

9 MR. HUTT: Well, if she wanted to -- using her two
10 lots as an example, as you've just said of where you can
11 combine the two lots for new construction.

12 MS. ZIEK: It's her lot and her neighbor's lot.

13 MR. HUTT: Oh.

14 MS. ZIEK: I mean, that's the existing -- you're
15 talking about the existing situation?

16 MR. HUTT: I'm talking about the existing house
17 and she owns three lots.

18 MS. ZIEK: Right.

19 MR. HUTT: On lot 25, the side yard, there's a
20 house.

21 MS. ZIEK: It doesn't meet the guidelines.

22 MR. HUTT: That's right, it doesn't meet the
23 guidelines. That's true. Now, I'm just going one step
24 further. In order for her to be able to develop a new
25 house, if she wanted to develop a new house on lot 26 and

1 27, she'd have to apply for a demolition permit to remove
2 the existing house?

3 MS. ZIEK: Correct.

4 MR. HUTT: The existing house is a primary
5 resource?

6 MS. ZIEK: Correct.

7 MR. HUTT: The testimony that I read previously
8 was that in terms of demolition frontage and/or frontage to
9 relocate a primary resource the Commission generally, and
10 I'm not saying in all cases, but, generally, does not favor
11 the demolition of a primary resource.

12 MS. ZIEK: It would have to be a compelling
13 reason.

14 MR. HUTT: Okay. When would the auto house come
15 designated as a primary resource?

16 MS. ZIEK: 1986 when the picture was designated.

17 MR. HUTT: Can you show me the document that
18 designates the auto house as a primary resource?

19 MS. ZIEK: Yes. That house was essentially in two
20 places. It happened once with the ordinance which defines
21 an appurtenances in environmental settings and where it
22 talks about appurtenances in environmental settings shall
23 include, but, is not limited to walkways and driveways,
24 whether paved or not, vegetation, trees, gardens, lawns,
25 rocks, pastures, crop lands, and waterways. So, that

1 defines that.

2 MR. HUTT: Can you tell me the definition of a
3 resource?

4 MS. ZIEK: In terms of the -- when you designate a
5 historic district you designate an object. You designate a
6 physical thing which is the resource where there's
7 appurtenances in an environmental setting.

8 MR. HUTT: But, --

9 MS. ZIEK: And then in the amendment, you know,
10 it's basically the same kind of general language that
11 designates the entire district. It provides the district
12 boundaries, it defines the historic resource, why it's
13 designated and once designated, significant changes to
14 resources in a historic district designated by the
15 Commission through the historic area work permit.

16 MR. HUTT: Okay. So, there's nothing in any of
17 the documents that you quoted from that focuses in on the
18 Ahearn property and says the auto house is a resource that
19 needs to be preserved?

20 MS. ZIEK: That is correct.

21 MR. HUTT: Okay. Correct me if I'm wrong. Did
22 you not --

23 MS. ZIEK: That is correct for every structure in
24 the district.

25 MR. HUTT: Every structure in the district. I'm

1 not applying the Ahearn property to treat it in a fashion
2 differently than any other property in the district.

3 In your staff reports, I believe you highlight the
4 auto house as something worthy of preserving because it
5 represents an example of the early, I guess we'll call it
6 development, where automobiles were introduced into
7 Kensington.

8 MS. ZIEK: Uh-hmm.

9 MR. HUTT: But, okay. What brought about that
10 recognition of the auto house? Was it the process that you
11 are now in regarding historic area work permits and
12 preliminary consultations?

13 MS. ZIEK: No. As with any historic district
14 you're going to use what resources we have. One of the
15 resources we have are the Sanborn maps which are insurance
16 maps that actually show structures down to the level of the
17 auto houses.

18 MR. HUTT: If I could just interrupt. The Sanborn
19 map --

20 MS. ZIEK: Is included in our preliminary
21 submission.

22 MR. HUTT: Does it show the auto house?

23 MS. ZIEK: Yes.

24 MR. HUTT: Can you show that?

25 MS. ZIEK: Sure.

1 director -- without looking at the definition, who is the
2 director that they're referring to, director of Department
3 of Permitting Services?

4 MS. ZIEK: That's correct. Each application will
5 be evaluated for completeness. I think we already answered
6 this in the sense that there were things that were missing
7 that I felt I needed to have before I could write my staff
8 report. I made some requests, a grading plan is paramount.
9 The applicant didn't spend the money on it. We arrived at a
10 compromise which we would still require a grading permit
11 before stamping anything. I would not stamp.

12 In my sense, I'm not exactly sure what you're
13 getting at because I answered that already.

14 MR. HUTT: Well, no, I'm basically trying to ask
15 what -- this refers to historic area work permits, correct?

16 MS. ZIEK: Right.

17 MR. HUTT: A lot of what you took to your
18 Commission related to preliminary consults.

19 MS. ZIEK: At the three hearings, two were
20 historic area work permit applications.

21 MR. HUTT: Now, that says if it's not complete the
22 director will send it back to the applicant.

23 MS. ZIEK: Right.

24 MR. HUTT: Now, this was submitted to you and
25 staff at HPC.

1 MS. ZIEK: It was submitted up to the Department
2 of Permitting Services.

3 MR. HUTT: Go ahead.

4 MS. ZIEK: And then we get and they accepted it
5 and I feel that that's problematic. We have -- you know --
6 that stamp and we did accept it and we did go through our
7 process so if -- you know -- I'm not exactly sure what point
8 you want to make to the board, but, you know, I can simply
9 talk about, you know, practice, how we --

10 MR. HUTT: Is it -- I understand the applicant has
11 indicated to you that they were trying to save some money
12 with grading plans because they weren't at that point in
13 time and that as a courtesy you agreed to take it to the
14 Commission. And, of course, the historic area work permit
15 application has the, in terms of details, the building
16 permit application. It's not a building permit application?

17 MS. ZIEK: The historic area work permit
18 application.

19 MR. HUTT: Okay. Okay. But, you might be making
20 a mountain out of a molehill because you basically did say
21 notwithstanding your reservation as to whether it was
22 complete or incomplete you took it to your Commission.

23 MS. ZIEK: Right.

24 MR. HUTT: And whether floor plans were provided,
25 or, not provided, or, grading plans provided, or, not

1 provided the bottom line of your staff opinion would have
2 been that the footprint as shown, the height, the footprint
3 was too large, the height was too tall, so, whether
4 additional information could have been provided to you or
5 not is really -- would not have changed your opinion one
6 iota, correct?

7 MS. ZIEK: Correct.

8 MR. HUTT: I have nothing else of Ms. Ziek. Thank
9 you.

10 MR. CAPUTO: I'm trying to follow you. You lost
11 me twice. Ms. Ahearn has three lots?

12 MR. HUTT: She owns three lots.

13 MR. CAPUTO: Okay. My map shows she owns 3320.
14 The lot in question would be 3322. That's the vacant lot.
15 Where's the other lot, the other side of her?

16 MR. HUTT: Yes.

17 MR. CAPUTO: And that lot is subdivided, or, --

18 MS. ZIEK: If you look at the staff report, circle
19 15, gives you her property in its three -- sided in three
20 lots.

21 MR. CAPUTO: Okay. So, Ms. Ahearn has the third
22 lot. Okay. Now, next question. Maybe in your cross of
23 this witness maybe she can answer. What's the difference
24 between an auto house and a carriage house? One's an
25 automobile and one's a pre-automobile carriage because you

1 keep interchanging that term.

2 MS. ZIEK: Um, let me clarify that. Um, there's
3 sort of historic terms. A carriage house, of course,
4 historically was a large enough structure to house a
5 carriage and a horse. It might have an upstairs hayloft and
6 it might have a large scale residential place that they're
7 living. We have carriage houses in the county. A good
8 example, Garrett Park, Kensington.

9 An auto house is a historic term that I'm using as
10 found on the Sanborn Insurance map and to my mind it sort of
11 indicated what was special about them when they first
12 started to be used. They weren't just called garages. Ours
13 are called garages like a housed building. But, it was
14 actually sort of an auto house. To my mind, it sort of gave
15 a sense of how much people prized their automobiles in
16 little buildings that they built to protect their
17 automobiles.

18 So, auto houses is under our terminology strictly
19 a garage, but, their sized to what the autos were at that
20 time. A garage nowadays would be larger.

21 MR. CAPUTO: Okay. So, now, on Baltimore we have
22 both auto houses and carriage houses, two different
23 structures?

24 MS. ZIEK: No carriage houses on Baltimore Street.

25 MR. CAPUTO: Okay. So, there's both on West

1 Baltimore. Thank you. Nothing further for me.

2 MS. TURNBULL: Any more questions?

3 MR. HITCHENS: I just have two matters, Madam
4 Chairman. Robin, I believe Mr. Hutt characterized Ms.
5 Ahearn's house as straddling the lot line. Is that correct?

6 MS. ZIEK: Uh, she has -- there's a side porch,
7 like a sun porch that's a small structure and that straddles
8 the -- it's a 10x16 porch on the side and that actually
9 straddles the side line. The house itself is completely on
10 lot 26. But, you see the distinction and that can be seen
11 again on circle 15 which is the site plan in the staff
12 report dated 2/25/98.

13 If you looked on circle 15 it's the plat of her
14 property and that shows up there.

15 MR. HITCHENS: So, the house dwelling structure,
16 dwelling unit itself is entirely on one lot?

17 MS. ZIEK: Right. The setback is 6 feet at that
18 point.

19 MR. HITCHENS: Okay. And let me ask you a
20 question about the historic district and the object and the
21 structures in the historic district.

22 When the master plan designation is done it has
23 boundaries in it, is that correct?

24 MS. ZIEK: Correct.

25 MR. HITCHENS: Okay. And when master plan

1 designation is done some structures are identified
2 specifically as structures, as resources, is that correct?

3 MS. ZIEK: They may or they may not.

4 MR. HITCHENS: But, if there is a structure within
5 a district and it's not specifically identified as a
6 resource it's still within the boundaries of the district
7 and it's still designated for protection of historic
8 preservation, is that correct?

9 MS. ZIEK: That's correct.

10 MR. HITCHENS: We call Emily Eig. If you could
11 identify yourself for the board and tell the board a little
12 bit about your professional background.

13 MS. EIG: Okay. My name is Emily Hoteling Eig and
14 I'm a member of the Historic Preservation Commission of
15 Montgomery County. I'm an architectural -- -- and it was my
16 son which prepared the Vision of Kensington along with the
17 preservation plan in 1992.

18 MR. HITCHENS: And did you personally participate
19 in developing that document?

20 MS. EIG: I did.

21 MR. HITCHENS: And why was this document -- who
22 requested the document, do you know?

23 MS. EIG: The Historic Preservation Commission
24 staff for Montgomery County National Capital Park and
25 Planning Commission Preservation Staff put a requested

1 proposal out to the public and our firm responded to that
2 and was selected.

3 MR. HITCHENS: And what was your understanding of
4 the reason or purpose for developing the document?

5 MS. EIG: Our understanding was that there was a
6 need to have an understanding of what would be appropriate
7 changes that could take place in historic districts and
8 there were actually four historic districts that were
9 studied at that time. I think Robin Ziek said it more
10 eloquently than I could, but, in the actual document, if I
11 could read it, the project offered a challenging opportunity
12 to determine a practical methodology for -- -- protectors
13 for districts for the future.

14 The project was approached with a view that
15 preservation does not have to create a static environment,
16 but, that which is necessary to recognize changing needs
17 that seriously threaten a historic district. This required
18 the commission of a methodology that would allow appropriate
19 change in growth by management of the historic district and
20 by inherent revision or standard by which changes could be
21 effected.

22 In fact, the phrase or term vision was the results
23 of one of the chairman of the Historic Preservation
24 Commission who felt that there was a need to have guidelines
25 so that visions would be made in a more educated manner than

1 has been possible otherwise.

2 MR. HITCHENS: Is it fair to state there was an
3 otherwise intuitive perception of Kensington as a garden
4 suburb but there wasn't up to that point there hadn't been a
5 survey done or hard statistical data to give empirical
6 substance to those intuitive descriptions of Kensington?

7 MS. EIG: That is -- yes and no in that there had
8 been a survey that had been done when the original historic
9 district was identified and I'm not knowledgeable about
10 exactly what happened at that time. But, that survey was
11 very cursory in its nature in terms of not out of keeping
12 with what preservation profession would find appropriate at
13 that time as compared to today's standards, much less
14 flushed out than we would seek today.

15 And the information on what was standing in the
16 historic district was also not as helpful in terms of
17 determining what was appropriate for the future of the
18 historic district and the idea of this study was to actually
19 collect specific data about the buildings more than just
20 their dates and their locations, but, actually
21 characteristics of them and how they related to one another
22 and in fact created a historic district.

23 MS. EIG: Okay. So, when you did the study, did
24 you go out and survey the district?

25 MS. EIG: We did. We re-surveyed the district.

1 MR. HITCHENS: And by survey, what did survey
2 encompass?

3 MS. EIG: Well, as architects, what we did and
4 what we do is we go out and identify the building,
5 photograph them, and collect specific pieces of information
6 about each property and the property's defined as a piece of
7 land and the resources that are on that piece of land as in
8 a house and a garage or carriage house or whatever might be
9 on it, as well as the landscaping and the whole of it, the
10 environmental settings, is the phrase we have in our --

11 MR. HITCHENS: Did you say you went property by
12 property and street by street?

13 MS. EIG: Yes, we did.

14 MR. HITCHENS: Okay. And for example, were you
15 trying to find out conclusions like what had been the
16 building patterns in each segment of the district?

17 MS. EIG: Yes, we were.

18 MR. HITCHENS: Okay. So, then, if you can point
19 to some pages of the -- of some parts of the Vision of
20 Kensington, can you tell what you did find out about the
21 character defining elements of Kensington, for example,
22 about lot coverage or patterns of buildings, ownership of
23 the buildings?

24 MS. EIG: We -- I should say we looked into a
25 number of character defining in collecting this data and did

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1 a comparative analysis of the data and the overall building
2 setback with the most spacing between buildings, geographic
3 and landscape features, scale and building height,
4 directional expression of building, roof forms and
5 materials, porches, building material, out buildings, type
6 of form, building addition and architectural style. Those
7 were what we used for all four of the preservation vision
8 studies that we did.

9 And the data that we collected was actually in the
10 vision study was a blank form that shows how we collected
11 that data and the questions that we asked ourselves as we
12 went around the community and collected data. We determined
13 lot coverage is that -- and I will read it, it's better --
14 is that in terms of lot area and ownership of Kensington it
15 was started at the outset as a suburban community with a
16 complete set of carefully ordered streets which remain the
17 primary subdivision plan and lot structure today. This is
18 in 1992.

19 It appears that development can be identified
20 within the historic district. The first period covers the
21 initial development of the -- -- from 1890 to 1910. The
22 large houses constructed during this period in the heart of
23 the district usually occupied more than one lot.

24 The second period of development includes building
25 construction between 1910 and 1930. Houses constructed over

1 this period were generally smaller and most were built on
2 single lots. Buildings built over these two periods are
3 considered primary historic resources.

4 The third period of zoning covers both 1930
5 construction which typically consisted of small residences
6 and buildings on single lots. That's a very general
7 overview. I think it gives you an idea of what we
8 discovered.

9 MR. HITCHENS: And then you summarized your data
10 in some other charts in there, is that correct?

11 MS. EIG: Yes. We summarized on page 47.

12 MR. HITCHENS: That's lot coverage. Besides lot
13 coverage, what were some of the other items that you --

14 MS. EIG: Well, we did lot characteristics in that
15 area and we collected lot area and we said lot, we were
16 actually referring to the property and that's an important
17 thing is that the question was asked earlier, what is a lot.
18 Well, there in fact was the original subdivision that has
19 lines on a map. We defined lot for the purposes of this
20 study as all the land that was associated with one ownership
21 and one use as in a house with its garden and its garage,
22 driveway, you know, owned by a single owner, or, joint
23 owners, whatever, but, that it was what we might consider
24 our home in that sense, or, it might be a commercial
25 residence.

1 And just to clarify that a little further, we also
2 identified four vacant lots. There were lots of vacant
3 lots, but, in fact there were four lots that had no primary
4 building associated with them; that there was nothing
5 associated with it. It was actually on the lot or not.
6 They were completely devoid of any relationship with a
7 building.

8 So, we identified the area for these properties,
9 how what we call lot coverage or how much the building that
10 was there covered the lot, front yard setback, and then
11 building separation between essentially the primary building
12 on a lot or on a property and another, you know, another
13 house let's say.

14 The -- I can see in retrospect from 1992 that a
15 nomenclature might have been a little clearer if we had
16 defined it, called it property here as opposed to lot, but,
17 I think the data that's collected makes it very clear that's
18 what we were referring to is associated lot into a single
19 property and that is the idea of property is one that is
20 defined by the National Register for Historic Places.

21 MR. HITCHENS: So, eventually, after you did this
22 survey and collected your data on lot coverage and patterns
23 of buildings, ownership of the buildings, other lot
24 characteristics, you developed some strategies, is that
25 correct?

1 MS. EIG: Yes.

2 MR. HITCHENS: Can you pick out one -- I'll pick
3 out a strategy for you and ask you to comment on it,
4 strategy 2.1. Is that strategy based on data that you
5 collected? How did you arrive at that strategy? What was
6 your goal? Was your goal to mimic the development that you
7 had observed, the existing development?

8 MS. EIG: Well, remember what I said before, we
9 were looking -- our whole goal in this entire study was to
10 give the decision makers about Kensington and the historic
11 district information that would help them determine what was
12 appropriate change, what were the parameters of what would
13 be appropriate in the future.

14 And in strategy 2.1 which says recognize that the
15 slightly denser patterns of development within the
16 peripheral residential area where a minimum of one lot for
17 construction of a single family based on the historic
18 patterns was appropriate and that's in contrast to other
19 strategies for different areas; the idea being that the
20 actual formation of the community as we could see it today,
21 the rhythm of the buildings on the blocks, was actually
22 generating the guideline.

23 MR. HITCHENS: When you use the word appropriate
24 do you mean it's what we like?

25 MS. EIG: I think that's really important is that

1 we spent a great deal of time collecting data about the
2 resources and the land development of this area so that
3 rather than it being intuitive and we could in fact provide
4 some realistic statistics behind it, you know, a slippery
5 slope perhaps in many ways, but, as a historian we have
6 found that being intuitive analysis is very commonplace and
7 that in the last ten years things have changed dramatically
8 as computer error, you know, that we have the ability to in
9 fact put some fact behind our intuition and that the -- it
10 means that we collect the data, we analyzed that data, we've
11 had parameters to that data, we've averaged that data,
12 meaning of that data in order to determine what were common
13 patterns that we could -- --.

14 I should make it very clear that these were
15 guidelines and suggestions. They were not engraved in stone
16 as to what should happen. They were supposed to be
17 strategies for decisions and not rules for decisions.

18 MR. HITCHENS: That's the end of my questions.

19 (Off the record discussion)

20 MS. TURNBULL: Any other questions? Mr. Hutt?

21 MR. HUTT: How long was your contract?

22 MS. EIG: The contract, if I remember correctly
23 was done in Summer of 1992.

24 MR. HUTT: Roughly six months? It was a twelve
25 month contract?

1 MS. EIG: No.

2 MR. HUTT: Was it nine months?

3 MS. EIG: I -- you'll have to forgive me. I was
4 having a baby in the middle of it and I remember before and
5 after and actually Laura, who could not be with us today,
6 was the project manager who mastered very specifically the
7 day to day operations.

8 MR. HUTT: During the spring and summer how many
9 historic districts were being surveyed by your firm?

10 MS. EIG: We surveyed four.

11 MR. HUTT: Four. How many staff members were
12 assigned to Kensington?

13 MS. EIG: The team did the entire group. The team
14 of three of us plus there was another firm called TMA
15 Associates who are planner, architects.

16 MR. HUTT: How did you determine what area?

17 MS. EIG: Lot area was determined by the ownership
18 of the property. Oh, we used documents that were given to
19 us by Maryland National Capital Planning Commission.

20 MR. HUTT: Do you recall what kind of documents
21 they were? Tax materials?

22 MS. EIG: I personally did not collect that data,
23 but, they were that kind of thing. They were official
24 documents of the county.

25 MR. HUTT: Did Park and Planning, or, Planning

1 Board staff also provide you with the lot coverage?

2 MS. EIG: We calculated it. PMA calculated the
3 lot coverage.

4 MR. HUTT: Did they go on the property?

5 MS. EIG: We went to every property. They didn't
6 measure every property, but, they used the information that
7 was found. We did very specific calculations.

8 MR. HUTT: I saw that each property had a lot
9 coverage had a spacial distance between buildings.

10 MS. EIG: They were measured.

11 MR. HUTT: Measured how? Physically with a survey
12 crew?

13 MS. EIG: No, no, no. With tape measures. Tape
14 measures.

15 MR. HUTT: Did you physically go on each property?
16 Did they physically go on every property within the core
17 district?

18 MS. EIG: I did not do that survey. To my
19 understanding they did it, yes.

20 MR. HUTT: That's your understanding?

21 MS. EIG: Yes.

22 MR. HUTT: Okay.

23 MS. EIG: Though I'll cover myself in that -- you
24 know -- I didn't do it myself and the data, there was a lot
25 of data that was given to us as official data by the county

1 and what they had to collect outside and what they actually
2 accepted from the documents I couldn't say.

3 MR. HUTT: And, so, from your perspective you
4 don't know whether they physically went onto 181 properties
5 or whatever the number was?

6 MS. EIG: I knew the photographs were taken of
7 every property.

8 MR. HUTT: I'm still trying to get to lot coverage
9 and distance between buildings as to how that was
10 determined. Your assumption is that they went out there
11 with a tape measure and did the physical measuring.

12 MS. EIG: I'm not -- because I know PMA was
13 involved in that as well specifically because of their
14 planning background, the zoning review and alike.

15 MR. HUTT: Okay.

16 MS. EIG: So, I won't --

17 MR. HUTT: But, you don't know how they physically
18 got the data?

19 MS. EIG: No.

20 MR. HUTT: That's fair, that's fair. Now, on page
21 56 of your vision document, you used the -- with regard to
22 the potential for in-fill development of the critical open
23 space threatened to disrupt the historic patterns --
24 historical pattern of development in character to the
25 residential neighborhood within the district. That's the

1 word threatened is --

2 MS. EIG: The potential for in-fill development
3 threatens to disrupt the pattern. That's correct.

4 MR. HUTT: Okay. With regard to the suggestive
5 lot area, 15,000 square feet, for construction, I asked
6 Robin whether she could identify which properties, whether
7 my concept of a subdivided lot or your idea of a property
8 being a larger thing, which properties fall within that
9 potential?

10 MS. EIG: I'm not going to be as up-to-date even
11 as Robin in terms of the specific ones, but, it's generally
12 the two lots, generally, and it's along Baltimore and along
13 Washington Street in that heart of the historic district.

14 MR. HUTT: We'll call them garden lots or two
15 side yards that would be the ones?

16 MS. EIG: Yes, generally.

17 MR. HUTT: And your testimony today is in terms of
18 the strategies that your company prepared as part of the
19 vision that they were intended as guidelines and
20 suggestions, not rules for decision making?

21 MS. EIG: That's correct. We were consultants and
22 in fact when we did this document at that time it had not
23 been adopted by the Historic Preservation Commission or the
24 City of Kensington or anything. It was in fact just a
25 recommendation to the parties.

1 MR. HUTT: Thank you, I have no other questions.

2 MS. TURNBULL: Today you're simply testifying as a
3 principal of that company, right? Is that correct?

4 MR. HITCHENS: We can try to --

5 MS. TURNBULL: That's fine. As a principal of the
6 company. My question, I must say, when were you appointed
7 to the Historic Preservation Commission? Were you sitting
8 on the Historic Preservation Commission --

9 MS. EIG: No, no. No, no. I was put on the
10 Historic Preservation Commission two years ago in April.

11 MS. TURNBULL: It was just more of a curiosity.

12 MS. EIG: No, no.

13 (Off the record discussion)

14 MS. TURNBULL: Okay. Any other questions? Okay.
15 Go ahead. Mr. Hitchens?

16 MR. HITCHENS: If we could take up to a five
17 minute break.

18 MS. TURNBULL: Sure.

19 (A brief recess was taken)

20 MS. TURNBULL: We're back on the record. Mr.
21 Hitchens?

22 MR. HITCHENS: The county's next witness is going
23 to be Carol Mitten.

24 MS. TURNBULL: Okay. Thank you.

25 MR. HITCHENS: Carol, I'd ask you to identify

1 yourself for the board.

2 MS. MITTEN: Carol Mitten.

3 MR. HITCHENS: And would you state your business
4 address for the board as well?

5 MS. MITTEN: I work for the firm of Mitten &
6 Reynolds and the offices of Mitten & Reynolds are at 717 5th
7 Street, N.W. in Washington, D.C.

8 MR. HITCHENS: And what does Mitten & Reynolds do?

9 MS. MITTEN: Primarily commercial real estate
10 appraisers.

11 MR. HITCHENS: And, Madam Chairman, I submitted a
12 resume of Ms. Mitten and I do intend to ask the board to
13 recognize her as an expert in the field of appraisal of
14 historic properties. I can either --

15 MR. HUTT: Well, we'll stipulate to that. I know
16 Ms. Mitten professionally from another case so I will
17 stipulate to her credentials.

18 MS. TURNBULL: Okay. Without objection?

19 MR. HUTT: Without objection.

20 MR. HITCHENS: Okay. Thank you.

21 MS. TURNBULL: Expert in appraisal of --

22 MR. HITCHENS: Historic properties, yes. And that
23 having been done then I'm going to dispense with discussing
24 her employment experience and other experiences that she had
25 related to her qualification as an expert. Then I'll start

1 off relating to this case.

2 Are you familiar with the facts of this appeal?

3 MS. MITTEN: In general, yes.

4 MR. HITCHENS: Okay. And you've been here since
5 the hearing started this afternoon at 1:30?

6 MS. MITTEN: That's correct.

7 MR. HITCHENS: And you were able to see some
8 slides of the property, Kensington, and the proposals that
9 were made?

10 MS. MITTEN: Yes, sir.

11 MR. HITCHENS: So, you have a familiarity with
12 this case here in front of us?

13 MS. MITTEN: Yes.

14 MR. HITCHENS: Okay. And have you been to
15 Kensington?

16 MS. MITTEN: Yes, I have.

17 MR. HITCHENS: Are you familiar with the open
18 space quality in Kensington?

19 MS. MITTEN: Yes, I am.

20 MR. HITCHENS: Okay. And are you also familiar
21 with the standard for the taking of a property?

22 MS. MITTEN: Yes, I am.

23 MR. HITCHENS: And could you state that standard
24 to the board?

25 MS. MITTEN: Well, are you referring to an eminent

1 domain overt condemnation, or, an inverse condemnation?

2 MR. HITCHENS: I'm referring to an inverse
3 condemnation.

4 MS. MITTEN: Well, an inverse condemnation occurs
5 when there's an action by the government body that
6 effectively goes beyond the scope of whatever their police
7 power is and that standard is different in different
8 jurisdictions. I understand that in this context the value
9 of a property would have to be reduced significantly in
10 order for an inverse condemnation to have occurred.

11 MR. HITCHENS: And you're familiar with the
12 appraising of historic properties?

13 MS. MITTEN: Yes, I am.

14 MR. HITCHENS: Okay. Can you tell the board some
15 examples of properties that you've appraised, historic
16 properties they might recognize?

17 MS. MITTEN: I can give some examples of my more
18 recent work and maybe they'll recognize them. Those are
19 some properties in Georgetown. Among them are the Bowie
20 Severe Mansion, the Grant House, Evermay I appraised
21 recently, the Water House in Upper Montgomery County, Brice
22 House in Annapolis, Belmont Plantation in Loudoun County,
23 the -- -- properties on Capitol Hill.

24 MR. HITCHENS: Now, you didn't do an appraisal of
25 this property, did you?

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1 MS. MITTEN: No, I didn't.

2 MR. HITCHENS: But, you have been there and seen
3 the lot, is that correct?

4 MS. MITTEN: Yes, I have.

5 MR. HITCHENS: Okay. And you're not going to
6 offer an opinion of an appraised value of this lot today,
7 are you?

8 MS. MITTEN: No, I'm not.

9 MR. HITCHENS: Okay. There's been the assertion
10 that if the proposal is not permitted that this would result
11 in a taking and diminish the value of the property to meet
12 that standard of being a taking. I'm going to ask you, if
13 this Commission were the board in this prohibited a dwelling
14 from being built on this property would the property still
15 have value?

16 MS. MITTEN: Yes, it would.

17 MR. HITCHENS: What are the circumstances, or, the
18 features of the property that would enable it to retain the
19 value?

20 MS. MITTEN: Well, can I ask just to clarify your
21 question, is it any dwelling or one of the three proposed
22 dwellings?

23 MR. HITCHENS: We can start with the three
24 proposed.

25 MS. MITTEN: All right. I think Ms. Ziek gave

1 probably the best conceptual example to use. If you imagine
2 a balloon that is full of air and it can be reduced
3 incrementally in size there are certain sizes that are
4 clearly not going to be approved in the context of an
5 historic district and there are sizes that clearly will be
6 approved in a historic district and so if the board finds
7 that the denials are proper that doesn't eliminate some of
8 the possible dwellings that can be built on the site.

9 If no dwellings were to be permitted on the site
10 the property still has utility, it has an improvement, the
11 auto house improvement, it has a driveway that can be used
12 as a yard or a garden, or, other -- I think there are other
13 appurtenant type of uses to it to compliment the dwelling
14 that are either available or currently in use -- currently
15 on the property.

16 MR. HITCHENS: Okay. And are there any other uses
17 of the property that -- besides the garage that come to your
18 mind?

19 MS. MITTEN: As possible alternative improvements?

20 MR. HITCHENS: Yes. Not for dwelling, not for a
21 garage. Anything else?

22 MS. MITTEN: Well, I suppose someone put a
23 reflecting pool on the property. They could put a -- I'm
24 not completely familiar with the zoning parameters, but,
25 conservatory or greenhouse type of thing, a patio, a deck,

1 things like that.

2 MR. HITCHENS: Okay. Now, what about the
3 circumstance where there would -- to discuss it in a little
4 bit more detail, if there was determination that no dwelling
5 unit could go on that lot, does the lot still have value in
6 another context?

7 MS. MITTEN: Yes, it does.

8 MR. HITCHENS: And what would that be?

9 MS. MITTEN: Well, I would say that the primary
10 context that would be examined by an evaluation expert would
11 be in conjunction with an adjacent dwelling.

12 MR. HITCHENS: Such as is there right now?

13 MS. MITTEN: Yes.

14 MR. HITCHENS: And you heard the testimony that
15 Ms. Ahearn currently owns the house and this lot and she
16 owns both of those lots and in fact a third one?

17 MS. MITTEN: Yes.

18 MR. HITCHENS: Okay. And does that common
19 ownership of lots affect the value that you could attribute
20 to the lot that we're discussing here about being built on?

21 MS. MITTEN: Yes. I think actually in two
22 contexts, but, maybe we should just focus on inverse
23 condemnation, one of the -- one of the tests is whether the
24 property that has been affected is to be considered alone or
25 in conjunction with other properties and there's a -- it's

1 called the unit rule and the two tests of the unit rule are
2 unit of ownership and unity of use.

3 So, because the property has common ownership with
4 an adjacent parcel it would be appropriate to consider the
5 best use of the house and its adjacent lot and not
6 exclusively the lot alone.

7 MR. HITCHENS: Okay. So, it does have an effect
8 on the improved lot, just its unity of ownership with the
9 improved lot creates additional value for the improved lot,
10 is that correct?

11 MS. MITTEN: Well, it's one area that would be
12 considered in an inverse condemnation. I guess I'm just
13 trying to help the board understand that even though a
14 particular property is not directly affected it's adjacent
15 to a property that is affected if it's in common ownership.
16 The test in inverse condemnation in terms of what is the
17 overall diminution in value by a government action it's
18 appropriate to consider that the owner of the affected
19 property may own adjacent property as well.

20 MR. HITCHENS: In this appeal, Ms. Ahearn owns the
21 property. Mr. Hobbler is a contract purchaser for the
22 property. How does that information fit into the taking or
23 the inverse condemnation by equation?

24 MS. MITTEN: It wouldn't have any effect, I don't
25 believe, on inverse condemnation case he remained the

1 contract purchaser and my understanding is that his contract
2 is contingent on the outcome of this, of the application,
3 so, that the property will not be in separate ownership
4 until a resolution is reached, so, that's a non-issue for
5 the inverse condemnation. At least it's my understanding of
6 the facts.

7 MR. HITCHENS: So, does that mean until the
8 property is sold we're not going to have any end of the
9 unity of ownership?

10 MS. MITTEN: That's right.

11 MR. HITCHENS: Okay. So, is it your opinion then
12 that if none of these proposals were approved by the board
13 that this property still retains value?

14 MS. MITTEN: Yes, I believe it does.

15 MR. HITCHENS: And is it your opinion also that if
16 no dwelling unit could be built on this property that the
17 property still retain value?

18 MS. MITTEN: Yes.

19 MR. HITCHENS: No further questions.

20 MS. TURNBULL: Any questions? Mr. Hutt?

21 MR. HUTT: Who is your client today?

22 MS. MITTEN: Mr. Hitchens.

23 MR. HUTT: Are you being paid for the testimony?

24 MS. MITTEN: Yes, I am.

25 MR. HUTT: Did you walk the subject property?

1 MS. MITTEN: I did not walk the subject property.

2 MR. HUTT: Did you drive by the subject property?

3 MS. MITTEN: Yes.

4 MR. HUTT: Did you get out of your car?

5 MS. MITTEN: No.

6 MR. HUTT: Okay. What do you believe the best use
7 of this property is?

8 MS. MITTEN: I haven't examined that.

9 MR. HUTT: Your testimony is that if no dwelling
10 were constructed, depending upon the zoning ordinance again,
11 it could be used for a reflecting pond or pool?

12 MS. MITTEN: Right.

13 MR. HUTT: A patio?

14 MS. MITTEN: Right.

15 MR. HUTT: A deck?

16 MS. MITTEN: Right.

17 MR. HUTT: In your review of those elements did
18 you review the county's Chapter 24-A, historic preservation
19 ordinance?

20 MS. MITTEN: No.

21 MR. HUTT: Okay. So, you don't know whether or
22 not those uses might be permitted under 24-A?

23 MS. MITTEN: No.

24 MR. HUTT: I have no other questions of this
25 witness.

1 MS. TURNBULL: No questions? Okay. Do you have
2 any redirect, Mr. Hitchens?

3 MR. HITCHENS: No.

4 MS. TURNBULL: Okay. Thank you.

5 MR. HITCHENS: Okay. Our next witness would be
6 Stephen Dennis.

7 Would you please identify yourself for the board?

8 MR. DENNIS: Yes.

9 MR. HITCHENS: Give your business address please.

10 MR. DENNIS: Yes. My name is Stephen Dennis. I'm
11 an attorney licensed in the District of Columbia and I
12 operate from 3901 Connecticut Avenue.

13 MR. HITCHENS: And I'm also going to qualify Mr.
14 Dennis as an expert in the field of historic preservation
15 law and, so, I submitted his resume and I wanted to do -- go
16 through the voir dire unless Mr. Hutt wants to stipulate. I
17 don't think you've ever seen this.

18 MR. HUTT: No, I haven't.

19 MS. TURNBULL: The resume was part of the file. I
20 have one question about this. Typically, we had a case
21 recently where there was an issue about a lawyer testifying
22 as an expert; that lawyers could not. It --

23 MS. BARRON: It was recently.

24 MS. OSIAS: You might have missed that hearing.

25 MS. TURNBULL: There was an issue about whether or

1 not lawyers could be experts and Maryland law there was --
2 the opposing counsel in this case had raised the issue of a
3 lawyer holding himself out as an expert and that's an issue
4 that is of concern to either of you?

5 MR. HUTT: Well, not knowing what Mr. Dennis is
6 going to proffer if he's recognized as an expert in the area
7 of historic preservation law, my sentiment would be that if
8 you do allow him to testify it's his opinion only. You are
9 not bound by whatever interpretation of the law he gives.
10 I'm viewing you as a judge, a panel of judges; that his
11 interpretation should be given no greater weight in terms of
12 interpretation than Mr. Hitchens, although I'm sure he's
13 being proffered to you that his opinion of whatever law he's
14 going to interpret in Montgomery County should be given
15 greater weight than my interpretation and in that regard you
16 are the ultimate decider and interpreter of the law.

17 So, to me, perhaps it goes to weight.

18 MS. MAYER: So, you're saying he should not be
19 recognized as an expert?

20 MR. HUTT: You know, --

21 MS. MAYER: Because an expert has greater weight
22 than --

23 MR. HUTT: He may very well have paper credentials
24 to show that he has some background and experience in what
25 he's being proffered, historic preservation law. Clearly,

1 what we're dealing with here is Chapter 24-A, Chapter 59,
2 County Zoning Ordinance, the Regional District Act, perhaps,
3 which are all State laws.

4 I mean, I don't see him --

5 MS. TURNBULL: So, that, basically, I did have a
6 conversation with our counsel about this and what where I
7 think we would view this is that the opinion of Mr. Dennis
8 would be recognized as expert opinion testimony based on his
9 expert status, okay, and that that opinion testimony is only
10 as -- can only be given the weight that we would afford him
11 based on his experience and knowledge.

12 MR. HUTT: Exactly. I would agree with that
13 limitation in the sense of if you were a jury rather than a
14 judge you would be addressed by the judge as to what the law
15 is that you should apply. This gentleman's given you an
16 opinion to the court as to what he thinks the law is in the
17 area you may decide, but, his opinion is not binding upon
18 you and it's not certainly binding upon me to disagree with
19 him or anyone else in the room disagree with him and it goes
20 to whatever weight you wish to use it as a tool among other
21 tools that you've heard in terms of the evidence presented.

22 MS. TURNBULL: Okay. But, I just wanted to bring
23 up the other aspect of it, which was of a lawyer in Maryland
24 that -- being used as experts and that's based on the -- and
25 I'm only basing that on previous hearing where that issue

1 was raised.

2 Now, in that hearing we did hear from that lawyer
3 and that the lawyer in fact stated that he was not putting
4 himself forth as an expert. So, I just wanted to --

5 MR. HITCHENS: Are you a member of the Maryland
6 Bar?

7 MR. DENNIS: No.

8 MR. HITCHENS: Was that guy a member of the
9 Maryland Bar?

10 MS. TURNBULL: Yes.

11 MR. HITCHENS: Okay. So, that might be a
12 distinction to make. The other distinction to make is that
13 it's certainly possible for someone to be an expert in
14 historic preservation law and not be a lawyer.

15 MS. TURNBULL: Right.

16 MR. HITCHENS: I think that was presented as in
17 terms of a credential. Mr. Dennis also has a Ph.D. I could
18 probably say for today would you ignore his credential as an
19 attorney and move through it that way, but, I think as with
20 any expert, the guiding principle for the board is to look
21 at the weight that they want to give that expert's opinion,
22 or, not. They find it incredible and there is a
23 significance to being an expert witness, not just to say
24 this guy seems to know more than other people and he's an
25 expert because he knows more.

1 The significance is that an expert opinion is
2 permitted into a court proceeding whereas ordinarily
3 individuals who are not experts cannot give their opinions
4 in a court case. They would be fact witnesses. There are
5 certainly exceptions, like somebody can give their opinion
6 as to whether somebody was drunk or not, but, generally,
7 opinions from lay witnesses don't count.

8 So, the -- I guess, you know, the purpose of
9 asking to have a witness qualified as an expert is two-fold.
10 One, it is to show that he is an nationally recognized
11 expert in his field and, second, that if he gives an
12 opinion, the opinion counts.

13 MS. TURNBULL: Mr. Hitchens, I just want to
14 clarify this and it's really not as much for this case, it's
15 just in general for future. What you're saying, therefore,
16 is that people who are not testifying as experts, that the
17 fact that they espouse, basically, are considered relevant,
18 but, the opinion that they render are really just their
19 opinion and can't be viewed to the same degree as an opinion
20 recognized by an expert.

21 MR. HITCHENS: Right.

22 MS. TURNBULL: Thank you.

23 MS. MAYER: I was just wondering about other
24 attorneys who are here as a real estate expert. I mean, we
25 don't -- we don't --

1 MR. HITCHENS: You don't keep them from being
2 qualified as real experts by virtue of their concurrent
3 status of being an attorney. Is that what you're saying?

4 MS. MAYER: Yeah. They don't normally -- I guess
5 it's a specialty of his legal specialty. I'm just wondering
6 why we don't do that with other attorneys.

7 MS. TURNBULL: I don't think -- I think that what
8 we're really talking about in this case is that the
9 difference, having to do with historic preservation law and
10 that in contrast is what Mr. Hutt has said was that he -- we
11 can judge what Mr. Dennis knows about Maryland law and
12 whether or not we can consider that or not consider that as
13 expert testimony from the -- we determine how much weight we
14 give it based on our view of it, based on, I'm sure what
15 will be conversation here, about what the Maryland law is.

16 But, in general, what we're doing is recognizing
17 Mr. Dennis' experience and knowledge having to do with
18 historic preservation law in general is where we are. And
19 we're doing that from the stand -- I think the issue really
20 was and I think, Mr. Hitchens, you laid it out pretty
21 clearly, it's a Maryland law about the members of the
22 Maryland Bar and how they lay themselves out as experts and
23 since Mr. Dennis is not a member of the Maryland Bar it's
24 not, it's not, that would not be an issue in this case.

25 Does that make sense?

1 MR. HITCHENS: Perhaps not.

2 MR. HUTT: Perhaps not and I think -- because I
3 think now we're just talking about an ethical question and
4 I'm not trying to impugn his ethics at all. It's really a
5 question within the Code of Professional Conduct as an
6 attorney practicing in the State of Maryland what can you
7 hold yourself out to be or not to be.

8 MS. TURNBULL: And I think that was exactly the
9 point that came up in our case and, so, Mr. Dennis is not a
10 member of the Maryland Bar that that wouldn't be the issue.

11 MR. HUTT: I mean, we may be dancing around the
12 head of a pin. Really the question is whether you wish -- I
13 mean, when somebody's an expert it's generally recognized
14 it's in a field of -- an area that the judge or the jury is
15 not familiar with and, therefore, it may provide assistance.
16 Therefore, that's why they're recognized as an expert in
17 their particular area of expertise as Carol Mitten was with
18 regard to appraisal of historic properties.

19 We don't presently know what Mr. Dennis is going
20 to opine to, but, you know, he is an attorney. He can
21 practice in his field whether we call him an expert or not,
22 he can express an opinion, and, again, that opinion, whether
23 it's an expert or non-expert status, you give it whatever
24 weight you believe it's entitled to based on your own
25 knowledge of the laws that he may be addressing.

1 MS. TURNBULL: So, we can continue.

2 MR. HITCHENS: I'll go through this voir dire then
3 and ask you to give the board some of your employment
4 background.

5 MR. DENNIS: Okay. From June of 1976 through
6 November of 1985 I was on the legal staff of the National
7 Trust for Historic Preservation. That legal staff was
8 bifurcated between the attorneys who did internal corporate
9 work for the National Trust, which I did not do, and the
10 attorneys who did outreach advisory work.

11 It was my job in that role to monitor all historic
12 preservation litigation in the country. When the
13 Preservation Law Reporter was developed in 1981 I became
14 their editor for the litigation summaries, but, beginning
15 almost immediately in 1976 I was given the assignment to
16 develop under the HUD contract, which the National Trust
17 had, a model historic preservation ordinance.

18 It took approximately two years to do that and in
19 doing it I read a large number of local historical
20 organization ordinance from communities around the country
21 to determine which categories of provisions were, shall we
22 say, generic. That document, which ultimately was called
23 Recommended Model Provisions for a Preservation Ordinance
24 with annotations was issued initially by the National Trust.
25 It was subsequently reprinted as Appendix A in the Handbook

1 on Historic Preservation Law, which appeared in 1983. It
2 has been published separately in the Preservation Law
3 Reporter and has been included as an appendix in a three
4 volume treatise by Matthew Bender.

5 From the Summer of 1986 through the Fall of 1994,
6 I was the Executive Director for the National Center of
7 Preservation Law, which had been formed in 1978. It was a
8 non-profit organization headquartered in the District of
9 Columbia. In that role I developed a series of what we call
10 preservation law updates. These were short two to eight
11 page summaries of new developments in historic preservation
12 law which were issued 48 times a year.

13 They were considered useful to the Historic
14 Preservation Commissions. In fact, a New York foundation,
15 the J.M. Captain Fund, was awarding annual grants of \$25-
16 30,000 to assist in the development of those updates and to
17 make it possible to distribute them for the first three
18 years as widely as possible to local preservation
19 commissions throughout the country.

20 I have taught historic preservation law at the
21 University of Virginia Law School, which has specialized
22 seminars since 1981. I co-taught the course in the Spring
23 of 1993. I currently teach historic preservation law for
24 Goucher, both in their non-resident masters program and in
25 their evening continuing education program in the District

1 of Columbia.

2 I have lectured widely in this country over the
 3 last four years and in Central and Eastern Europe as well.
 4 I have been on the board for the Royal Oak Foundation, which
 5 is the American affiliate organization for the British
 6 National Trust, the largest private landowner in Great
 7 Britain, which owns some 200 major historic properties, a
 8 number of great gardens, and over half a million acres of
 9 land as well as a considerable amount of the coastline.

10 MR. HITCHENS: And I mentioned before, but, could
 11 you just tell the board your educational background?

12 MR. DENNIS: I have an undergraduate degree from
 13 the University of North Carolina, Chapel Hill; Ph.D. in
 14 English literature, Cornell University; and a law degree
 15 from Duke University.

16 MR. HITCHENS: Any questions?

17 MR. HUTT: No.

18 MR. HITCHENS: I'd offer Mr. Dennis, or, ask the
 19 board have recognize him as an expert in the area of
 20 historic preservation law.

21 MS. TURNBULL: Okay. At that suggestion he will
 22 be designated as such.

23 MR. HITCHENS: All right. So, Mr. Dennis,
 24 listening to your experience, is it fair to say that you're
 25 familiar with national, with historic preservation

1 ordinances across the country?

2 MR. DENNIS: I hope so.

3 MR. HITCHENS: Okay. And are you familiar with
4 the Maryland ordinance, Maryland ordinances? There's not
5 one particular one.

6 MR. DENNIS: Yesterday, I reviewed both the
7 Maryland enabling general legislation for the preservation
8 ordinances and specific Maryland enabling legislation for
9 chartered counties.

10 MR. HITCHENS: Okay. And you're familiar with
11 Montgomery County's historic preservation ordinance, Chapter
12 24-A?

13 MR. DENNIS: Yes.

14 MR. HITCHENS: Okay. How are you familiar with
15 that?

16 MR. DENNIS: Well, I have a copy in front of me
17 which I have marked and read.

18 MR. HITCHENS: And have you ever had any
19 experience in Montgomery County with this historic
20 preservation ordinance itself?

21 MR. DENNIS: Yes. I understand that Mr. Eddie
22 Latner is currently the attorney for this board. When the
23 Avery/Flaherty case came before this board several years
24 ago, Mr. Latner was the attorney representing the Historic
25 Preservation Commission and I worked rather closely with Mr.

1 Latner as he -- -- the arguments which were going to be made
2 in that case.

3 MR. HITCHENS: Did you appear before the board on
4 that case?

5 MR. DENNIS: No.

6 MR. HITCHENS: Now, you're also familiar with
7 Kensington?

8 MR. DENNIS: Yes.

9 MR. HITCHENS: Okay. And are you familiar with
10 the Vision of Kensington document?

11 MR. DENNIS: Not very. I've looked at it.

12 MR. HITCHENS: And are you familiar with the facts
13 of this appeal here today?

14 MR. DENNIS: Yes.

15 MR. HITCHENS: Okay. And how are you familiar
16 with that?

17 MR. DENNIS: I spent several hours last week going
18 through the file in the case. I read the initial transcript
19 for the hearing before this board and I have seen transcript
20 for the hearing from the HPC decision that's on appeal.

21 MR. HITCHENS: Okay. So, you're familiar then
22 with the Historic Preservation Commission's powers here in
23 Montgomery County?

24 MR. DENNIS: Oh, yes.

25 MR. HITCHENS: And can you describe what you

1 understand their role and function to be?

2 MR. DENNIS: The Montgomery County Commission like
3 most historic preservation commissions around the country,
4 has three functions. It reviews proposals for alterations
5 involving designated historic properties, whether those are
6 individual properties, or, what we sometimes call landmark,
7 or, whether they are properties designated in an historic
8 district.

9 It also reviews applications for permission to
10 demolish historic properties and applications for permission
11 to construct new construction in historic districts, or, on
12 historic sites. These are typical of the provisions that
13 local preservation commissions have exercised since the
14 early 1930's when Charleston, South Carolina enacted the
15 first historic preservation ordinance.

16 MR. HITCHENS: Okay. And are those the powers
17 that you just enumerated, are they consistent with what the
18 county is authorized to do through its enabling legislation?

19 MR. DENNIS: Now when you say enabling
20 legislation, do you refer to the State legislation or the
21 county ordinance?

22 MR. HITCHENS: The State legislation. I'm asking
23 if the county ordinance is consistent with the power granted
24 to the county from the State ordinance.

25 MR. DENNIS: Yes. I've got that with me. It's

1 Article 25, Section 5, which is the enumeration of the
2 express powers granted to and conferred upon chartered
3 counties and Item DD, historic and landmark zoning and
4 preservation, gives chartered counties to enact laws
5 generally for historic and landmark zoning and preservation,
6 or, to enact those laws in accordance with the provisions of
7 Article 66(b), or, to enact such laws to be administered
8 generally by an historic district commission and to provide
9 for appeals.

10 And the authority is in addition to any existing
11 charter provisions or local law providing for planning and
12 zoning.

13 MR. HITCHENS: Okay. Back to the specifics of the
14 county ordinance. There's a provision in there regarding
15 the composition of the commission and it requires that
16 certain fields be represented. You're familiar with that
17 provision?

18 MR. DENNIS: I am.

19 MR. HITCHENS: Okay. And is that, based on your
20 familiarity with national standards, national ordinances in
21 other jurisdictions in the county, is that a standard
22 provisions that's found?

23 MR. DENNIS: It's a standard category of
24 provision. I wouldn't say that this exact provision as it
25 is worded is identical to a large number of other

1 provisions, but, the requirement that members of a
2 preservation commission bring to the commission certain
3 categories of expertise is very typical.

4 Almost invariably, a commission is required to
5 contain an architect so that there is someone on the
6 commission who understands plans submitted to the
7 commission. There is frequently a requirement that there
8 must be an historian, someone who ought to be familiar with
9 local history and able to help the commission make an
10 informed decision.

11 The requirement that two additional members of the
12 Montgomery County Commission have specific expertise in
13 planning and urban design is another protective feature and
14 then the remaining members are required "to the extent
15 possible" to represent geographical, social, and economic,
16 and cultural concerns, but, obviously, an effort has been
17 made to ensure that many of the members of the commission
18 will bring significant expertise to their role.

19 MR. HITCHENS: Why is that an important provision
20 to be in a historic preservation ordinance? What is it
21 about historic preservation that requires a provision like
22 that?

23 MR. DENNIS: Historic preservation law has
24 developed rapidly since the late 1960's, most rapidly since
25 the U.S. Supreme Court handed down its Penn Central decision

1 in June of 1978. One of the things the Supreme Court
2 recognized in the Penn Central decision was that the
3 membership composition of the New York Landmarks
4 Preservation Commission helped ensure, if you will, that
5 that commission was making responsible decisions.

6 As graduate programs in historic preservation have
7 developed around the country, there has been an increasing
8 insistence that people who serve on historic preservation
9 review boards, or, people who serve on municipal historic
10 preservation commissions should ideally have some background
11 in historic preservation, if possible, some degree of
12 training in historic preservation.

13 Twenty five years ago that would have been an
14 unreasonable requirement because very few people had this
15 kind of training. Today there are more than 40 programs
16 around the country that provide graduate training, so, it's
17 not at all uncommon to find very well trained people in
18 their twenties and thirties.

19 MR. HITCHENS: Okay. Now, back to our specific
20 neighborhood, Kensington. You're familiar with the -- you
21 said you were somewhat familiar with the Vision of
22 Kensington guidelines, is that correct?

23 MR. DENNIS: I've heard a lot about them today and
24 I've looked at them briefly last week.

25 MR. HITCHENS: Do you have an opinion on these

1 guidelines as to their relative specificity compared to
2 other guidelines you've seen?

3 MR. DENNIS: Before I address that question
4 specifically, what I'd like to do is refer the board to a
5 couple of things that courts have had to say about the
6 specificity of guidelines and I'm pulling this from the
7 appendix A in the Handbook on Historic Preservation Law.
8 There's a section called guidelines, -- -- for the
9 commission to use, which is subdivided into need to develop
10 criteria and required specificity for criteria and also size
11 and areas which criteria apply.

12 Let me say, generally, that this has been often a
13 contested issue and sometimes to courts a troubling issue,
14 but, generally, courts which have been asked to consider the
15 adequacy, specificity, if you will, the challenge, vagueness
16 of guidelines for local historic preservation commissions,
17 have upheld it.

18 What courts which have looked at this issue
19 concluded is that it is often very difficult for detailed
20 guidelines to be developed because there may be a certain
21 heterogeneity, if you will, within a historic district.

22 I'd like to read just a short quotation from a
23 North Carolina Supreme Court case in 1979, ASP Associates v.
24 City of Raleigh. "The general policy and standard of
25 incongruity adopted by both the General Assembly and the

1 Raleigh City Council in this instance is best denied "a
2 contextual standard". A contextual standard is one which
3 derives its meaning from the objectively determinable
4 interrelated conditions and characteristics of the subject
5 by which the standard is to be applied. In this instance
6 the standard of incongruity must derive its meaning, if any,
7 from the total physical environment of the historic
8 district, although the neighborhood encompassed by the
9 historic district is to a considerable extent an
10 architectural milage that heterogeneity of architectural
11 style is not such as to render the standard of incongruity
12 meaningless.

13 It is therefore sufficient that a general, yet,
14 meaningful contextual standard has been set forth to limit
15 the discretion of the historic district commission.
16 Strikingly similar standards for administration of historic
17 district ordinances have long been approved by courts of
18 other jurisdictions."

19 And, I think the court's emphasis on a general,
20 yet, meaningful contextual standard which limits the
21 discretion of the historic district commission are the two
22 phrases I would ask you to remember. The Montgomery County
23 Historic Preservation Commission is not just shooting in the
24 dark when it looks at an application which has come before
25 it to determine whether a proposed project would be

1 appropriate or inappropriate within a local historic
2 district, or, at a particular historic site.

3 Other courts have recognized the fact that what
4 may be appropriate in one portion of a historic area is not
5 necessarily appropriate in another portion of the same
6 historic area. There's a Massachusetts case called Sleeper
7 v. Old King's Highway Regional Historic District Commission.
8 It's a 1978 decision. It was affirmed in 1981 and I'd like
9 to read a short quote.

10 "The issue of compatibility of a structure must be
11 determined in the context of its immediate surroundings.
12 What may be incompatible from an aesthetic, or, historic
13 viewpoint at the Marconi site in South Wellfleet is
14 obviously not determinative of compatibility of a similar
15 structure in the Scarter Lake area of Denis. As previously
16 suggested, there is no legislative intent requiring
17 uniformity throughout the entire region covered by the Old
18 King's Highway Act."

19 MR. HITCHENS: Now, can you relate what you just
20 read, that principle in there, to our appeal before us
21 today?

22 MR. DENNIS: Oh, I will try to. A lot has been
23 said about the map which was projected on the wall and the
24 fact that different areas of the Kensington historic
25 district have slightly different characteristics. The

1 development used to be denser around the edges, looser
2 towards the center, and it would appear that as the district
3 developed from 1890 forward through apparently 1930 there
4 was almost a hierarchy of sites in the district.

5 Wealthier families seemed to have built larger
6 houses and to have acquired more property on which to build
7 those houses. I've heard the argument that what Warner was
8 effectively doing was chopping the land up into pieces so
9 that somebody could buy as many pieces as they could afford
10 and then develop a suitably impressive house on whatever
11 amount of property had been purchased.

12 Warner had obviously wanted the most impressive
13 house and took 18 of the lots for himself.

14 MR. HITCHENS: Okay. In Kensington one of the
15 features that's in the master plan designation is the open
16 space recognized as a character-defining feature and, in
17 fact, this case is about building in some of that open
18 space.

19 Is that ability to regulate the building on open
20 space land within the power of the HPC has the Montgomery
21 County ordinance is written?

22 MR. DENNIS: I would say the power of the HPC here
23 is not to forbid all development on a single identified lot,
24 but, is instead to regulate the development on that lot.
25 Some development may be appropriate. Many developments that

1 could be designed would be hopelessly inappropriate.

2 It is a question of judgment for the commission to
3 make using its assembled expertise, using the experience
4 that commission members have built up during their terms in
5 office to decide whether a specific proposal, and these are
6 very fact specific determinations, whether a specific
7 proposal for a project at a specific location is or is not
8 appropriate and a proposal which might be appropriate in one
9 location may turn out to be very inappropriate in a
10 different location.

11 That's why the fact that one house has been
12 approved is not determinative of the fact that the identical
13 design ought to be or ought not to be approved at a
14 different location. It is inherently a judgment call.

15 MR. HITCHENS: Now, are you familiar with the law
16 throughout Maryland or any other Maryland jurisdictions
17 regarding that issue of regulating -- historic preservation
18 commission or historic district commission regulating -- the
19 term that's used in the ordinance is appurtenances and
20 environmental setting?

21 MR. DENNIS: The Maryland law is naturally unusual
22 in its reference to environmental settings. That is an
23 issue which has intrigued me quite a bit over the years and
24 when the Court of Special Appeals issued its Coscan decision
25 in June of 1991 I wrote a somewhat lengthy position update

1 about it. This was a case involving the power of a county
2 planning board to impose special conditions on new
3 construction adjacent to, but, not within the boundaries of
4 a historic site.

5 And two things which the Maryland court said in
6 that case I think are pertinent to the situation.

7 MR. HITCHENS: Where was that?

8 MR. DENNIS: Prince George's County. The court
9 quoted from a 1973 decision in the Manno-Schwartz case. It
10 has long been recognized that the police power may rightly
11 be exercised to preserve an area which is generally regarded
12 by the public, pleasing to the eye, or, historically, or,
13 architecturally significant.

14 But, the more important statement was this one.
15 Building design can only be evaluated effectively in the
16 context of the environment in which the buildings will
17 ultimately exist. An important consideration in this
18 evaluation is the historical importance of not only the land
19 on which the structures will be built, but, the adjacent
20 land as well.

21 And then they cited the Manno-Schwartz case again,
22 the historical importance of an area is a legitimate
23 consideration in the zoning process.

24 What was at issue here was the question of whether
25 the Planning Board required new townhouses to be built near

1 the historic structure to be faced entirely in brick. The
2 developer challenged that. The court upheld the Planning
3 Board's authority to impose that condition, which was
4 imposed on new construction outside a defined historic area,
5 whereas in this situation, we're talking about new
6 construction within a boundary which has already been
7 legislatively determined.

8 MR. HITCHENS: So, would it be your opinion that
9 if the Maryland court in the Coscan case was willing to
10 recognize the HPC's, or, the historic preservation
11 principles on property outside a historic district that they
12 would have an effect on, that is, the resource, they would -
13 - that's it's certainly within the HPC's power to regulate
14 within a historic district?

15 MR. HUTT: I'm going to object simply because he
16 can express his own opinion as to whether he thinks it would
17 be enforceable, but, now the question is would the Maryland
18 courts enforce it and I think we're going one step beyond
19 his opinion. He's now telling us what the courts will do.
20 He may opine what he thinks they may do, but, let's at least
21 characterize it as what he thinks they may do, not what the
22 courts will in fact do.

23 MR. HITCHENS: I characterized it differently. I
24 just asked him to interpret that decision.

25 MR. DENNIS: I think I can say factually that this

1 --

2 MS. TURNBULL: But, it still goes back to what he
3 thinks the court would do or what the court did.

4 MR. DENNIS: But, I'm not going to say what I
5 think the court did. This case is factually, to my
6 knowledge, everything that the Maryland courts have had to
7 say about the protection of environmental settings.

8 MR. HITCHENS: Okay. Now, the proposals that Mr.
9 Hobbler made were evaluated by the HPC and the HPC has
10 evaluated their features in terms of the size and the
11 massing of the structures and has denied all three of them.

12 Is it within the board's power to regulate size
13 and massing of a new structure?

14 MR. DENNIS: The question is not size or massing
15 per se. The question is whether a specific proposal is
16 appropriate or inappropriate and if the size is one of the
17 key factors that makes the property inappropriate then, yes,
18 the Historic Preservation Commission has the full authority
19 to deny it.

20 But, size and massing are simply two of the many
21 factors that the HPC must consider.

22 MR. HITCHENS: And one of an unimproved lot with a
23 new structure, is that stepping into and interfering with
24 the zoning power that's been granted to the County Council
25 if they do that, if they regulate the size of a building?

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1 MR. DENNIS: The zoning power states what uses are
2 permitted on the site and gives the maximum normal allowable
3 zoning envelope, if you will, for maximum height and the
4 required setbacks for construction on the site.

5 In the context of the historic district though,
6 the zoning specifications become maximums which may be
7 reduced in specific situations if a proposed project is
8 inappropriate. And, again, it's always a contextual
9 determination. What is appropriate to a specific location,
10 it may be something that is not appropriate in another
11 location. It may be something smaller than what would be
12 appropriate than the other location.

13 This is why it would be difficult, I think, for
14 the HPC to say this is the allowable footprint on any one of
15 the lots in the historic district. What is suitable in one
16 location is not necessarily suitable in another. At least
17 that's how most historic preservation commissions would
18 operate.

19 MR. HITCHENS: Okay. All right. Based on your
20 knowledge of the county's ordinance and the guidelines
21 Vision of Kensington, the applications that the HPC had
22 before it, are you convinced that they're validly exercising
23 their powers pursuant to Chapter 24-A?

24 MR. DENNIS: Let me preface that by saying that
25 the HPC has never said to the applicant, to the owner, that

1 no construction at all would be possible on this site. Two
2 specific proposals were considered for historic area work
3 permits, both were turned down as inappropriately over-sized
4 for the location.

5 The third proposal was never considered by the
6 commission for a historic area work permit. So, in that
7 sense it has never been officially denied because it came
8 before the commission in a different posture.

9 I would then say that what the Historic
10 Preservation Commission has done is not improper because the
11 two official denials are fully within the authority of the
12 commission.

13 MR. HITCHENS: I don't have any further questions.

14 MS. BARRON: A comment. I must say what it's like
15 to sit here and listen to the definition of contextual
16 consideration. Given the fact that you don't have to
17 consider Mossburg, Schultz v. Pritz, or, Aspenwood II, which
18 means we can't apply that same criteria to our own decision
19 making on the Board of Appeals. So, I do understand. I'm
20 just envious of your power. Your attorney will explain
21 later.

22 MS. TURNBULL: Okay. Mr. Hutt?

23 MR. HUTT: I just want to clarify a little bit.
24 What statutes did you review?

25 MR. DENNIS: I think you want to look at Article

1 25-A, Sections 4 and 5 on the powers of chartered county.

2 MR. HUTT: The Expressed Powers Act for the State
3 of Maryland?

4 MR. DENNIS: Right.

5 MR. HUTT: Okay.

6 MR. DENNIS: And Article 66(b), Section 8.01.

7 MR. HUTT: 66(b)?

8 MR. DENNIS: 66(b), 8.01, Historic Area Zoning.

9 MR. HUTT: Chapter 24-A?

10 MR. DENNIS: Right.

11 MR. HUTT: Okay.

12 MR. DENNIS: Which is county.

13 MR. HUTT: Okay. Are you aware that Article 66(b)
14 is not applicable to Montgomery County, Maryland?

15 MR. DENNIS: I believe I stated that.

16 MR. HUTT: Okay. That's fine. What is applicable
17 to Montgomery County, Maryland?

18 MR. DENNIS: The Express Powers Act of Chartered
19 Counties.

20 MR. HUTT: What about the Regional District Act,
21 did you review the Regional District Act?

22 MR. DENNIS: I did not. I reviewed everything
23 that pertained to the powers of the Historic Preservation
24 Commission.

25 MR. HUTT: Okay.

1 MS. TURNBULL: I'd just like clarification. Is it
2 your contention that the Regional District Act also contains
3 information about the Historic Preservation?

4 MR. HUTT: Um, I haven't the portion here.

5 MR. DENNIS: If it does, it's not indexed in the
6 Annotated Code.

7 MR. HUTT: I wouldn't question that the Annotated
8 Code is probably poorly indexed. I'll save that for a
9 moment when I can get an opportunity to look.

10 MS. TURNBULL: I was just --

11 MR. HUTT: That's okay. I will bring it back into
12 context.

13 And who has hired you?

14 MR. DENNIS: The county.

15 MR. HUTT: The county being County Attorney's
16 Office, County Historic Preservation Commission?

17 MR. HUTT: Christopher, you're --

18 MR. HITCHENS: I guess I'm the one who's
19 authorized to enter into a contract as I was with Ms.
20 Mitten.

21 MR. HUTT: Okay. And you're being paid for your
22 testimony today?

23 MR. DENNIS: Yes.

24 MR. HUTT: On an hourly rate or flat fee?

25 MR. DENNIS: Hourly rate.

1 MS. TURNBULL: It doesn't matter.

2 MR. HUTT: Okay.

3 (Off the record discussion)

4 MR. HUTT: Sir, what I'm gathering from your
5 testimony is that each proposal that is submitted to the
6 county Historic Preservation Commission must be viewed in
7 the context of where it's physically located within the
8 historic district at Kensington and its environment.

9 MR. DENNIS: The Maryland reference to
10 environmental settings makes the Maryland law in this area
11 somewhat unusual, but, the Maryland courts have never had
12 any problem upholding actions of Maryland Historic
13 Preservation Commission.

14 MR. HUTT: Sir, that's not the question.

15 MR. DENNIS: Okay. Repeat the question. Let me -

16 -

17 MR. HUTT: The question was, the sense that I'm
18 getting from your testimony in terms, I guess, of this
19 contextual standards is that what HPC does in Montgomery
20 County when it gets a proposal is to review it on a fact
21 specific basis as to what is proposed, and what it's in the
22 middle of in terms of its environment to make its decision.

23 MR. DENNIS: Would the proposal be damaging to the
24 designated historic district; would it be damaging to the
25 features which caused that district to be designated.

1 MR. HUTT: Okay. So, now, we're going a little
2 further. We're not talking necessary about -- unless you
3 want to define -- are you defining the environmental setting
4 for this particular application, in your opinion, to be the
5 entire historic district?

6 MR. DENNIS: No, because environmental setting is
7 defined in Chapter 24-A as the entire parcel and structures
8 thereon on which is located a historic resource. And it
9 includes, but, is not limited to, walkways and driveways,
10 vegetation including trees, gardens, lawns, rocks, pasture,
11 cropland, and waterways.

12 So, it is property surrounding or adjacent to the
13 primary historic structure.

14 MR. HUTT: Okay. That's what I thought I heard in
15 your direct testimony. I'm not trying to mislead you. I'm
16 just trying to affirm or confirm that that's what your
17 testimony was that it's site specific and it's proposal
18 specific.

19 MR. DENNIS: I would agree.

20 MR. HUTT: And the determination is whether site
21 specific and proposal specific it is either appropriate or
22 inappropriate for that particular location?

23 MR. DENNIS: Right.

24 MR. HUTT: What research did you do in terms of
25 Mr. Warner and what he intended to or not intend to do with

1 how he laid out his subdivision?

2 MR. DENNIS: I did not no research in preparation
3 for this testimony. I am remembering some of what I learned
4 at the time of the Avery/Flaherty case and I have also
5 listened to everything that's been said today.

6 MR. HUTT: Okay. So, you've done nothing
7 independently in preparation?

8 MR. DENNIS: I'm not here testifying as a
9 historian.

10 MR. HUTT: I understand that, but, you did opine,
11 or, come up with some conclusions as to what Mr. Warner
12 intended to do when he did what he did with his subdivision.
13 Your testimony was that he chopped it up into 50 foot wide
14 lots so that he could sell as many lots at one time to --

15 MR. DENNIS: I don't think anyone knows what Mr.
16 Warner intended. What we know is what was done
17 historically, what happened over time, and certain
18 inferences can be made from those events.

19 MR. HUTT: What events are you basing that
20 conclusion on?

21 MR. DENNIS: The pattern of subdivision and the
22 subsequent pattern of purchases and house construction.

23 MR. HUTT: Okay. Did you look at the specific
24 sale of the three lots in question by Mr. Warner?

25 MR. DENNIS: I know that one of these three lots

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1 was not originally purchased when the other two were
2 purchased.

3 MR. HUTT: And did you do any title --

4 MR. DENNIS: But, I think I also stated that the
5 lot in question is undoubtedly a buildable lot. The issue
6 for the commission is whether the specific proposal, each of
7 the specific proposals, was or was not appropriate and was
8 or was not therefore acceptable.

9 MR. HUTT: And I believe it was also your
10 testimony that in terms of the HPC with each of those
11 proposals as it will be ultimately for this board, a
12 judgment call, based upon the expertise that they bring to
13 the table as well as the facts presented as to the --

14 MR. DENNIS: It's a fact specific determination.

15 MR. HUTT: I have no other questions of this
16 witness.

17 MS. TURNBULL: Okay. Based on the last set of
18 questions, the question I have, and please correct me if I'm
19 wrong, what I think part of your testimony was stating was
20 that Historic Preservation Commissions are made up of people
21 who have experience in certain fields and they are allowed
22 to make decisions and that typically the courts have been
23 accepting those decisions, is that right? I mean, am I --
24 and that's -- I mean, it's sort of like --

25 MR. DENNIS: Let me give you some broader

1 information. There are something over 2,000 local historic
2 preservation commissions around the country. There's a
3 national organization called the Natural Alliance of
4 Preservation Commissions which was created, I believe, in
5 1982. Their function is to product periodic newsletters, to
6 advise commissions that do annual training workshops at the
7 Natural Trust for Historic Preservation at its annual
8 preservation conference.

9 Maryland, in a sense, led the nation in developing
10 a network of historic preservation commissions. There's
11 something called Maryland Lands Historic Districts which I
12 believe was created in 1979 and the two people who were
13 instrumental in creating the Maryland group then decided
14 about three years later the time had come for a national
15 network.

16 So, a lot of players are at work trying to develop
17 information for commissions to provide training programs and
18 to help commissions understand their powers and their
19 responsibilities in exercising their procedures carefully.

20 MS. TURNBULL: Okay. I guess I'm having
21 difficulty trying to figure out how I wanted to say what I
22 was about to say which is, basically, what you are stating
23 to us is that we should recognize that the Historic
24 Preservation Commission in Montgomery County, for example,
25 is being experts in the field and we should agree with their

1 decision?

2 MR. DENNIS: I'm not saying --

3 MS. TURNBULL: Am I hearing that?

4 MR. DENNIS: -- that you have to recognize that
5 they're experts in their field. They have a considerable
6 accumulated amount of experience.

7 MS. TURNBULL: Okay. Go ahead.

8 MR. DENNIS: That may or may not make them in your
9 eyes experts, but, --

10 MS. TURNBULL: It's probably the wrong word that
11 we've been referring to today, but, they have -- they are
12 chosen because of their experience; that it's set up so they
13 have to have an interest. There has to have someone --

14 MR. DENNIS: True. But, they're not paid even by
15 the hour.

16 MS. TURNBULL: They're not paid. They have to
17 have certain experience, they have to have certain knowledge
18 and trust, whatever, right? And that basically what the
19 gist of your testimony has been is on that subject, on how
20 they come up with their decision.

21 MR. DENNIS: They're also fortunate in that unlike
22 a large number of commissions in smaller communities they
23 actually have a paid staff. A surprising number of
24 commission have no paid staff, or, they have part-time paid
25 staff. A commission with staff hopefully has a staff which

1 helps filter information so that by the time the application
2 comes officially before the commission it is considered
3 complete. The staff had done an initial review. The staff
4 review is in no way binding on the commission, but,
5 obviously, a working relationship develops.

6 MS. TURNBULL: Okay. The next question then is,
7 you're not really talking about the specific, the detail on
8 the decision that they've made in this case, is that
9 correct, or, not?

10 MR. DENNIS: Excuse me, I don't understand the
11 question.

12 MS. TURNBULL: Okay. That you -- that you're --
13 that what you're saying -- it's sort of like in general and
14 I'm going to use very simple layman's terms, in general, the
15 Historic Preservation Commissions in general make good
16 decisions because they are based in this particular case in
17 Montgomery County we have a paid staff and there's a lot of
18 information available to them and they can do that.

19 MR. DENNIS: Sometimes they can make bad
20 decisions.

21 MS. TURNBULL: That's the question that I have.
22 Because if you looked at this from the standpoint of this
23 particular decision do you have any position on the decision
24 they made in this case? Do you have background about that?

25 MR. DENNIS: You say this case. There are three

1 separate proposals. Now, which one do you want to talk
2 about?

3 MS. TURNBULL: I'm talking about the one which
4 they appealed, which is having to do with the building
5 permit, with the historic preservation permit.

6 MR. DENNIS: Okay. Because I've looked at all
7 three files and there are three different plans.

8 MS. TURNBULL: They are appealing a specific
9 historic work permit.

10 MR. DENNIS: Application.

11 MR. HUTT: Application submitted in April '97.

12 MR. DENNIS: My impression in looking at the file
13 was that the applicant is attempting to build a very large
14 house to maximize the price at which the completed house can
15 be sold but that the house proposed is too large for that
16 location; that a smaller house at that site could be
17 approved and would be salable.

18 Olga Hirshorn in the District of Columbia lives in
19 something that has been nicknamed the mouse house. It's the
20 back wing of a structure near the corner of Massachusetts
21 and Florida Avenues. Residences come in many sizes and many
22 shapes.

23 MS. TURNBULL: When you characterize it as a large
24 house, how big of a house is this?

25 MR. DENNIS: In terms of square footage I can't

1 remember. I think when I looked at the floor plan it was 5
2 bedrooms.

3 MS. TURNBULL: But, a bedroom could be 3x3 with a
4 closet in Montgomery County. If it has windows and a closet
5 it could be a bedroom. Are you saying --

6 MR. DENNIS: The first design I think is the one
7 that has, I think of as the tower along the side and the
8 tower is a very visible feature because there is a bathroom
9 on the third floor.

10 MS. TURNBULL: So, that you can --

11 MR. DENNIS: The -- -- was being stacked which is
12 the logical way to do it.

13 MS. TURNBULL: But, as far as what we're doing
14 today on the historic preservation work permit for a house
15 at this location, you couldn't tell me how many square feet
16 it is, how big it is? I mean, you're saying generally
17 speaking it's a large house and you're not sure which one
18 and this is what sort of making us nuts here.

19 MR. DENNIS: All I've got to go from on that would
20 be the cover sheets from the three staff reports which do
21 not provide that information.

22 MS. TURNBULL: Okay.

23 MR. DENNIS: The problem with concentrating on
24 single numbers like the square footage of the footprint or
25 the height of the structure or the square footage is that

1 you can't really separate any one from the other. That's
2 why people are talking about the balloon as the metaphor.

3 The footprint expands then possibly you've got a
4 lower structure in order to retain the volume that the
5 builder would like to put in the house and this was the
6 issue in the Avery/Flaherty case with two proposed houses on
7 the side yard lots.

8 The builder wanted the houses to be as large as
9 possible.

10 MS. TURNBULL: I want to talk about this case
11 though and basically what I'm trying to hear here is how --
12 is whether or -- and based on your knowledge on historic
13 preservation, which is what we have recognized you as an
14 expert in historic preservation law, what you know about
15 this decision because this decision is what is -- what has
16 been appealed and that is what is the crux of this case.

17 We very much appreciate the information you've
18 given us in the global --

19 MR. HUTT: Excuse me, I don't think that the
20 witness has -- I'm finding him a copy of a document that
21 help him. Please don't whisper in his ear facts which I'm
22 not saying you are whispering facts, but, let him find it
23 himself.

24 MR. HITCHENS: And I would also add that I think
25 this is the first review that he's doing of this proposal

1 because I did not hire him to review these proposals.

2 MR. DENNIS: I looked quickly at it last week.

3 MS. TURNBULL: I'm sorry?

4 MR. HITCHENS: I was just commenting, I think this
5 is the first time he's reviewed these proposals specifically
6 and we didn't hire him to review this proposal.

7 MS. TURNBULL: Then in fact if you have -- if that
8 is not the case, that's fine too.

9 MR. DENNIS: I looked at all three proposals, but,
10 I was not expecting to be asked to talk about them.

11 MS. TURNBULL: That's why -- basically, I wanted
12 to distinguish your testimony from the standpoint of what
13 your -- what you were basing -- what you had background in,
14 the background clearly is the strength and viability of the
15 Montgomery County Historic Preservation Commission in the
16 context of historic preservation commissions.

17 MR. DENNIS: I think when you asked me about this
18 proposal you're asking for an opinion which is getting
19 beyond what I've been qualified as an expert for.

20 MS. TURNBULL: And that's fine. What you've been
21 qualified as an expert for. So, that basically the value to
22 me of your testimony is showing under how the Historic
23 Preservation Commission comes to their opinions in general,
24 not necessarily in this case.

25 MR. DENNIS: This commission is a very typical

1 historic preservation commission in terms of the ordinance
2 under which they operate and the powers which they exercise.

3 MS. TURNBULL: Okay. And that's really all that -
4 -I think we're in agreement here. I just wanted to make
5 sure on how much background you had about this specific case
6 and you stated --

7 MR. DENNIS: I have an opinion, it's just that I'm
8 not sure that you can give them much weight.

9 MS. TURNBULL: Okay. Go ahead.

10 MS. MAYER: You're not here to talk about this
11 particular case, just the expertise of the commission?

12 MR. HITCHENS: We've had, I think, probably more
13 than almost than we wanted to hear, I guess, of comments on
14 these particular cases and by the commissioners, by the
15 staff, and, right, he came to provide information on
16 historic preservation law and not a particular case.

17 MS. TURNBULL: Right. And I appreciate that. I
18 just wanted to get the clarification because the decisions
19 we make have to be in the context of the historic
20 preservation law and, but, at the same token they also mean
21 that we then have to lean in on has -- has the Historic
22 Preservation Commission in this case made the decision that
23 we would make based on the same --

24 MR. DENNIS: A responsible decision.

25 MS. TURNBULL: Yes.

1 MR. DENNIS: Is their decision supported by the
2 record and is it based on the ordinance and the guidelines
3 that you're supposed to be administering.

4 MS. TURNBULL: Exactly.

5 MR. HITCHENS: I have one final question on that
6 last statement. Mr. Dennis, in this case, the Carey Hobbler
7 appeal, throughout the afternoon I think you heard various
8 people opine about, or, offer as one of the reasons for the
9 denial of this application that it would have a detrimental
10 effect on the district, the historic district in Kensington.

11 Is a detrimental effect on a district a valid
12 consideration for a historic preservation commission for
13 this Historic Preservation Commission to consider?

14 MR. DENNIS: Yes. It can be a detrimental impact
15 on the environmental setting. It can be a detrimental
16 impact on the streetscape of Baltimore Street, or, it could
17 be a detrimental impact on some larger portions of the
18 district. There's been much discussion about what is
19 visible and where and given the open character of this
20 neighborhood a large structure at this location would be
21 visible not just from Baltimore Street but from the street
22 behind.

23 MR. HITCHENS: I have no other questions. That
24 concludes the county's case.

25 MS. BARRON: One question would be what year did

1 you graduate from Duke School of Law?

2 MR. DENNIS: 1974.

3 MS. BARRON: Thank you.

4 (Off the record discussion)

5 MR. RITZMANN: I'm Robert Ritzmann. I'm a Council
6 member of the Town of Kensington. I really don't want to
7 lower your hourly rate.

8 (Off the record discussion)

9 MR. RITZMANN: But, I did think I would like to
10 make a few comments about the town's interest in the
11 historic preservation, what it's done for our town, and what
12 we think of the Visions of Kensington Report.

13 Prior to the formation of the historic district in
14 Kensington, we were sort of wobbling around. By that I mean
15 properties were, some were being fixed up, some were being
16 let run down and on the county's passage of the ordinance
17 for the Town of Kensington it did a tremendous amount to
18 stabilize the property in the town.

19 One of the principal things that we wanted to
20 stabilize was the historic victorian garden setting that was
21 talked about so much here today. We were particularly
22 interested in not seeing a town developing to being built on
23 every 50 foot lot. We have taken a firm interest in this
24 throughout the years. We -- sort of an aside, the town
25 enacted a 10 foot side yard ordinance. This applies outside

1 of the historic district as well as inside, but, you heard
2 about 25.

3 In order to preserve more open space around our
4 general town we deviated from the county's 8 foot side yard
5 to a 10 foot and that's been upheld and we preserve it. So,
6 we appreciate very much the value of having open space.

7 We were delighted when the Vision of Kensington
8 long awaited preservation plan was prepared. It now
9 provided us with some factual information upon which the
10 town could consider new projects as they came into being.
11 The Town of Kensington, its Mayor and Council, adopted this
12 report. We found it extremely valuable and that as
13 applications have come before us it has given us something
14 to form our opinions and in this case we've appeared at
15 every one of the Historic Preservation Commission's meetings
16 and without, without fail and supported the HPC's staff and
17 Historic Preservation Commission.

18 We appreciate very much the work that the Historic
19 Preservation Commission has done in supporting Kensington.
20 We believe that the Historic Preservation District is an
21 important part of Kensington and not only part, is only an
22 important part of Kensington, but, it's an important part of
23 creating that great Kensington Hall that we value as the
24 Town of Kensington.

25 There are some citizens here from the Town of

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1 Kensington and I think would like to speak and I think at
2 this point if there are no questions I'd like to turn it
3 over to them.

4 MR. HUTT: I just have one question. Councilman,
5 when did the Town Council adopt the Vision of Kensington?

6 MR. RITZMANN: We adopted it in May of 1997. We
7 used it, we used it immediately upon its issuance in
8 providing guidance. We did not formally adopt it until we
9 were sure that the Historic Preservation Commission had
10 given it to us in draft form and we wanted to adopt it
11 immediately but we didn't think we should do it ahead of the
12 Historic Preservation Commission.

13 MR. HUTT: Thank you.

14 MS. TURNBULL: I'm sorry, Councilman Ritzmann,
15 that I missed the beginning of your testimony and I just
16 wanted to ask a question. There was a letter in the file
17 from the Town of Kensington on this case and I just wanted
18 to make sure that the issue and it's in support of the
19 Historic Preservation Commission decision and I want to make
20 sure that it is based on the work permit for the structure
21 as it was planned. You see what I'm saying?

22 MR. RITZMANN: Yes.

23 MS. TURNBULL: That because there's been confusion
24 throughout these hearings as to what exactly what was, was,
25 was being requested and the issue that I have is that in the

1 letter it talks about what the criteria are and basically
2 what, what -- I just want to be clear what the letter says
3 is that the report developed certain criteria and the
4 maximum lot coverage, minimum of two lots, and minimum
5 required setback and basically is is the position of the
6 Town therefore that anything that doesn't meet those three
7 criteria would not be something that would be found
8 acceptable by the --

9 MR. RITZMANN: Largely we feel these criteria are
10 very valuable and are the criteria we are looking for in
11 this case of the criteria in the primary district. There
12 are -- --.

13 MS. TURNBULL: Okay. Thank you very much. Anyone
14 else have any questions? Thank you. Whoever would like to
15 come up.

16 DR. LOSSING: I'm Dr. Lossing. I live in a house
17 next door to the subject property on the west side, the
18 house of notorious group of houses. I'm going to try to
19 limit my remarks to facts and not opinions.

20 The fact of the notorious greenhouses is that they
21 were built a long time ago. Funny enough, they came from
22 Rockville. These were the Gude greenhouses on Gude Drive.
23 I bought them from Trammel Crowe and preserved them from
24 demolition before they built that warehouse. They moved
25 into my property.

1 I rebuilt it with my own hands. I was told by the
2 Gudes that they were old when they rebuilt them on their
3 property during the depression. And the rumor was they came
4 from St. Elizabeth's Hospital, so, it may be that these
5 notorious greenhouses are older than the whole Town of
6 Kensington, including the subject historic property.

7 They're made of cypress which is sort of immortal.
8 The greenhouses perhaps support my ability to testify about
9 horticultural issues and it happens that I was on a local
10 advisory committee of the Town of Kensington back in the
11 80's when I was the tree committee and my assignment as the
12 tree committee was to go around and look at applications for
13 modification or removal of trees with regard to advising the
14 HPC about our local trees.

15 So, I did some post-mortems on trees around town,
16 some were dead and some were sick. What I want the
17 commission to know and something I have consistently
18 testified with the HPC about the subject property is this
19 red bud tree pointing, there's a wonderful red bud tree on
20 this lot that was seen on the pictures and on the wall,
21 which is the top one up there. It's a big tree. How big a
22 tree is it, is it falling, is it bigger than every other red
23 bud tree in Kensington and this -- I've done the picture of
24 every other single one, there's 25 in the Town of
25 Kensington, 8 in the historic district, is much bigger than

1 any other red bud tree in the Town of Kensington.

2 Not only it's bigger than any red bud in Garrett
3 Park, bigger than any red bud in Rock Creek Park all the way
4 down to Watergate, it's bigger than any red bud in Mt.
5 Vernon and I went to Mt. Vernon a couple of weeks ago
6 because I read some books on trees referenced Mt. Vernon.
7 It's famous for its red buds that George Washington planted,
8 bigger than those, well, to the ones he planted, but, they
9 would have been replanted and still bigger than any red bud
10 in Mt. Vernon.

11 I called a Montgomery County forester. This red
12 bud tree is 2 feet taller than the champion red bud tree in
13 Montgomery County which is in Bethesda and he didn't know
14 its address. I had to go visit this tree. This may be the
15 biggest red bud in Montgomery County. Beyond that, the
16 county forester is not aware of any other specimen champion
17 red bud tree in the State of Maryland because there isn't
18 one. As far as he knows the one in Montgomery County would
19 be the champion of the State of Maryland unless there's some
20 other county like Calvert that's got their own secret red
21 bud tree.

22 So, I invite the attention of the commission to
23 this tree. First of all, there's an enormous tree. It
24 happens that the guy told me that on spruce day or arbor day
25 that they're inviting members of the state to nominate

1 specimen trees, so, it's reasonably known that this is the
2 specimen tree, the champion red bud in the State of Maryland
3 which surely increases the value of the lot.

4 The second thing is in light of the discussion
5 came up about the Flemming property, Flemming addition over
6 on Washington Street, a moment in silence because there was
7 a specimen magnolia tree on that block that he promised to
8 save and, guess what, he crushed that tree, he crushed the
9 roots of that tree, and it died and the problem is that it's
10 awful hard to save a big, big tree like that. The roots go
11 all over the place. When you get to ride around on backhoes
12 and steam shovels and all these big construction things the
13 boom trucks, you're going to kill the roots on that tree and
14 they go along way.

15 Now, not once has any submission been made to the
16 Historic Preservation Commission as a horticulturist to
17 warrant or guarantee that this tree will be saved, the
18 biggest tree in the Town of Kensington.

19 MS. MAYER: Could you let us see that, it's kind
20 of bending that way.

21 DR. LOSSING: There are trees all over town. It
22 may be that in the Town of Kensington there are more red
23 buds than any other flowering tree.

24 (Off the record discussion)

25 DR. LOSSING: I didn't have a big poster made.

1 (Off the record discussion)

2 MR. RITZMANN: I'd like to add that earlier we saw
3 plan 1 and plan 1-A and I think Carey Hobbler flipped it to
4 try to see if we couldn't do something to save this tree.

5 DR. LOSSING: The first submission would have run
6 the driveway right over this tree until Mr. Hobbler flipped
7 the footprint to make a cul de sac around the tree which
8 brings me to another issue of historic preservation. This
9 is the biggest red bud tree in the Town of Kensington and
10 you know that if somebody applied to build a fence 30 feet
11 high to fence that tree off the division of the town you'd
12 never get a permit for a fence.

13 What's the difference between building a fence to
14 screen this tree or building a house? And if you look at
15 these different views of certain elevations all of them
16 screen this magnificent tree from public view in one
17 direction or another.

18 Limiting again my statements to fact, it is a
19 fact that a man in Saudi Arabia can have four wives but it's
20 a fact that if this man comes from Saudi Arabia and moves to
21 the United States he can't have four American wives, not at
22 the same time. When he comes to this country he waives his
23 freedom to have four wives at the same time. When I moved
24 to Kensington I waived my right to have a chicken.

25 Now, it used to be in the Town of Kensington

1 historically on my lot there were chickens because they had
2 a chicken coop back where my -- -- is now and why they say
3 it so sterling. Well, there used to be a goat that lived up
4 at the corner of Mills and Connecticut in the backyard, but,
5 sometime in the 60's, as recently as the 60's, Montgomery
6 County ordinance was passed, you can't have domestic
7 livestock so there goes the chickens and the goats.

8 The point is that the county or State to make a
9 law that changes your freedoms to have a number of wives,
10 or, chickens, goats, or, to put aluminum siding on your
11 house in Kensington. The Town of Kensington historic
12 district you can't side over aluminum siding. It happens my
13 house is sided over with stucco which was the aluminum
14 siding of the 20's, but, if I got sick of that stucco I
15 couldn't side over that.

16 Mrs. Ahearn's house is sided over with a cedar
17 shake over the original clapboard. She couldn't side over
18 that cedar shake with aluminum siding. She's lost her
19 freedom to aluminum side her house. You lose freedoms when
20 you move some places. If I wanted four wives I would go to
21 Saudi Arabia.

22 If you think about it, the appellants are experts
23 in the field of development. Mr. Hobbler is an expert
24 developer and knows all about historic districts. He knows
25 all about the law, he knows all about historic commissions

1 and how they are made up not of attorneys, but, real people
2 who have opinions and are trying to make applications of
3 law.

4 Mrs. Ahearn is an expert in the field of realty.
5 She is a licensed realtor in Montgomery County. She knows
6 these things. Both individuals acquired an interest in this
7 property subject to the historic district and we all know
8 that the Historic Preservation Commission in Montgomery
9 County was a little notorious even before 1990 because there
10 are some properties such as the one over on Prospect Street
11 which was desperately developed, desperately desired to be
12 developed by, by, what's his name, -- well, Frank Murray,
13 but, the realtor was an old short guy who became before us -
14 - his name was Carter -- not Carter Brown -- whatever his
15 name was -- you remember him -- well, in 1989 he came and he
16 wanted to shoe horn this sort of dormitory kind of a thing
17 in between two historic resources and the LAC said no, go
18 away. He never came back.

19 You waive your freedom, you waive your rights when
20 you go someplace like the US of A for the number of wives.
21 For the town of Kensington for the number of chickens. I
22 waived my right to have a chicken, so I bought a parrot.
23 The parrot was \$600. I've still got the parrot. The
24 chicken would have been a buck. It's a taking of my rights
25 to have a cheap bird, but, that's what happens when you move

1 to town.

2 If I wanted to have a chicken I'd get a place
3 someplace else.

4 MS. BARRON: Come to my neighborhood.

5 DR. LOSSING: Where do you live?

6 MS. BARRON: I live in Chevy Chase and there are
7 properties with chickens in the backyard.

8 DR. LOSSING: Chevy Chase Village?

9 MS. BARRON: Well, no, across the street on the
10 back side of the village.

11 DR. LOSSING: Well, the truth is that Chevy Chase
12 Village you have waived your right to have a fish pond
13 because my next door neighbors had to go to Buttonhole
14 Brown, the same as the surgeon, and say they had to rip up
15 his fish pond because it was against the covenants of Chevy
16 Chase Village. That's what makes it 52.

17 Well, history, the appellants have cited history,
18 what about the mind of Brainard Warner for 50 foot lots.
19 Did Brainard Warner have chickens and goats? I don't know.
20 But, the thing is, nowadays times have changed and it's not
21 a who is the victim. Is the man who comes from Saudi Arabia
22 who gets here, he's a victim because he can't have four
23 wives. He came here of his own free will. He should have
24 known how many wives he was going to have. When you go to
25 the Town of Kensington, the historic district, and you buy a

1 property with an eye towards development you have a
2 responsibility to check out the possible hazards and if you
3 decide to throw the dice and think maybe the HPC will
4 approve a monster house on your lot seven years later when
5 the covenant not to develop the lot expires which is part of
6 the original sales contract, it's a roll of the dice.

7 I mean, now it's up to this commission to decide
8 how the dice will fall. I make myself available for
9 questions.

10 MS. BARRON: Are you an M.D. or a Ph.D.?

11 DR. LOSSING: Neurologist, headache doctor.

12 MR. HUTT: I just have one question, doctor, and
13 that is did you physically measure the red bud on --

14 DR. LOSSING: Yes, sir. I measured her red bud
15 and I also measured red buds at Mt. Vernon, every single
16 one, and also I scored all the red buds up and down Rock
17 Creek Parkway. I guess I might be the living red bud
18 expert.

19 MR. HUTT: You can put that on your resume. Did
20 you ask permission from Mrs. Ahearn to --

21 DR. LOSSING: I went over there in the middle of
22 the night.

23 MR. HUTT: If that's what your testimony is,
24 Doctor.

25 DR. LOSSING: It is.

1 MR. HUTT: You snuck over there in the middle of
2 the night. Okay. Thank you.

3 DR. LOSSING: It was about 11:30.

4 MR. HUTT: 11:30 in the evening, okay.

5 DR. LOSSING: But, in the context of the --

6 MS. TURNBULL: You know what, can I just say
7 something to that, you understand that we have laws in
8 Montgomery County about sneaking over into people's yards in
9 the middle of the night, so, you may not be allowed to have
10 four wives, you're also not allowed to sneak over into your
11 neighbor's yard at 11:30 in the morning and measure --

12 DR. LOSSING: I've been getting my dog out of her
13 yard for 22 yards and I've been looking at that red bud for
14 22 years and, as a matter of fact, Mr. Hobbler asked me
15 subsequently if it would be all right for him to come over
16 to my land and survey my property building by building and I
17 said, if the reverse is true and there was no reply.

18 MR. HUTT: But, he did ask your permission before
19 he went onto your property.

20 DR. LOSSING: Well, he's not my next door
21 neighbor.

22 MR. HUTT: I'm not saying that your request of him
23 was unreasonable. I'm merely saying you didn't -- he did
24 come to you requesting permission.

25 DR. LOSSING: Well, not to be forgetting the

1 reason I sneaked over there to measure it is that he said
2 that that red bud wasn't even on the subject lot and in fact
3 I proved -- I proved with my tape measure there was four
4 feet on the subject lot. So, doesn't a citizen have a right
5 to disprove his testimony before a government body?

6 MR. HUTT: Did you go with a flashlight?

7 DR. LOSSING: Full moon.

8 MR. HUTT: Full moon.

9 (Off the record discussion)

10 MS. TURNBULL: Okay.

11 MS. WILKE: I'm Helen Wilke and I just want as a
12 footnote to that discussion to put it in the fact that this
13 has been a neighborhood for years and years where people cut
14 through everybody else's yards. I live behind Dr. Lossing
15 and I'm also an adjacent property owner to the subject
16 property and for years what people have done, and certainly
17 Dr. Lossing has lived there enough years that it's not a
18 foreign notion, it's a new suburban notion it seems to me,
19 or, urban notion that, you know, you have to ask your
20 neighbor's permission. I mean we all grew up cutting
21 through people's yards and it was, you know, just --

22 MS. TURNBULL: Having been to your neighborhood I
23 was wondering if the penguins walk through your yard and the
24 moose and the elk.

25 MS. WILKE: I have many eccentric neighbors. Of

1 course, I'm not one of them.

2 I have come here today to speak as mostly as in my
3 capacity of the Kensington Land Trust, but, I also want to
4 mention that I am an adjacent property owner as I mentioned
5 a moment ago and that my house, if you look through the
6 subject property on the right, my house is the sort of
7 grayish house that you see at the back.

8 I want to make two points on that count. One is
9 that my own house which was built in 1905, without its wrap
10 around porch, in other words, -- -- around 950 square feet
11 and with the wrap around porch it comes out to around maybe
12 1,200-1,300 square feet and I have a problem that exceeds
13 capacity. I mean, mine is one example that exceeding
14 footprint and scale and massing, those of existing historic
15 resources, and another point is I'm not sure it's been made
16 before that between Prospect Street and Baltimore Street the
17 land builds in trust and the third proposal that was made by
18 the applicant was perhaps pushed back large in scale and
19 massing larger than my own house, but, which then sits on
20 this promontory towering over other surrounding properties.

21 I also want to point out that I am an AIA
22 registered architect licensed in Maryland, Virginia,
23 District of Columbia and I'm interested in issues of scale
24 and massing, setbacks, and I want to make a point which I
25 didn't hear made in this hearing which is that houses such

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1 as the Ahearn property, Mrs. Brown's house, and my own
2 house, which you will see that occupy two, three lots, often
3 were set back from the street much farther than other more
4 densely situated houses in Kensington.

5 So, that, within that horseshoe configuration that
6 I'm part of and this subject house is part of, those houses
7 were all set back pretty uniformly around 50 feet from the
8 street and the point is that all these houses had a certain
9 amount of space around them historically, not just from side
10 to side, but, if you're looking from a streetscape
11 standpoint, yes, there is a rhythm of house to space and any
12 house placed in this space would disturb that rhythm of
13 house to space, but, also it was -- the object in the
14 landscape.

15 In other words, looking at it, again, that balloon
16 idea versus, you know, looking at it in terms of a
17 footprint, two dimensional idea. So, I think that's a fairly
18 important distinction. If you look at the more densely
19 situated houses in Kensington usually they are 25 feet from
20 the street and that dictates a smaller scale, a greater
21 density, more town-like, more urban approach, you know,
22 creation of the street edge.

23 Now, as president of the Kensington Land Trust I
24 wanted to talk to you today about the fact the Kensington
25 Land Trust grew out of a land use committee appointed by the

1 Mayor of Kensington in 1991 to study issues of open space.
2 This was in the wake of two fairly acrimonious applications,
3 the Avery/Flaherty application and then on Prospect Street
4 there was Mr. Murray's proposal for two in-fill houses, one
5 which resulted ultimately in the big house that you saw in
6 the 122 foot wide being built.

7 So, this land trust grew out of this land use
8 committee as being the most effective proactive way to
9 establishing an organization within the town to provide
10 alternate uses, alternate economic solutions to developing
11 land.

12 We have been in a small town a fairly low key
13 organization. We publish a newsletter twice a year. We are
14 a membership organization with 501-C-3 and we exist
15 primarily for the purpose of educating the public about the
16 importance of land -- of open space in Kensington and also
17 for the purpose of receiving donated conservation easements
18 on open space.

19 We have not gone out actively and solicited them.
20 I'd say that the single greatest reason for that is a lack
21 of committed energy, time, expertise on the part of our
22 volunteers. However, we have spoken at previous hearings on
23 this matter and have offered and still offer to sit down
24 with the owner of the subject property and talk about
25 creative ways to think about creating a win/win situation

1 for the town that is going to create some economic benefit
2 for the owner.

3 I don't know the solution. We have recently
4 retained an attorney to help us look more closely at some of
5 the issues, you know, to look at our sample conservation
6 easement too. I've spoken with this attorney about perhaps
7 sitting down if the owner's interested, the Kensington
8 Historical Society is interested in becoming involved in
9 saving this piece of land, there are private land owners who
10 are interested in maybe, you know, let's put our heads in
11 there, there may be some -- in fact, some private funds used
12 in the equation. There's a lot of interest in saving this
13 particular piece of land and that's how deeply felt the
14 issue is.

15 I personally feel that to build on this piece of
16 land is a grave mistake in terms of precedent for the Town
17 of Kensington. I recognize that I haven't the right, no one
18 has the right to say that the owner may not build on this
19 piece of land, but, I do with all my heart believe that it
20 is a mistake to build this piece of land.

21 The cost of that green space has implications not
22 only in the immediate vicinity of that property, but, for
23 the entire town in terms of damaging the garden park's
24 legacy that so many have worked so hard to preserve for so
25 many years.

1 My husband and I placed a covenant -- I understand
2 there's been some discussion about this earlier while I was
3 gone, but, we did place a covenant in our deed when we
4 bought our property because our neighbors -- they are our
5 neighbors still -- the people who raised their children
6 after 35 years moved to a smaller house and they expressed
7 their concern that we weren't snaky, sleazy people, because
8 it's happened before; people have moved in Kensington, one
9 of them said they'd never build the property and then went
10 ahead and sold it to builders. It has happened.

11 So, we voluntarily wrote in the covenants to not
12 develop. So, I guess, the other remaining point I would
13 make is that there's a -- -- Kensington open spaces. It's
14 not the object of the houses themselves that, that alone
15 make Kensington a special historic district, but, the open
16 space which is part and parcel of that entire package. You
17 can't separate one from the other.

18 The houses are very special houses just like in
19 Takoma Park and Garrett Park and many other places. In
20 Kensington we value our open space so much that we have
21 created a land trust to state openly and publicly it is
22 important to preserve it.

23 MS. TURNBULL: Okay. Any questions? Thank you
24 very much. I'm sorry, go ahead.

25 MR. HUTT: What's your address?

1 MS. WILKE: 2153 Prospect Street.

2 MR. HUTT: And just out of curiosity the covenant
3 you've just described expires when you sell your property,
4 correct?

5 MS. WILKE: I believe that's correct, but, my
6 husband knows how I feel on the subject obviously and we
7 have spoken doing a conservation easement on our own
8 property, but, it hasn't been necessary.

9 MR. HUTT: But, you have not done that?

10 MS. WILKE: We have not done that.

11 MR. HUTT: But, you've suggested that perhaps Ms.
12 Ahearn could make available to herself. You and your
13 husband have not chosen similarly to avail yourself of that
14 suggestion.

15 MS. WILKE: Well, guess what, I've gotten him to
16 agree to, if Mrs. Ahearn would be willing to put one on her
17 property we'll do it on ours.

18 DR. LOSSING: I'd be willing to sign a covenant I
19 wouldn't put any more greenhouses.

20 MR. HUTT: I think it's a little too late, Doctor.

21 MR. HITCHENS: I believe Mr. Peoples would like to
22 speak of the Kensington Historical Society.

23 MS. TURNBULL: Thank you.

24 MR. PEOPLES: Probably due to the late hour. I'm
25 president of the Kensington Historical Society. My name is

1 Barry Peoples. I live at 10030 Kensington Parkway. I'm also
2 a board member of the LAP, Local Advisory Panel to the HPC
3 and Barbara Wagner, who is Councilman Wagner's wife, who
4 lives across the street, had to go to work so she could not
5 speak, but, would like me to speak on behalf of both.

6 The Kensington Historical Society has 212 members
7 and is one of the largest groups in Kensington. We moved to
8 Kensington specifically because of the garden environment.
9 We even -- I went before the board and asked permission to
10 get funding to approach Mrs. Ahearn and to have the home
11 appraised and land appraised such that maybe we could work
12 something out for her.

13 Unfortunately, both she and Mr. Hobbler denied our
14 request to spend our funds as well as unfortunately Mr.
15 Hobbler stated to me in a meeting that the HPC, that he
16 understood that they would turn him down, but, that the
17 Board of Appeals did not care for the HPC and would find in
18 favor of the builder.

19 I believe in the board and appreciate your hard
20 work.

21 MS. TURNBULL: Excuse me. Thank you very much.
22 Does anyone have any questions? Okay. No? Okay. Thank
23 you very much, Mr. Peoples.

24 MR. RITZMANN: Well, in conclusion of the town's
25 testimony I would like to point out that at the first

1 meeting several citizens wrote letters and I believe that we
2 turned these into the board, which, again, indicates the
3 degree of support for the citizens for preserving this open
4 space. Thank you very much.

5 MS. WILKE: Excuse me, I'm sorry, that reminded
6 me, I forgot, I have some letters also from two people who
7 came, two neighbors who came to the last hearing and were
8 not able to attend today's submitted a statement as well as
9 an adjacent property owner and a next door neighbor
10 submitted a letter which I will submit to you all and, last,
11 but, not least, a letter from Judith Robinson, who lives on
12 Tray Street, which she's an architectural -- -- her
13 expertise. I called her about this case earlier when this
14 case was scheduled earlier and asked her to render an
15 opinion. I offered to pay to do this and she did it pro
16 bono.

17 So, I would like to submit this letter. It may be
18 part of the record, I'm not sure, because I submitted it to
19 Robin a while back and she wasn't sure if she submitted it.

20 MS. TURNBULL: The letters of support I'll include
21 as 23.11 because we have others that were 23 and I'll just
22 keep adding that on and then for the treasurer's report. If
23 it doesn't already have a number we'll include that 27.

24 MR. HUTT: I would only object in the sense that,
25 well, I have a different opinion towards neighbors in terms

1 of expressing their opinion by letter. She's expressing a
2 professional opinion to this board without any opportunity
3 for me to examine the basis for her conclusion, the basis
4 for her opinion, and I'd like to defer to your judgment as
5 to whether you wish to admit it.

6 I just want to go on the record that I think that
7 kind of opinion is a little stretching it in the sense of
8 being an interested person who may submit something in
9 writing to this board.

10 MS. TURNBULL: I think that there is a point where
11 people can solicit views from others and it's been
12 recognized in the file as such, as a letter of support,
13 versus an opinion, a professional opinion.

14 DR. LOSSING: With the permission of the board I
15 will submit a copy of my measurements of the various red
16 buds. They've all seen a copy of this because I gave the
17 same thing about the -- --.

18 MR. HUTT: Before you close the record today, I'd
19 just like to close the loop on two things. First of all, --

20 MS. RAUFASTE: Did you want me to speak today, or,
21 would you rather I wait? I'll be here at the next time as
22 well.

23 MS. TURNBULL: If you're going to be here the next
24 time that would be great.

25 MS. RAUFASTE: That's what I thought. I have

1 three letters that I brought from neighbors. Do you want me
2 to turn those in.

3 MS. TURNBULL: Why don't you turn those in and
4 those will be 23.14, 15, and 16. Ms. Raufaste is giving her
5 name to the reporter. Thank you. Okay.

6 MR. HUTT: I want to make two comments. First of
7 all, I want to -- I said I'd find the reference to the
8 Regional District Act, which, I think, relates to the
9 question asked of Stephen Dennis as to whether he reviewed
10 it and he said he did not.

11 Referring the board to Article 28, Section 8-
12 101(c), powers to regulate the protection of historical,
13 archeological, etc. sites, structures, or districts in order
14 to protect the historical, archeological, architectural, and
15 cultural heritage of Montgomery County and Prince George's
16 County comprising a regional district and to preserve and
17 enhance the quality of life in a community in addition to
18 any power or authority of district councils to regulate by
19 ordinance planning, zoning, or, subdivision, each district
20 council may provide by ordinance regulations for the
21 protection, preservation, and enhancement of sites,
22 structures with their appurtenances in environmental
23 settings, or, districts of historical, archeological,
24 architectural, or, cultural value designated on the adopted
25 and approved general plan.

1 Enaction and application of these regulations
2 shall be reasonable and appropriate for the purpose of this
3 section and are limited to the protection, preservation, and
4 enhancement of the exterior of the sites, structures, or
5 districts and if such action constitutes a taking of private
6 property provisions shall be made for just compensation.

7 I'm just closing the loop that there was another
8 statute that I referred to. The only other comment that I
9 have is in regards to the question of him in terms of your
10 deference to decision of the Historic Preservation
11 Commission and Mr. Dennis spoke about whether that decision
12 was well reasoned based upon evidence of record, etc., etc.

13 I would only bring to your board's attention which
14 I clearly saw in the first transcript that as a de novo
15 hearing you are in fact sitting in the seat of the Historic
16 Preservation Commission. Whatever they decided, whatever
17 they considered is not the same standard as one of your
18 decisions went across the Circuit Court where it was based
19 upon a fairly debatable standard. This is not a fairly
20 debatable appeal and I just wanted to correct that.

21 Hopefully, that impression is not your impression.
22 With that, just waiting for the next hearing date.

23 MS. TURNBULL: Okay.

24 (Off the record discussion)

25 MS. TURNBULL: Mr. Hutt, how much do you need?

1 MR. HUTT: The only witness that we really have is
2 primarily Mr. Hobbler. Ms. Ahearn may only be a few
3 minutes. I'm not expecting on the direct more than maybe an
4 hour, hour and a half, and that's just with a free flow
5 discussion.

6 MS. TURNBULL: Okay. And, Mr. Hitchens, do you
7 have any other witnesses?

8 MR. HITCHENS: I don't have any planned. That was
9 our case. I mean, there might be some rebuttal witness
10 depending on what develops in Mr. Hobbler's case.

11 MS. TURNBULL: We have time actually on the
12 morning of Tuesday, May 5th. We have a work session and
13 unfortunately a case has come off, so, if we would be
14 available at 10:30 on May 5th if we could do the morning
15 that would be great.

16 MR. HUTT: Okay.

17 MS. TURNBULL: Is that fine?

18 MR. HITCHENS: Yes. Tuesday, May 5th?

19 MS. TURNBULL: Yes. Okay. So, we will close the
20 record for today and we'll see everyone on May 5th.

21 (Whereupon, at 5:30 p.m., the hearing was adjourned to
22 reconvene on May 5, 1998).

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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:

Administrative Appeal of Carey Hobbler

By:



Beverly Jason, Transcriber

8/97D
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M O N T G O M E R Y C O U N T Y
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