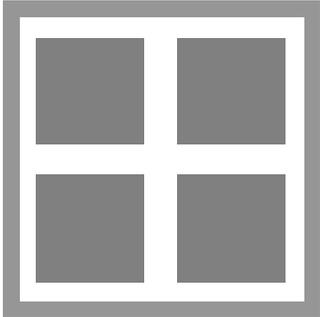


Teardown/Mansionization Bulletin: Protecting Older Neighborhoods with Newer Tools Montgomery County, Maryland

Maryland-National Capital Park and Planning Commission
Montgomery County Department of Planning
Historic Preservation Section
August 2006



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Goals and Methodology

This Bulletin was prepared to show a snapshot in time of one county in the state of Maryland grappling with the issue of teardowns and infill development, often referred to as mansionization. The Bulletin is intended as a case study that outlines a variety of planning and regulatory tools available for addressing this issue. The work on the project was partially funded by a grant from the Maryland Historical Trust's Certified Local Government fund, and was undertaken by staff in the Historic Preservation Section of the Montgomery County Department of Planning.

In order to understand the issue, Historic Preservation Section staff attempted to get information and input from both sides of the debate: the real estate/building community and neighborhood residents. One goal of the project was to understand and frame the economic forces in Montgomery County creating this trend. A second goal was to identify the concerns of neighborhoods and communities with regard to the trend. A third goal was to report on the planning and regulatory tools being used in the county by various communities taking action on aspects of the teardown/mansionization trend.

Due to the relatively small nature of the grant, the effort did not involve conducting a completely comprehensive study of the issue, but rather aimed at understanding how various, sample neighborhoods have responded to teardown/mansionization forces. The Historic Preservation Section worked with several builders and concerned neighborhood residents to analyze the problem, but it did not, by any means, contact every person or organization involved in home construction or neighborhood conservation.

The first step in undertaking the research for the Bulletin involved the convening of a half-day builder/realtor/new homeowner workshop to discuss the issues associated with teardowns/mansionization in Montgomery County. Several builders attended, as did two real estate agents who sell new properties and a homeowner building a large house to replace an older, smaller

house. As preparation for this meeting, the Historic Preservation Section prepared a series of questions, titled "Questions for Builder/Realtor Teardown Workshop" as well as a "Partial List of Issues Associated with Teardowns/Infill Construction." Two staff from the Historic Preservation Section took notes on the content of the meeting, particularly the builders/realtors/new homeowners' perspectives on neighborhood character, housing market trends, the problems of retrofitting existing houses, and issues associated with recently introduced legislation. The group was informed that the Section would be writing a Bulletin on Teardowns and Mansionization, and that their input on a draft would be welcomed. During the course of the next several months, staff had occasion to call a few of the builders/realtors with specific questions.

A second step was to convene a meeting of residents concerned with teardowns/ mansionization. Again, the group was not comprehensive in its geographic scope, but staff made an effort to find people from neighborhoods that had taken action or were contemplating action in the face of teardown activity. Representatives from the Town of Chevy Chase, Woodhaven, Green Acres/Glen Cove, Somerset, Kensington, Brookdale, English Village, Greenwich Forest, Woodmoor, greater Bethesda, and the county's civic federation were invited to participate. This group exchanged information on what was happening in the county on the topic. Participants discussed the specific concerns of their neighborhoods, as well as the tools their neighborhoods were using or contemplating to retain community character due to loss of buildings and trees. Subjects under discussion included: neighborhood conservation districts, demolition moratoriums, tree ordinances, stormwater management controls, incorporation into municipalities versus remaining unincorporated, design guidelines, local historic districts, etc.

Some of the residents in this group worked together outside the context of preparation of this Bulletin to begin drafting enabling legislation to create neighborhood conservation districts as a tool in Montgomery County. The citizens took the lead on drafting this legislation, with Historic Preservation Section staff acting as a resource on historic preservation issues and current-day county planning

processes. This draft legislation has not yet been introduced.

Historic Preservation Section staff incorporated all the information gained from the meetings mentioned above, and conducted additional research. This research focused on various planning tools being used across the country to address teardowns and mansionization, the monitoring of local events regarding task force efforts on environmental issues and building regulations, and a review of legislation contemplated or introduced by the County Council on issues ranging from building height to forest conservation to stormwater management. All of these factors led to the development of a rough draft Bulletin, which was sent to the builder/realtor/new homeowner group in June for comment. Historic Preservation Section staff actively solicited comments. Comments that were received were considered very carefully. In the case of one builder who supplied detailed,

written comments, almost 100% of those comments were incorporated into a revised draft.

Similarly, as the document proceeded towards completion, staff issued a draft to the neighborhood resident group in July. As with the builder/realtor/new homeowner group, comments that came in were reviewed carefully, and a majority of the comments were incorporated as appropriate into the document.

Finally, the document was reviewed by staff at the County Attorney's office for legal accuracy, by the staff at the Maryland Historical Trust, by the Acting Chief of Countywide Planning, and by the Acting Director of the Department of Planning.

The resulting document provides useful information for communities experiencing a large number of teardowns and infill construction. It is an educational publication that explores a variety of tools that have been used or may be used in the future to address this important planning issue.

Introduction

Although teardowns and mansionization are occurring nationwide, Montgomery County could easily serve as the “poster child” for the phenomenon. The reality in lower Montgomery County is that significant numbers of older, modest-sized houses are being razed to make way for substantially larger homes. This is a concern because these replacement houses often are incompatible with the existing height, scale, massing or materials of the surrounding, established neighborhood. Moreover, the resulting increases in lot coverage have contributed greatly to the loss of mature tree canopy and an increase in stormwater runoff. Neighboring property owners also report “quality of life” impacts such as diminished air, light, ventilation and privacy.

This trend is primarily being undertaken by small-scale homebuilding companies, rather than large development firms. These builders have been operating, for the most part, in accordance with existing building and zoning codes. The builders are unified



This brand new house in Glen Echo Heights dwarfs the modest ranch and Cape Cod houses of the original neighborhood, one of which can be seen amongst the mature trees behind it.

in their stance that they are not creating the market, but rather responding to it. According to builders, the current market is demanding large houses in close-in, established neighborhoods. Their clients, ranging from young families to empty nesters, want abundant square footage along with a manageable automobile or Metro commute to downtown and closeness to shops and restaurants. According to these builders, their clients tend to view older, existing houses as “obsolete” or “starter homes” that are appropriate for removal. The neighborhoods hardest hit presently are those west of Rock Creek Park and just over the District border; namely Bethesda and Chevy Chase, but no neighborhood is immune. There are “mansionization” pockets in Kensington, Wheaton, and Silver Spring.

Many socio-economic factors contribute to this extremely fast-paced trend:

1) A rise in affluence and buying power within the Washington metropolitan community;

2) Land that is valued more highly than existing houses;

3) A zoning code that is inconsistent with existing conditions; one that in fact permits as a matter of right, Floor Area Ratios (FARs) and lot coverages at great odds with existing neighborhood development patterns;

4) A perspective on the part of the builder community that the cost of repairing older structural systems and/or replacing potentially hazardous materials such as lead-painted surfaces is not money well spent;

5) A lack of appreciation for the character of houses built in the second through sixth decades of the 20th century;

6) A distrust of traditional historic districts, still the best tool for protection against demolition;

7) A growing elderly population which can fall prey to sometimes misleading real estate solicitations; and

8) The revitalization of certain downcounty, urban business districts, such as Bethesda and Silver Spring, which makes neighboring lots all the more attractive.

The issue is not just one of the preservation of buildings; it is an issue of preserving the character of older, established neighborhoods and preventing a loss of what is, relatively speaking, more affordable housing. (Not only do smaller houses get torn down for bigger houses, property taxes rise as the neighborhood becomes more affluent.) In other words, the teardown / mansionization trend is not simply about historic preservation; it is about environmental health and protections, neighborhood conservation, and housing that can serve a diversity of people and incomes. The issue embraces buildings, streetscapes, trees, vegetation, open space, water quality, wildlife, and, of course, neighbors.

The challenge lies in finding the point where individual property rights end and community property rights begin. It lies in defining how the other side of the “property rights” coin is “property responsibility.” It means recognizing that one person’s dream house may become another neighbor’s newly flooded basement.

It means exploring alternative tools and new regulations that could have the positive effect of retaining existing community character. Protecting longstanding character traits would prove a benefit to homeowners. It also means recognizing, however, that if those regulations require limits on new construction, current homeowners may lose some portion of their future resale income.

Partly because out-of-scale, infill development has been so rapid in its spread, Montgomery County has not yet developed one specific policy to address the problem head on. Instead, as this bulletin points out, the tools being used in Montgomery County have resulted primarily from grass-roots efforts by concerned citizens working with



This is the type of house most threatened: a modest dwelling in a neighborhood close to downtown that lacks protection by any preservation or planning tools.

the County Council, the Department of Permitting Services, and the Department of Planning. Similarly, the builder community, struggling to keep up with newly changing regulations, has its own share of concerns. Elected officials have responded through regulation targeted at the teardown phenomenon’s most quantifiable problems. As a result, Montgomery County is in the midst of analyzing a great number of legislative initiatives. This bulletin should be viewed, therefore, as a snapshot in time of one county grappling with a multi-faceted land-use, environmental, and social policy issue.

The list of tools available singly or in combination to mitigate teardowns / mansionization in Montgomery County thus far includes:

- ◆ Traditional Historic Districts
- ◆ Overlay zones
- ◆ Architectural covenants
- ◆ An approved building height amendment to the Zoning Ordinance
- ◆ A proposed forest conservation law amendment and/or separate tree ordinance
- ◆ A proposed stormwater management amendment
- ◆ Demolition moratorium
- ◆ Potential Neighborhood Conservation District legislation
- ◆ A builder/resident communication checklist

All of these tools are potentially available to at least one or more neighborhoods in the county. Some can apply to the entire county.

At present, most planning and zoning occurs under the umbrella of the Montgomery County Department of Planning and the Department of Permitting Services. When it comes to teardowns and mansionization, however, not everyone is satisfied that the county is the best watchdog to protect the character of established neighborhoods.

Several lower Montgomery County municipalities turned to the state legislature to gain control over mansionization within their borders. On May 26, 2006, state legislation was adopted that will give municipalities the right to adopt stricter controls on the dimensions of structures, including height, bulk, massing and design, and on lot coverage, including impervious surfaces. This authority, granted through the enactment of House Bill 1232, becomes effective on October 1, 2006. In addition, some unincorporated sections of the county are considering incorporation as a means of accessing these new planning tools.



This new house in the Sonoma area of Bethesda rises significantly higher than its neighbors.

See:

<http://mlis.state.md.us/2006rs/billfile/hb1232.html>
www.nthp.org/teardowns/resource_guide.html

Tools: Traditional Historic Districts

For older, established neighborhoods that meet the criteria for historic and architectural significance, there is no better tool for protection against teardowns and inappropriate infill than the traditional, local historic district. To be designated a historic district, however, an area must meet local criteria for qualification. Once an older neighborhood has been designated as an historic district on Montgomery County's Master Plan for Historic Preservation, any exterior alteration to a structure other than routine maintenance requires an application for a Historic Area Work Permit (HAWP). Review of such an application falls under the purview of the Montgomery County Historic Preservation Commission. While demolition of contributing buildings within an historic district is not outlawed as a matter of right, it is extremely rare for the Historic Preservation Commission to approve the demolition of a "contributing" building. Instead, the Commission typically works with homeowners to expand smaller houses through sensitive additions. As long as such additions are compatible with the overall character of a neighborhood, they are usually approved in one form or another.

A second benefit of local historic district designation is that it requires an added protection for trees over six inches in diameter. Any removal of a tree that size or greater within an historic district requires a HAWP, unless the tree has been

verified as "dead or dying" by a certified arborist.



Top: This Victorian house in Somerset benefits from design standards developed as part of a traditional, local historic district. **Bottom:** A streetscape in the Takoma Park Historic District illustrates how setback, massing, and overall character can be maintained when historic districts are in place.



See:

<http://www.montgomerycountymd.gov/govtmpl.asp?url=/content/government/AboutGovtCharter.asp>

Tools: Overlay Zones

Another tool on the books in Montgomery County is the overlay zone. Through an overlay zone, a neighborhood's existing character can be partially protected by the adoption and enforcement of stricter building requirements than established under the regular zoning code. Such a zone exists in Garrett Park and could be used as a model for other neighborhoods. See Zoning Code, Sec. 59-C-18.11.

The Garrett Park Overlay Zone was created as part of the North Bethesda/Garrett Park Master Plan, which went into effect in 1993. The overlay zone seeks to “preserve the unique park-like setting of the 19th century garden suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses.” The overlay standards increase the amount of front, rear, and side setbacks from the street and adjacent properties; limit the maximum percentage of net lot area that may be covered to 20%; and limit the maximum floor area ratio (FAR) to .375. All of these standards are more stringent than those for a typical R-90 zone.



In Garrett Park, the recent, Neo-Victorian house on the left rises much higher than the smaller, older house on the right. Yet the newer house was built in conformance with the overlay zone.

One problem common to all properties within R-90 zones, which includes Garrett Park, is that allowable building height is relatively tall compared to what was built historically. In addition, until recently, the county allowed 35-foot high structures to be measured at the mid-point of the roof and nothing prevented builders from building up the lot's grade to create a “terrace.” A terrace, in turn, provided opportunity for an even taller structure.

The Garrett Park overlay zone, while mostly successful in protecting the neighborhood's open space patterns, has been less able to mollify the effects of these taller houses. The problem is particularly acute in new houses with prefabricated, trussed attics. These houses are permitted under the Garrett Park Overlay Zone because the formula used to determine gross floor area does not consider unusable attic space—exactly the type of space contained in houses with trussed attics.

Despite these concerns, Garrett Park citizens decided in the fall of 2005 not to support the adoption of amendments to the overlay zone that would change the definition of gross floor area and how building height is measured. (See next section on Zoning Text Amendment on Height.) The issue of whether or not to amend the overlay zone is still an ongoing discussion.

Tools: Architectural Covenants

Architectural covenants are a third tool for addressing teardowns and mansionization. Covenants are restrictive provisions typically created at the time of neighborhood establishment. They include a set of standards that can be legally enforced by covenant beneficiaries. Most are safeguarded by a designated entity such as the initial builder/architect and/or a civic association covenant committee. In some communities, the covenants are allowed to sunset, but most are renewed and therefore remain perpetual. In this way and because they are restrictive--meaning they convey with the lot and are attached to the deed—they differ from zoning laws. Typically, *architectural* covenants stipulate that new construction must match the character that already exists in the neighborhood and that all new designs must be approved by a design review board. In these ways, architectural covenants can help ensure that an existing housing stock is retained and that additions are architecturally compatible.

A useful case study for assessing the value of architectural covenants as a means to protect community character lies in the juxtaposition of two Montgomery County neighborhoods, Wood Acres and Springfield. The former has architectural covenants, while the latter does not. Wood Acres was developed beginning in 1939 as a neighborhood of modest, two-story, brick Colonial Revival houses. The neighborhood covenants state, in part:

. . . no improvements of any character shall be erected thereon, and none begin (sic), nor any change made in the exterior design of such improvements after original construction has begun, unless and until the architect designing the same; the cost, type and size thereof; the materials to be used in

the construction, the color scheme; the plans, specifications and details thereof, and the lot plan, showing the proposed location of the dwelling and driveways upon the lot, shall all have been approved in writing by Wood Acres Construction Corporation, or its successors . . .

Even more pertinent to the teardown phenomenon are the “guidelines” that accompany the architectural covenants. These guidelines stipulate that an owner



Top: A Wood Acres house from the street showing how the subdivision's character is maintained through covenants. Bottom: A different Wood Acres house, showing how covenants direct additions towards the side and rear.



wishing to demolish and rebuild an existing, structurally sound house, must come up with a design that is “consistent with the spirit of the original Wood Acres house” to the point that the lengths of the front, side, and rear elevations shall not exceed those of the pre-existing elevations unless setbacks break up the mass. In addition, the floor-to-floor heights of the new house must match those of the pre-existing house. These restrictions create a climate where conservation is prized over newness. As of the date of this bulletin, there have been no demolition requests in Wood Acres. Instead, the houses, which are small by nature (an original footprint of approximately 750 feet

and roughly 2000 square feet of living space not counting a 150-foot screened porch), have almost all received additions of one sort or another. Most houses have seen the one-bay garage on the front of the house infilled to create a year-round room and almost all houses have received some kind of rear and/or side addition. Recently, such additions have been quite sizeable, often doubling the square footage of the houses. While the loss of back- and side-yard trees to accommodate these expansions has not been ameliorated, the character of the neighborhood as perceived from the street has been maintained. Rooflines remain the same, as does the overall scale as perceived by a passerby.



Top: An original Springfield house that was expanded, but attempted to fit in with its neighbors. Bottom: The newer trend: a series of large, new houses that replaced the older houses.

Making existing architectural covenants more protective to prevent teardowns is easier to achieve than enacting covenants in neighborhoods where they do not exist. In order to create architectural covenants anew, each property owner would have to agree to covenants on his/her own property, in addition to senior lien holders such as mortgage companies signing on. Such covenants could, in fact, dictate architectural review criteria and/or stipulate against demolition. While protecting the neighborhood, however, covenants might affect purchase price when it came time to sell.

Another opportunity to stem teardowns in older neighborhoods is the selling or donating of easements to local preservation organizations that could protect historic and architectural character in exchange for tax benefits. While *façade* easements are a common form of this tool, there could, in fact, be easements on *development rights* as represented by height or massing. Such easements would have to be very carefully crafted, however, to meet stringent IRS criteria for legality and enforceability. As such, they are an unused tool in the teardown kit.

Springfield, immediately adjacent to Wood Acres, is not protected by

architectural covenants and because of this difference, the neighborhood is becoming a study in the domino effect of the teardown/infill phenomenon. Built in the early-to-mid 1950s, the community of brick, split level houses continued to serve families well for housing, but in the 1990s, some owners began looking for more space. One builder began to expand the houses by raising the roofline of the lower level of the split. This approach added square footage to the houses while maintaining the overall character of the neighborhood.

Starting around the year 2000, however, this builder and others began to tear some of the houses down, replacing them with structures at least twice their size. What is evident as one goes through the neighborhood today is that a teardown on one block virtually assures two, three, or four others on that same block's adjacent lots. The newer trend also includes more clear cutting of trees and the construction of houses that do not necessarily attempt to match the exterior character of the original houses

Legislative Initiatives

Legislation introduced in Montgomery County on a number of fronts is beginning to address teardown/mansionization issues. Bills and zoning text amendments aimed at the problems associated with over-scaled buildings, loss of mature trees, and stormwater runoff represent serious efforts by the Montgomery County Council to curtail the multi-faceted impacts of inadequately regulated infill development.

Height Amendment

On October 18, 2005, the County Council closed a loophole in the zoning code by adopting an amendment to improve the method of calculating residential building height and reduce allowable building height on single-family houses in the R-60 and R-90 zones. (See Zoning Text Amendment 03-27.) The legislation also revised the definitions of basements and cellars, and added a definition for pre-development and finished grades. The new zoning text amendment specified a height limit in the R-60 and R-90 zones of 35 feet as measured from the average finished grade



A large house under construction towers over its neighbor, but is built according to code. Such disparities in height prompted citizens to lobby the County Council for zoning revisions.

in front of the house to the peak of the roof, regardless of roof type, *or* 30 feet, as measured to the mean height level between the eaves and the ridge of a gable, hip, mansard, or gambrel roof (or to the highest point of a flat roof).

While most neighborhood groups view the amendment as a definite step in the right direction, it is not seen as a perfect solution. Neighborhood groups still feel that allowable building heights are excessive. They also are concerned that the new requirements are not being properly enforced. (The County Council's Office of Legislative Oversight will conduct an investigation into the laws applying to teardowns and replacements as part of its Fiscal Year 2007 work program.) Many builders are also less than happy about the new height regulations, viewing them as a directive to design mansard-style or flat-roofed structures if they are to obtain higher interior ceiling heights. Builders also indicate that the new rules effectively prohibit the small, creative use of space that might be employed to break down roof massing. A not necessarily welcome result, therefore, may be the introduction of roof *design* consequences from legislation intended only to solve problems of *scale*.

Forest Conservation Law Amendment

In addition to over-scaled buildings, nothing has provoked the ire of neighbors more than the loss of mature trees that typically accompanies an infill development project for a large new house. The removal of trees is often viewed by neighbors not only as a loss of community character, but as environmental destruction in the broader sense since trees filter carbon dioxide from the air and cool increasingly soaring temperatures. In Montgomery County, two task forces and a working group were formed to focus on forest conservation and urban tree canopy loss:

The C & O Canal Task Force

Put into place as a reaction to significant tree loss on a National Park Service property with the assistance of County Council members and U.S. Congressman Chris Van Hollen, this task force is working to improve the county's forest conservation law. Task force members see several weaknesses to the law, including enforcement issues and limited citizen input. The group is concerned that the current law is less focused on tree retention than on reforestation. The goal of the C&O Canal Task Force is to apply the law to a broader area of the county and to create a higher threshold for the removal of healthy, mature trees.



Top : What was once a typical streetscape in Bethesda is becoming a remnant, as lots are cleared of mature trees for houses of greater scale. At present, there is no obstacle to removing such trees. Bottom: A lot completely cleared of trees while being prepared for construction. In the background is a typical neighborhood house, which is far smaller than what is planned for the construction site.

The Montgomery County Urban Forest Alliance

Formed to deal with the loss of tree canopy in more urbanized areas, this informal working group of citizens not affiliated with county government began tackling the challenge of crafting a tree and urban forest ordinance separate from the Forest Conservation Law for Montgomery County. Such an ordinance is a tool in other parts of the country and in local municipalities including Takoma Park, the Town of Chevy Chase, the Village of Chevy Chase, and Somerset. In the absence of any ordinance, some unincorporated sections of the county, like Edgemoor, are grappling with the problem by undertaking tree surveys so that citizens can monitor construction that negatively impacts mature trees. Several members of this working group have now joined a Department of Planning task force to continue their efforts.



Planning convened a task force to look at the implementation of the Forest Conservation Law. This task force is made up of knowledgeable citizens, members of the environmental community, and representatives of the building community who are working to improve the operation and implementation of the existing law. The original forest conservation law was put in place in 1992 as Chapter 22A of the Montgomery Code. When written, its goal was primarily to protect upland forest in the rural sections of the county. The increasing number and complexity of cases has spurred a reevaluation of how the law is working.

The Montgomery County Department of Planning's Task Force on the Forest Conservation Law

In summer 2006, the Acting Director of the Montgomery County Department of



Houses of great size on high ground have the potential for stormwater runoff that causes flooding of others' yards and basements. Builders have a responsibility to implement stormwater management plans for each new house to prevent such nuisances.

In September 2005, several members of the County Council introduced Bill No. 27-05 to amend penalties under the forest conservation law. This amendment was approved, but it is just a first step. The amendment increases the penalties available to be levied upon violators of the law and makes actions against the law not only civil but criminal. Additional staffing and inspection support are still needed, however, to improve enforcement.

Stormwater Management Amendment

If trees are the first environmental issue to be noticed with infill development, stormwater runoff is the second. Several factors have contributed to the predicament: 1) bigger house footprints and massing, 2) the possibility of an artificially raised grade

(at least prior to the height amendment to stop the practice), and 3) an expansion in impervious surface area and loss of soil cover. The result is larger houses that sometimes tower over neighboring houses set at a lower grade, with stormwater runoff trailing onto other people's property (and into their homes) and damaging the County's important stream systems.

The most significant runoff issue resulting from mansionization is surface water on the site that is increased and redirected due to more impervious area and altered topography. Presently, the county does not regulate this runoff because it has no surface drainage grading ordinance. While the stormwater management ordinance applies to water collected in streets, other paved areas, and entire subdivisions, it does not apply to runoff on individual lots at this time. A county grading

ordinance controlling water runoff on individual lots would go a long way toward rectifying the problem of nuisance runoff to adjacent neighbors.

Working to improve the existing law, the Montgomery County Stormwater Partners Coalition is a citizens' group that was formed to improve stormwater management and protect streams. The coalition is advocating that Council Bill 26-05 concerning stormwater drainage and runoff contain language stipulating that a minimal level of on-site infiltration be required on small, individual residential lots in order to prevent further stream damage. The coalition also is pressing the Maryland Department of the Environment, and Montgomery County, to adopt stronger pollution controls through the 2006 renewal of the County's water quality permit under the federal Clean Water Act (National Pollutant Discharge Elimination System, or "NPDES" permits). To help meet the tougher permit requirements and to make the pollution reductions necessary to restore the Anacostia, the Chesapeake Bay, and other waters, the Coalition urged the County Council to put money and programs towards LID stormwater retrofits. These techniques include bioretention filters (shallow depressions in the landscape to collect, filter, and absorb excess water and pollutants), rain gardens, rain barrels, and green roofs. The first result has been a Low Impact Development Retrofit Initiative, approved by the County Council, which provides 1.3 million dollars for retrofitting residential and commercial properties in pilot subwatershed areas downcounty. The initiative is funded from dedicated stormwater fees, and it provides incentive grants to builders who make use of retrofit technologies such as rain gardens and rain barrels. On August 1, 2006, the County Council unanimously passed a resolution supporting higher permit standards and asked the County's Department of Environmental Protection to report on ways to address pressing stormwater issues.

Demolition Moratorium

Citizens are not only active on a countywide basis, but are active in their own municipalities. The Town of Chevy Chase is one neighborhood that has taken a strong stand against teardowns and mansionization in response to the alarming rate at which its houses have been demolished (55 in 4 years). Incorporated in 1918, the town was developed primarily in the 1920s and 1930s by a series of small builders. Although the county proposed historic district designation for a portion of the town in the mid-1990s, its residents opposed the designation because they did not perceive a threat to the community at the time. Startled by the rate at which the community has been losing its houses and trees, however, and by the size and scale of replacement housing, town residents decided on a different course of action.

At the request of over 500 petitioners out of a town of 3000 residents, The Chevy Chase Town Council approved an emergency ordinance creating a six-month moratorium on demolitions, additions, new construction, and the removal of trees. The moratorium, adopted on August 10, 2006,



A typical scene in the Town of Chevy Chase, where an older, Cape Cod-style house on the left stands next to a newer, taller, significantly bigger house on the right. This type of new construction prompted residents to successfully petition the Town government for a demolition moratorium.



Top: An original house in this section of the Town of Chevy Chase is a small cottage-type dwelling. It is one of the only remaining original houses on the block. Bottom: The houses directly across the street are all new, giving the impression of a completely new subdivision.



was enacted over the objections of builders and real estate agents who had been active in the neighborhood and a minority of residents concerned about property rights. One builder successfully sued the town, enabling him to build his project during the moratorium period. Other projects were also constructed through a variance process, but overall, the demolition moratorium gave the Town what it needed: time to craft a vision and a plan.

During the moratorium period, the town formed several citizen committees. These committees were tasked with addressing problems relating to visioning and strategic planning, tree protection, stormwater runoff, regulatory review enforcement, setback restrictions, and the need for more authority through state or county measures. In less than a year, the town has a new tree ordinance in place, setback controls, and new enforcement measures. Through its town-wide visioning process, the residents developed a draft strategic planning guide, and, most importantly, succeeded in obtaining authority from the state (as one of several municipalities) to regulate height, bulk, massing, design, lot coverage, and setbacks within its own borders.

Tools: Neighborhood Conservation Districts

No tool is more popular right now in mitigating teardowns and mansionization than the Neighborhood Conservation District tool. Neighborhood Conservation Districts (NCDs) are spreading across the country as an effective means of preserving the character of older, established neighborhoods that are not registered as local historic districts. One aspect of the NCD model that is highly advantageous is the self-determination that goes with it. An NCD usually requires neighborhood initiation and a strong level of participation, or 'buy-in,' as part of the NCD application process. In most cases, any limitations imposed upon demolition or new construction are decided by the neighborhood after crafting a Neighborhood Conservation Plan.

The National Trust for Historic Preservation has published several excellent pamphlets that cover the subject either exclusively or as one of several teardown tools. These publications include: Julia Miller's *Protecting Older Neighborhoods Through Conservation District Programs*; Adrian Scott Fine and Jim Lindberg's *Protecting America's Historic Neighborhoods: Taming the Teardown Trend*; Pratt Cassity's *Maintaining Community Character: How to Establish a Local Historic District*, and the National Park Service issue paper *Conservation Districts*, a Cultural Resources Partnership Note. As mentioned, the National Trust has also launched an entire website devoted to the subject. http://www.nationaltrust.org/teardowns/resource_guide.html

Neighborhood conservation districts (NCDs) are typically formed in established residential areas having a distinct physical and environmental character worthy of protection. NCDs may be established as

zoning overlay districts or actual re-zonings. Under either approach, special protections are put in place to ensure that the physical and environmental hallmarks of that neighborhood—the development patterns



This street in the Brookdale neighborhood reveals the qualities inherent in potential neighborhood conservation districts: a distinct sense of place, uniform height and setbacks, and mature trees.

that comprise its special qualities--remain in place and serve as guideposts for new construction. Neighborhoods that seek NCD status typically are looking for a land-use tool that protects character-defining streetscapes threatened by inappropriate infill, excessive development, loss of buildings and / or loss of environmental qualities. NCDs can be found in Philadelphia, Atlanta, Austin, Boston, Chapel Hill, Dallas, Indianapolis, Miami and many other areas. While those examples represent cities, NCD enabling legislation is also on the books in counties as close as Prince George's and as far as Boulder County, Colorado.

Although NCDs vary widely, many provide neighborhood-specific development standards that require *discretionary* review. Such review would include a design review process and/or a general prohibition on

demolition as part of an NCD's legal structure and implementation package. Parameters are developed in accordance with each neighborhood's character and needs. Since the application of standards is to a specific property and the outcome may vary depending on the context, some type of commission is typically required for decision making.

In addition to discretionary review items, many neighborhoods opt for development controls that are *non-discretionary* or *ministerial* in their planning. These controls also come out of

the neighborhood planning process and often focus on setbacks, building height and width, roof pitch, floor area ratio, lot coverage, garage location, demolition thresholds, tree retention, and stormwater runoff, etc. Some specify maximum square footage for new construction, based on the average of the existing buildings. Unlike discretionary items, these items can be reviewed by a program administrator defined legally in an ordinance.

Thus, NCDs have some similarities to local historic districts in that they can involve design review, but they also can have many differences. A key difference between how a traditional, *local historic district* and a *neighborhood conservation district* are administered is the latitude in crafting the process for NCDs. As noted, an NCD can be administered by a planning agency or official, by the local historic district commission, and/or by a neighborhood review body. Given the detailed, lot-by-lot nature of NCD review, it is particularly appropriate to have reviews handled at a neighborhood level.

One important thing to take into account, however, is that once an NCD becomes an established planning tool in a locality, it may become harder for that locale to initiate traditional historic districts, the controls of which are typically more stringent.

Just how similar or different NCDs are from traditional historic districts largely depends on the guidelines developed by the neighborhoods. In Cambridge, Massachusetts, for example, some of the neighborhood conservation districts have the same review criteria as the local historic districts, except that there is no requirement to review paint color. In the Eastport section of Annapolis, Maryland — where a long-established neighborhood conservation district program is in place—the situation is quite different. The review criteria there are looser than would be those of a traditional, local historic district. As examples, large-



Above: This street in English Village has been in a constant state of construction for years. Almost all of the original houses have been replaced. Below: This new house in Bethesda indicates the trend for double facade garages and paved driveways, regardless of established neighborhood patterns.



scale additions can be added to small houses if they are well placed, and new materials are incorporated liberally, even at the expense of loss of original materials.

Eastport serves as an example of emerging trends in neighborhood conservation district planning. Whereas a traditional historic district often aims for protection of original building materials, a neighborhood conservation district is generally more lenient on that subject, while concerning itself more with issues of scale, bulk, and mass. And while demolition of a contributing structure within a designated traditional historic district is rarely approved (unless there are strongly mitigating circumstances), demolition of structures within a neighborhood conservation district may happen, again depending on whether demolition controls are adopted by the neighborhood at the time the NCD is put in place. What a good neighborhood conservation district always achieves, however, is a replacement structure, the height, bulk, and mass of which are in keeping with the existing neighborhood. This positive result is due to the fact that a

neighborhood conservation district's parameters for new construction must be stricter than those of the underlying zoning code.

The value of NCDs as a potential planning tool came out of research for this project. In preparing this bulletin, concerned residents and members of the real estate/builder community were asked to provide input and ideas. Out of discussions with residents, it became apparent that many thought the neighborhood conservation district model would be a very effective tool for the unincorporated sections of Montgomery County seeking protection of community character, but not opting for traditional historic district status. To that end, a group of residents began reviewing NCD ordinances from other parts of the country, and decided to draft enabling legislation that would allow for the creation of NCDs. This draft legislation has not yet been introduced, but may be soon.



While there is nothing wrong with Modern architecture per se, the scale and massing of this new house in Edgemoor are completely at odds with those of its neighbors.

Tools: Improving Builder / Resident Communication

While many residents have banded together to discuss the issue of teardowns and proposed a number of legislative changes, some builders have actively participated in the dialog as well.

There are many differences to overcome before moving toward solutions. Builders emphasize that they are fulfilling a market-driven need; namely, the desire for larger houses in close-in, established communities. Builders describe their market as comprised of people who insist on significantly more living space than can be accommodated in older neighborhood houses. For this market, very large kitchens with attached family rooms are the norm, as are extremely generous master bedroom suites and baths, and space for luxuries such as home gyms, family theaters, his and her walk-in closets, and nanny suites. Builders describe their clients as expecting tall ceiling heights (9' to 10' on average) and a dining room capacity ranging anywhere from 10 to 40 people for



In Woodhaven, the original house on the left was turned sideways and moved to accommodate a new house to its right. The existence of two recorded lots allowed such a change. Although introducing a tighter density pattern into the neighborhood, the residents were able to convince the builder not to tear down the original house. The new house also looked to its predecessor for Tudor Revival design cues.

large family gatherings.

When talk revolves around conserving the “character” of a neighborhood, the opposing groups frequently differ in their attitudes. The builder, realtor, and new homeowner communities will tell you that it is the people who make up the character of a neighborhood more than its structures or vegetation. If the people contribute to a community by sharing its values in desiring good schools, easier commutes, and accessibility to commerce, then nothing is lost by the removal of a smaller, older home and its trees. Builders also suggest that change in the building stock promotes a welcome diversity in housing types.

While long-term residents will agree that the majority of new community members want to participate in the neighborhood’s life, they will disagree that teardowns and large new houses introduce diversity, either of housing type or of socio-economic groups.

In looking at neighborhoods experiencing teardowns as part of the research for this project, it is clear that an early 20th-century block face can easily become an early 21st century block face almost overnight, with no more or less housing diversity attained in the end. In other words, a block of 1940s Cape Cods can become a uniform block of 2006 Neo-Arts and Crafts mansions within a matter of months. As for the economics, it appears from direct observation for this project that a neighborhood of somewhat varied income tends to become one homogenized even more by affluence. There is clearly a loss of what is relatively speaking “affordable” housing.

Both sides of the issue really only agree on one thing: that the cultural divide between the citizens who want controls on teardowns and mansionization and the builders/new homeowners who participate in the process has reached the point of impasse. One creative suggestion put forward by the builder/real estate group convened for this

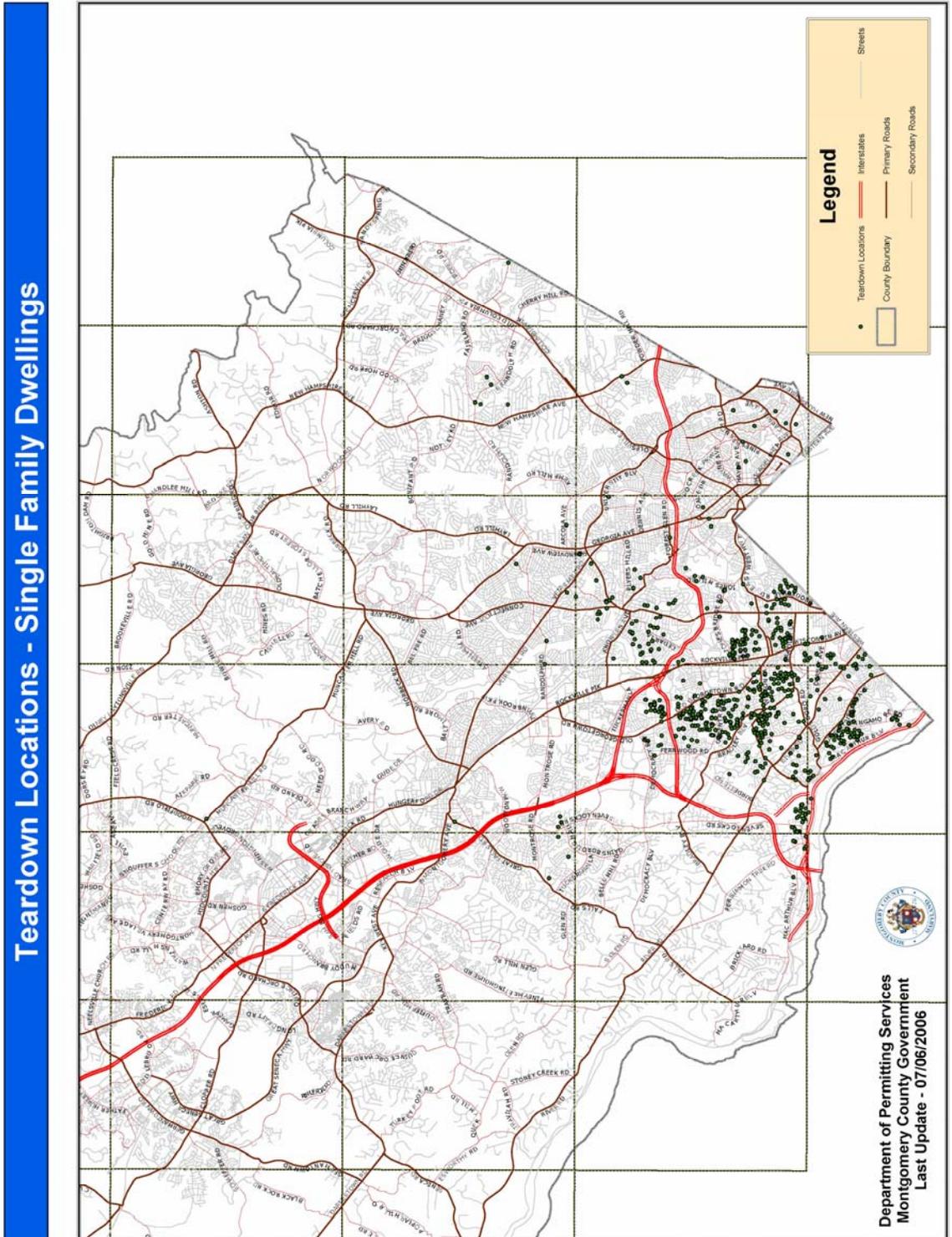
study was to prepare a checklist for builders and existing residents when undertaking any demolition and/or major new construction in established neighborhoods (perhaps at a threshold of a size increase of 50% or more). Such a checklist could improve the climate between the neighborhood and the builders.

One future application of the checklist might be to attach it to an actual building permit so that all questions have to be answered in the affirmative for a building permit to be released by the County's Department of Permitting Services.

Checklist for residents and builders interested in improved communication before and during major additions or demolition:

- ◆ Has a pre-construction meeting with the affected civic association been scheduled for project inception? This meeting is the best way for the builder to introduce his/her intended design and for neighborhood residents to explain their concerns. Concerns might include scale, design, trees, stormwater capture, etc.
- ◆ Will the builder agree to keep the neighborhood informed at the 5%, 50%, and 90% stages?
- ◆ If changes are made to building plans during the course of construction that will be evident to neighbors, is there a system in place so that the builder can apprise the residents of those changes? Is there a main neighborhood contact person?
- ◆ If a neighborhood is not within a neighborhood conservation district, has the builder conducted an analysis of the affected block face to inform his design? Such an analysis should include block face averages such as: setbacks, height, lot coverage, floor area ratio, existence and location of garages (if any), existence or lack of driveways and curb cuts, ratio of green space to impervious surface, etc.
- ◆ Have the residents also familiarized themselves with the predominant materials and architectural styles of the neighborhood or the block face so that additions and/or new construction can be evaluated for harmoniousness to existing materials and styles?
- ◆ Has a new roofline been designed to avoid going higher than the original rooflines within the community, at least from the vantage point of the streetscape?
- ◆ Has an effort been made to disguise the allowable mass of any new construction by breaking up the faces of the building into smaller planes, so that what is perceived from the street is in keeping with the existing neighborhood scale?
- ◆ Has the builder employed an arborist? If so, has he/she shared the arborist's tree and vegetation survey with the neighborhood, explaining how mature and/or character-defining trees and shrubs will be saved and which trees, if any, are suggested for removal?
- ◆ Has the builder explained his/her stormwater runoff plan?
- ◆ Have the builder and residents agreed to standard work hours, so as not to disrupt basic neighborhood patterns?
- ◆ Have the builder and residents communicated about the setup and cleanup of the construction site so that the builder can operate efficiently, but the neighborhood can retain a reasonably tidy view from the streetscape?

Appendix A: Map of Teardowns



*Teardown / Mansionization : Protecting Older Neighborhoods with Newer Tools
Montgomery County, Maryland*

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**Montgomery County Department of Planning
Historic Preservation Section**

8787 Georgia Ave
Silver Spring, MD 20910

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