

## **HISTORIC PRESERVATION PRACTICES IN MONTGOMERY COUNTY, MD**

### **INTRODUCTION**

The League of Women Voters of Montgomery County, MD, adopted a study of historic preservation in the county in 2010. The committee has examined current practices of handling historic preservation by the Montgomery County government and other jurisdictions. The rationale for historic preservation, legal and economic issues, selection criteria, the role of historic societies and the benefits and problems of historic preservation are presented below.

Historic preservation in the United States began in 1816, when Independence Hall in Philadelphia was saved from demolition. The Mount Vernon Ladies Association formed in 1853 to save President George Washington's home is regarded as the first private group to mount a national preservation effort. The efforts of the Mount Vernon group led to the early tradition that preservation efforts were largely supported by private individuals, and that women had a prominent role in these activities. Saving individual landmark buildings became a common goal of such efforts. Architectural significance became a criterion for preservation around the mid-twentieth century. Historic preservation has grown from the activities of groups of individuals to an accepted practice of local governments serving the public interest. The Bicentennial, in 1976, spurred interest in historic preservation everywhere, including Montgomery County.

### **THE LEGAL BASIS FOR HISTORIC PRESERVATION**

The legal basis for historic preservation is largely based upon land use law. The most important historic preservation legal precedent is the landmark 1978 U.S. Supreme Court decision regarding *Penn Central Transportation Company v. City of New York*, referred to as the Penn Central decision. The Penn Central case addressed the issue of the right of an owner to develop a property vs the right of a city to review and regulate a designated historic property. Penn Central had applied for permission to construct a fifty-five story addition over the Grand Central Station Building. The Court of Appeals decision was upheld because the company failed to prove that it was unable to get a reasonable return from its property.

This decision upheld the legitimacy of historic preservation review ordinances by recognizing that preserving historic resources is a permissible governmental goal and that the city's ordinance was an appropriate means for accomplishing that goal. The Penn Central decision formed the legal basis for legislatures to grant cities the right to establish controls that owners of historic properties must follow.

### **FEDERAL AND STATE ROLES IN HISTORIC PRESERVATION**

**The National Park Service (NPS)**, established in 1916 for the protection of natural sites, plays an integral role in preservation at the federal level. National Park Service preservation activities include administering preservation grants, historic rehabilitation tax credits, and listings in the National Register of Historic Places, National Historic Landmarks and National Heritage Areas. The standards and guidelines for historic rehabilitation projects developed by the NPS, published as *The Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings*, have become the standard used nationally. NPS has been leading the current recognition of historic preservation as an important tool for sustainability.

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**The Advisory Council on Historic Preservation** is a federal agency, created by the National Historic Preservation Act of 1966 (NHPA), charged with ensuring that other federal agencies meet their obligations under NHPA and consider historic properties in their project planning and execution. A historic review of the National Geospatial-Intelligence Agency site in Bethesda was recently conducted as part of the site's redevelopment as the Intelligence Community Campus, Bethesda site.

The NHPA also created the **National Register of Historic Places**, which is a part of the NPS. Note that listing a property on the National Register does not restrict the rights of private property owners in the use, development or sale of privately owned historic property, but makes them eligible for grants, investment tax credits, preservation easements and fire and life safety alternatives. A commonly accepted criterion for historic significance is that a building must be at least 50 years old. This rule is being reconsidered as newer properties such as Philip Johnson's Sony (ATT) Building in New York and the Getty Center in Los Angeles have already taken on historic significance.

Note: There are no federal laws or regulations that limit what private property owners can do to their properties, including properties listed on the National Register of Historic Places. The only situations in which private owners may be impacted by federal laws and regulations are when the owners have applied for or received a Federal Rehabilitation Tax Credit (within the past five years) or require a permit, license or funding from a federal agency.

**The Maryland Historical Trust (MHT)**, created in 1961, nominates sites to be included in the National Register of Historic Places; administers financial incentives such as grants, loans and tax credits for historic properties (maintenance planning and documentation); administers the Maryland Inventory of Historic Properties (all properties surveyed and recorded); and administers the Maryland and National Registers of Historic Places (properties surveyed and evaluated as historically significant). MHT is part of the Maryland Department of Planning. Note: there are no state laws that limit what private property owners can do to their properties, including properties listed in the Maryland Inventory and Maryland and National Registers of Historic Places. The only situations in which private property owners may be impacted by state laws and regulations are when the owners have applied for or received a State Rehabilitation Tax Credit (within the past five years) or require a permit, license or funding from a state agency.

## **LOCAL HISTORIC PRESERVATION**

**The Locational Atlas and Index of Historical Sites** of 1976, prepared by the Advisory Committee on Historic Sites and Districts to the Montgomery County Planning Board, was the preliminary step in drafting Montgomery County's Historic Preservation ordinance. The Locational Atlas and Index of Historical Sites, based upon the Hopkins Atlas of 1878, attempted to include all existing structures one hundred or more years old and also includes some 20<sup>th</sup> century buildings of outstanding architectural merit. The Index, which included close to 1,000 sites, serves as a listing of historic resources that are to be evaluated for master plan designation and affords interim protection for those properties prior to final evaluation and addition to the Master Plan for Historic Preservation. The owners of historic resources included in the Locational Atlas, but not yet evaluated, must apply for work permits prior to renovation or alterations to the exterior of the property and before demolition. Sites not initially identified on the Locational Atlas can be added to it.

**The Master Plan for Historic Preservation Ordinance** of July 1979 established planning and regulatory tools for protecting and preserving its historic and architectural heritage by adopting a functional Master Plan for Historic Preservation and enacting a Historic Preservation Ordinance, Chapter 24A of the County Code.

## Chapter 24 A:

1. mandates the preparation, adoption, and approval of a Master Plan for Historic Preservation. The Master Plan designates historic sites and historic districts and describes their boundaries; integrates historic preservation into the planning process and advance the goals of historic preservation. A historic site is defined as any individual resource that is significant and contributes to the historical, architectural, archeological or cultural values. A historic district is a group of historic resources which are significant as a cohesive unit and contribute to the historical, architectural, or cultural values.;
2. lists the criteria for designation of historic sites or districts;
3. creates the Historic Preservation Commission of Montgomery County, consisting of nine members appointed by the county executive and confirmed by the county council, for a three year term. The Commissioners must all be residents of the county and a minimum of one member must have special interest, knowledge or training in each of the four fields of history, architecture, preservation and urban design. The Commissioners work with the staff of the Historic Preservation Planning section of the Montgomery County Planning Board to recommend historic designations, work permits and administer easements, revolving funds and grants to the Planning Board;
4. protects historic resources by requiring a historic area work permit for modifying, changing or altering the **exterior** features, construction, reconstruction or relocating any historic site or any historic resource located within any historic district.

## HOW IS A SITE ADDED TO THE MASTER PLAN FOR HISTORIC PRESERVATION DECLARED HISTORIC?

**The Historic Preservation Office**, Montgomery County Department of Park and Planning, provides for the identification, designation, and regulation of historic sites and supports the Planning Board and the Historic Preservation Commission.

The first step is documenting the history, architecture and significance of a structure or site on a form called the Maryland Historical Trust Maryland Inventory of Historic Properties Form. The form must be filled out by a private owner/group or the Historic Preservation Section staff for a property on the Locational Atlas. Once a site has been evaluated, Historic Preservation Section staff provides the Historic Preservation Commission (HPC) with a recommendation. The HPC evaluates each proposed site to see if it meets the county's criteria for preservation. At least one criterion must be met.

The criteria are:

1. *Historical and cultural significance.* The historic resource:
  1. Has character, interest or value as part of the development, heritage or cultural characteristics of the county, state or nation;
  2. Is the site of a significant historic event;
  3. Is identified with a person or a group of persons who influenced society; or
  4. Exemplifies the cultural, economic, social, political or historic heritage of the county and its communities.
2. *Architectural and design significance.* The historic resource:
  1. Embodies the distinctive characteristics of a type, period or method of construction;
  2. Represents the work of a master;
  3. Possesses high artistic values;
  4. Represents a significant and distinguishable entity whose components may lack individual distinction; or
  5. Represents an established and familiar visual feature of the neighborhood, community or county due to its singular physical characteristics or landscape.

If the HPC recommends the historic designation to the Planning Board, an amendment to the Historic Preservation Master Plan is drafted for review by the county's Planning Board.

If the Planning Board recommends the amendment it is then reviewed by the County Council of Montgomery County, which has the final approval authority. The County Executive has the opportunity to comment prior to the County Council's hearing. Public hearings (at least three) are held by each reviewing body. The consent of a property owner is not required; however, it may be a factor in a council member's determination of where the public interest lies. The public interest is broader than an individual's interest. Amendments establishing historic districts are often very controversial and often result in the adoption of special guidelines proposed by the residents/owners of the historic district. The recent approval by the County Council of the Greenwich Forest Historic District included seventeen guidelines requested by the residents/owners. The Greenwich Forest Historic District includes 71 homes and is the largest such district in the county. As of October, 2011, the Master Plan for Historic Preservation includes 22 historic districts and 430 individual sites, the most recent being Greenwich Forest, the Bureau of Animal Industry Building and the Higgins Cemetery. Over 3,000 structures have been determined to be historic and included in the Master Plan.

### **HOW ARE MODIFICATIONS MADE TO COUNTY-DESIGNATED HISTORIC PROPERTIES?**

For exterior modifications to a historic site, the property owner must submit a Historic Area Work Permit (HAWP) to the Department of Permitting Services before an application for a building permit can be approved. HAWPs are required before modifying, changing or altering the exterior of any historic site or any historic resource located within any historic district or changing features within the environmental setting such as a fence. HAWPs are intended to encourage repair over reconstruction. The Historic Preservation Section staff offer guidance and encourage consultation. That staff reviews all HAWPs for compliance with Chapter 24, and district-specific guidelines and the *Secretary of the Interior's Standards For Rehabilitation*.

The HAWP is then sent to the Historic Preservation Commission within 45 days for a public hearing. When the HPC approves the HAWP, the Department of Permitting Services issues a work permit. A denial can be appealed to the Board of Appeals.

Year-to-date, the HPC has reviewed 120 HAWPs, approving all but one. The Planning Staff works with applicants whose applications do not initially meet the criteria. In the prior fiscal year, the HPC reviewed 127 HAWPs, denying only one.

### **INCENTIVES FOR HISTORIC PRESERVATION IN MONTGOMERY COUNTY**

**The Montgomery County Historic Preservation tax credit**, against County real property taxes, is 10% of documented expenses for exterior maintenance, restoration or preservation work on property listed in the Master Plan. An application form must be completed and submitted to the Historic Preservation Commission. The HPC received just over 60 tax credit applications this year, versus 48 last year.

**The Maryland Sustainable Communities tax credit program** is administered by the Maryland Historical Trust and provides Maryland income tax credits based on a percentage of capital costs expended in rehabilitation of a structure as follows:

20% for "certified historic structures" that are owner-occupied single-family residences: expenditures must exceed \$5,000 in 24 months. Must be on or eligible for the National Historic Register or a district on the Register (local designation can be used). Can be external or internal and must comply with the Secretary of the Interior's Standards for Rehabilitation.

20% for "certified historic structures" that are commercial buildings

25% for "certified historic structures" that are high-performance commercial buildings. Can be used with local tax credits; costs must exceed the greater of 50% of the adjusted basis value of the structure or \$25,000.

**THE MARYLAND Historical Trust** also administers grants, loans and tax credits for historic properties, including planning and documentation, “bricks and mortar” and museum and heritage tourism. The Maryland Historical Trust regularly holds workshops all over the state on funding opportunities for historic preservation and museum projects.

**Federal Historic tax credit** program applies to rehabilitation of historic income-producing properties. A 20% tax credit is available for the substantial rehab of commercial, agricultural, industrial or rental residential buildings that are certified as historic. The tax credit can be subtracted directly from federal income taxes owed by the owner. The structure must be on the National Register or a contributing part of a historic district listed or eligible for the National Register. The amount spent must be greater than the building’s adjusted basis. The work must comply with the Secretary of the Interior’s Standards for Rehabilitation.

**The Montgomery County historic preservation easement** program, established by Chapter 24A, is administered by the Historic Preservation Commission. An owner of an historic resource may offer the county a preservation easement to protect or conserve interior or exterior features of the historic resource and its environmental setting. All easements are granted in perpetuity and recorded by the grantor in the county land records. In return for donating an easement, a property owner can register a charitable donation with the Internal Revenue Service. In some cases, property assessments are also lowered after donation of an easement. The county may acquire the easement upon the recommendation of the HPC and approval of the County Executive.

**Other possible incentives for historic preservation, not available in the county, include** permitting the transfer of development rights from a significant building in exchange for their preservation and establishing a façade easement. A Purchase of Development Rights program can be used for farmland and special funds from the Bureau of Land Management (provide matching funds to local communities for projects on or adjacent to BLM land) and Community Development Block Grants (CDBG) from the U.S. Department of Housing and Urban Development (HUD).

## **CEMETERIES AND HISTORIC PRESERVATION**

The Historic Preservation Section of the Planning Department has online a Montgomery County Cemetery Inventory, compiled by the Montgomery County Cemetery Coalition. The Inventory includes 269 cemeteries, including those that have been moved and those that have disappeared. Additional information is available in paper files maintained by the Montgomery Historical Society. Sixty-two have been declared historic sites. The most recent being the Higgins Family Cemetery, the only remnant of Spring Lake Park, a community laid out in 1891 and built on land once farmed by James Higgins, a Revolutionary War veteran. On a national level, cemeteries and birthplaces are not considered appropriate for historic designation unless the property is the only remaining evidence from an important person’s life. On a local level, cemeteries provide a wealth of information to historians, genealogists and other researchers.

## **HISTORICAL SOCIETIES – THE GRASS ROOTS**

As stated in the Introduction, early preservation efforts were largely supported by private individuals, and women had a prominent role in those activities. While the preservation movement has changed from its early years to today’s organized and systemic activities, nongovernmental groups such as historical societies still play a major role in historic preservation efforts. The National Trust For Historic Preservation was established in 1949 and is a major source of historic preservation activity and education all over the United States. The Montgomery County Historical Society collects, interprets and promotes the history, heritage and culture of Montgomery County, Maryland. It concentrates on history and genealogy research and does not deal with the preservation of historic buildings. Within Montgomery County, almost every area of the county, such as Chevy Chase, Kensington, Germantown, Takoma Park and Rockville, has a historic society. Peerless Rockville

covers the greater Rockville area and was instrumental in establishing the first historic district in Montgomery County, in Rockville, which includes St. Mary's Cemetery where F. Scott Fitzgerald is now buried. County historical societies collect much of the local history and culture that makes historic sites relevant.

### **HISTORIC PRESERVATION AND AFFORDABLE HOUSING**

The National Park Service has included the following case study on its site. The Shelly School Apartments, West York, Pennsylvania, consist of two former school buildings built in 1897. PFG Capital Corporation rehabilitated the two buildings into 17 apartments, five of which are accessible. PFG Capital combined the Low-Income Tax Credit and the Historic Rehabilitation Tax Credit for the redevelopment project. The historic corridors and their features and finishes convey the historic character of the former school and provide distinctive public spaces for the residents.

Similarly, in St. Louis, Missouri, the Mayor and Rollin Stanley, Director of Planning in St Louis before coming to Montgomery County, created thousands of new housing units in abandoned tremendous old warehouse buildings with the aid of historic preservation tax credits and low-income housing tax credits. Some of the housing created in St Louis was market rate or higher housing, but most was affordable.

### **HISTORIC PRESERVATION AND SUSTAINIBILITY**

The National Trust For Historic Preservation states that historic preservation can and should be an important component of any effort to promote sustainable development. The conservation and improvement of our existing built resources, including re-use of historic and older buildings, greening the existing building stock and reinvestment in older and historic communities, is crucial to combating climate change. The greenest building is often the one that is already built. Most historic buildings are located where public infrastructure already exists, saving the costs of new water lines, sewer lines and streets. Vacant, unused and underused buildings are brought back as tax-generating assets for a community. Interconnectivity is reemerging in historic areas that encourage integration of uses and less dependence upon the automobile. New construction is often 50% labor and 50% materials. Rehabilitation is 60 – 70% labor and provides local jobs, resulting in a significantly greater local impact than new construction. The razing of existing structures results in construction debris. Sixty – sixty-five % of most landfill sites are made up of construction debris. Finally, no new land is consumed when rehabilitating a historic building, such as conversion of a historic warehouse into residential units. Such rehabilitation reduces the demand for the development of farmland.

### **THE DOWN SIDE OF HISTORIC PRESERVATION**

Despite the great effort on the part of county staffs and officials to accommodate citizen's property rights, some property owners, especially in historic districts, are not happy. Low income residents, again usually in historic districts, lack funding or are unaware of available funding for maintenance to prevent deterioration of their historic property.

### **CONSENSUS QUESTIONS**

1. Is Historic Preservation in Montgomery County a governmental activity of benefit to the public good?

YES

NO

NO CONSENSUS

If yes or no, why?

2. What is the obligation of the Montgomery County Government to owners of property designated as historic properties?
  - a. Should it be possible for property to be declared historic over the owner's objections?  
YES                      NO                      NO CONSENSUS  
If yes, under what conditions?
  - b. Should owners whose property has been designated historic be informed of available financial assistance for maintenance?  
YES                      NO                      NO CONSENSUS
  - c. Is it appropriate for a historic district to develop its own set of criteria or guidelines?  
YES                      NO                      NO CONSENSUS.

## SOURCES:

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4. Case Studies in Affordable Housing Through Historic Preservation #3: Shelly School Apartments. National Park Service, Historic Preservation Services, October 2005
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6. Montgomery County Cemetery Coalition [www.mc-mncppc.org/historic](http://www.mc-mncppc.org/historic)
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10. Maryland Historical Trust: <http://mht.maryland.gov/designation>
11. Interview with Eileen McGuckian, Peerless Rockville
12. Interview with Scott Whipple, Sandra Youla, Clare Lise Kelly of the Historic Preservation Section
13. Interview with Robin Ziek, City of Rockville Planning Office
14. Clare Lise Cavicchi: Places From the Past: The Tradition of Gardez Bien in Montgomery County, Maryland. Maryland-National Capital Area Park and Planning Commission, 2001.

The Historic Preservation Study Committee: Melpi Jeffries, Chair, and preparer with the assistance of Nancy Bliss, Barbara Hankins, Pat Laine, Judy Morenoff, Lois Stoner and Connie Tonat.

## Resulting Positions

- a) Historic preservation as a county government activity of benefit to the public good, as a means of preserving our heritage and providing a sense of place.
- b) The county government's obligation to:
  - i) inform individuals whose property has been designated historic of available financial assistance for maintenance.
  - ii) designate property as historic over the owner's objections only if more than one criterion is satisfied.
  - iii) provide the opportunity for a historic district to develop its own set of criteria or guidelines as part of the historic designation process. (2012)