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### Subdivision Regulation and Historic Preservation

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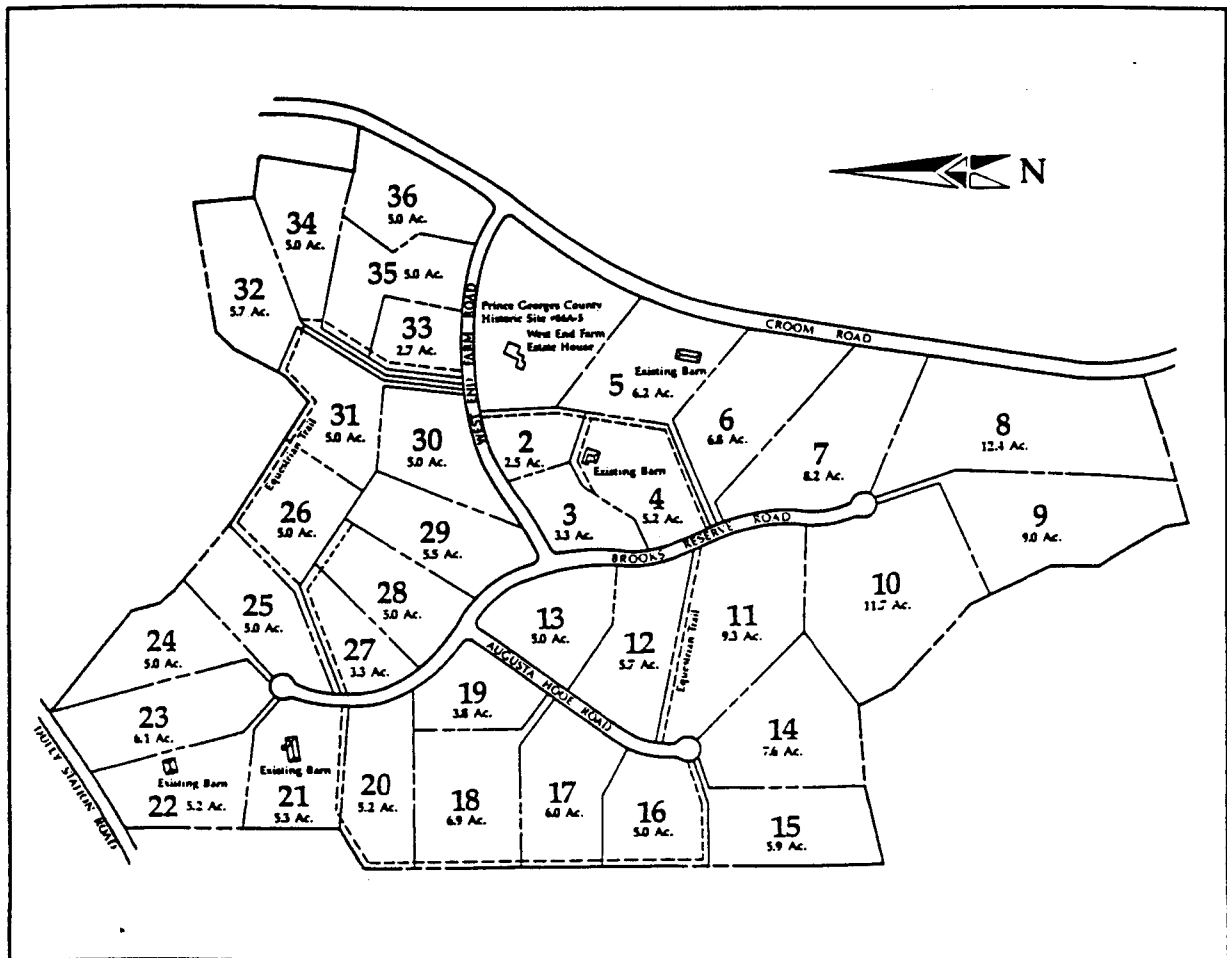
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August 1992

In the language of land use planning and regulation, the term "subdivision" refers to the process by which a tract of land is split into smaller parcels, lots, or building sites for the purposes of sale and eventual development. The regulation of land subdivision by local governments is one of the principal means of guiding the direction and quality of land development. Under local subdivision regulations, a landowner is not permitted to divide and sell his land until the governing body or its designated local agent, has approved a plat (map) of the proposed subdivision design. In many suburban and rural areas, subdivision regulation rivals zoning in importance as a public control on land development or redevelopment. In urban areas, subdivision regulation determines whether or not large lots in established neighborhoods can be split up into smaller lots for new development which may alter the character of the neighborhood. Like zoning, subdivision regulations can be either harmful or helpful in the preservation of historic properties. Advocates of preservation should be knowledgeable about subdivision regulation in their communities in order to determine what effects it has on the community's historic resources.

#### How does subdivision regulation affect historic preservation?

When a parcel of land is subdivided for development, the historic resources, both standing structures and subsurface sites, on that land become vulnerable to destruction if the proposed new development is not carefully arranged on the parcel of land. For example, a 1990 excavation for the foundation of a house in Ledyard, Connecticut uncovered human remains and funerary objects associated with an unmarked Mashantucket Pequot cemetery which had been in use between 1667 and 1721. Field examination revealed that 15-25 graves had been destroyed by the excavation. Tribal authorities worked with the landowner, town officials, and State officials to allow construction of the home to continue while at the same time ensure that the remaining portions of the cemetery would be

preserved. Even when historic resources are not directly threatened by demolition, the resource's immediate surroundings including, for example, secondary buildings or structures and important landscape features such as woodlots or hedgerows, can be destroyed by insensitive land development. Subdivision regulations that include provisions to protect historic properties can help prevent this needless destruction by ensuring that the developers or subdividers take historic resources into account as they lay out lots, blocks, and streets. As a result of the Pequot cemetery incident, the Ledyard Planning Commission amended its subdivision regulations to require that archeological resource inventories be conducted in all areas covered by newly proposed subdivisions and that all subdivisions should be laid out to preserve significant historic resources.



*Plan for the West End Farms subdivision in Prince George's County, Maryland. Negotiations between the Historic Preservation Commission and the developer led to a doubling of the size of the lot containing the historic Estate House, relocation of the subdivision entrance road, and Commission review over new construction on adjoining lots. (Reproduced by permission of the Lawrence Doll Company.)*

**What purposes do subdivision regulations serve?**

Modern subdivision regulations are an outgrowth of colonial laws relating to the the layout of new towns and 19th-century laws that sought to ensure the maintenance of proper land records by requiring accurate surveying and platting (mapping) of land as it was sold. Titles to land can be identified more readily if they refer to a surveyed and recorded plat in addition to the traditional "metes and bounds" description. Many States adopted modern subdivision enabling legislation following the publication of the Standard City Planning Enabling Act by the Department of Commerce in 1928. As a result, subdivision ordinances were transformed into development controls with design standards for lots and blocks and, eventually, design and construction standards for new roads and other subdivision improvements. The public interest in land subdivision derives from the fact that once land is divided into streets, blocks, and lots and is publicly recorded, the pattern of development is set for years to come and is difficult to change. Communities have adopted such controls to prevent poor quality development within their jurisdiction, i.e., subdivisions with inadequate streets, water mains, sewers and other facilities, which, if built, could result in health and safety problems and diminished property values. Increasingly, subdivision regulations have been used by local governments as a way of sharing with the private sector (i.e. the developers creating the subdivisions) the financial burdens of building and maintaining the new roads, sewers, and other infrastructure associated with new development.

**Do subdivision regulations apply to all divisions of land and property transactions?**

The definition of subdivision varies widely from State to State. In most States, subdivision for the purposes of local regulation is defined in the State enabling legislation (although some States, such as Virginia, allow local governments to adopt their own definition). One State defines subdivision as "the division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions." Another defines it as the division "into three or more lots or parcels of less than five acres each for the purpose of transferring ownership or building development." In some jurisdictions, large-lot subdivisions (2-, 5-, or 10- acres) are exempt from regulation. Conversely, in some States, such as North Carolina, small-scale subdivision (involving land in single ownership whose entire area is no greater than two acres) is exempt.

**How do subdivision regulations relate to a community's comprehensive plan and to its zoning regulations?**

In communities which have a comprehensive or master plan, both zoning and subdivision ordinances carry out or implement the plan's policies. Zoning regulates the uses of land as well as the intensity of use (e.g., number of dwelling units), while subdivision ordinances regulate the division of tracts into

building lots and the provision of infrastructure. In terms of their relationship to each other, both zoning and subdivision regulations may specify minimum lot size, shape, and access requirements; some of the standards from the zoning ordinance are typically incorporated by reference into the subdivision ordinance. While historically zoning and subdivision have been seen as separate kinds of regulations, the distinction between them is blurring and both come into play in all but the simplest development project.

**Is subdivision regulation a tool for limiting growth and development?**

No. While a well-crafted subdivision ordinance can be very effective in minimizing the negative impact of development, subdivision ordinances do not determine where, or if, development can take place; they merely ensure that whatever development does take place meets appropriate quality standards. Consequently, subdivision regulation alone, even when it incorporates preservation concerns, is insufficient to prevent development from occurring. A determination of how much new growth and development a community wants and where in the community it should be located is a function of the community's comprehensive or master plan. Communities that wish to limit new development in the interest of maintaining rural character, for example, will likely have to consider a range of additional strategies beyond subdivision regulation, including scenic road designations, agricultural preservation techniques, acquisition of easements, etc.

**What sorts of concerns come under the purview of subdivision regulations?**

Typically, subdivision ordinances cover the following kinds of issues:

- Street design, which deals with the layout or pattern of streets, their width, the spacing of intersections, the location of pedestrian ways, and the relationship of the subdivision streets to the community's existing streets.
- Lot layout and design, including the size and shape of lots and minimum width where lots meet the street (frontage requirements).
- Provision of utilities to serve the residents of the new development including water supply, gas and electrical service, and sanitary sewers.
- Hazardous and environmental areas requiring special attention such as steep slopes, floodplains, unstable land, wetlands, woodland conservation areas, and habitats for endangered species.
- Stormwater management, which deals with providing for safe and environmentally appropriate drainage of stormwater through installation of storm sewers and other drainage systems.
- Soil erosion and sedimentation of streams and rivers, which seeks to limit the extent of grading and land disturbance and the length of time graded areas can be exposed without ground

cover.

- **Water quality, which deals the impact of new development on water-supply watersheds and seeks to limit the pollution of drinking water supplies.**
- **Landscaping and aesthetics, which deals with protecting existing vegetation and the installation of new vegetation such as street trees and buffers or planting strips to shield new subdivision residents from the effects of adjacent land uses.**
- **Mandatory dedication of land for public facilities, such as roads, parks, and schools needed to serve the residents of the subdivision.**

**What types of improvements do subdivision regulations typically require?**

The types of improvements required by subdivision regulations varies according to the type of subdivision (e.g., whether it is industrial or residential) and its density. However, the types of improvements typically required of developers in residential subdivisions are fairly standard and include paved streets (including curb and gutter where appropriate), surface and subsurface drainage facilities, sidewalks in some instances, water and sewer lines where service is available, and fire hydrants. More demanding municipalities may require street signs, streetlights, subdivision entrance signs, perimeter fences or walls, trash receptacles, or even bus shelters.

**Which local jurisdictions are empowered to adopt subdivision regulations?**

Local governments derive their power to regulate subdivisions from State enabling legislation; virtually all States allow various classes of municipalities to exercise this power. Some States, such as Alaska and Virginia, require certain or all units of government to do so. In many States, the power to enact and enforce subdivision regulations may be applied in areas immediately adjacent to a municipality's borders. Since a substantial amount of land subdivision occurs on the fringe of urban and suburban areas outside municipal boundaries, virtually all States also allow Counties (or comparable units) to review subdivision plats.

**What agency of local government adopts and administers subdivision regulations?**

The way in which subdivision regulations are adopted and administered varies from jurisdiction to jurisdiction and from State to State. In some States, (e.g. Arizona) the legislative body both adopts the regulations and approves plats. In most States, locally appointed planning commissions or boards are delegated authority to regulate subdivisions. In some States the planning commission both adopts the subdivision regulations and reviews subdivision plats; in others, the planning commission acts only as a plat approval agency while the local legislative body adopts the regulations. In many States, plat approval authority is delegated to staff technical review committees or the planning director.

**What is the subdivision application and review procedure?**

Typically, there are two stages in the review of subdivision proposals--preliminary (or sketch plan) and final plat review.

The steps in the review of preliminary plats generally take place as follows:

- 1) Pre-filing conference between developer and local government representative (planning department staff)
- 2) Developer submits application
- 3) Planning department (or other authorized review body) accepts application
- 4) Application is distributed to appropriate State and local agencies (e.g., State health department, utilities, transportation agency) for review
- 5) Planning department and other agencies conduct field inspection as appropriate
- 6) Other agencies submit written comments on application to planning department
- 7) Planning department compiles other agency comments and those of its own staff into a report
- 8) Staff or planning department approves the plat, often with conditions, or disapproves it (or recommends approval/denial to the planning commission or the local governing body). (A public hearing may be required as part of the approval process).

If approved, the applicant goes on to final plat review, generally within a specified period of time; if not, the applicant is informed and generally given the opportunity to redesign the subdivision to conform with the requirements of the community's regulations and to reapply for approval. Final plat review and approval follows a similar sequence. A large part of final plat review involves ensuring compliance with the conditions established during preliminary plat approval; major changes to the subdivision layout (such as streets, lots, nondisturbance areas) are not usually permitted at this time. The final plat is recorded as a legal document in the land records with metes and bounds description. Many communities have a simplified review and approval process for "minor subdivisions" which might be defined as those involving fewer than five lots, requiring no new streets or roads, and requiring no new extension of water or sewer lines.

**What role does a local historic preservation commission or landmarks board have in the subdivision review process?**

When an application for subdivision is submitted for parcels of land that contain historic resources or for parcels that are adjacent to historic resources, the local historic preservation commission should have an opportunity to review and comment on the application as part of the routine plat review process (corresponding to Step 4 listed above). Ideally, local laws should include provisions that require consideration of historic resources and list the preservation commission as a required referral

body on subdivision cases. If this is not possible, the commission should make an informal arrangement with the planning office to receive and comment on applications (under these circumstances the commission may have to conduct its review and provide its opinion relatively quickly so as to not interrupt the broader review process). The commission should ensure that the planning office has accurate information (on maps and in other forms) on the location of all historic properties in the community (depending on local law, the commission may be restricted in its review of subdivision plats to only those that affect officially designated historic resources).

**How does a preservation commission review a subdivision proposal?**

To facilitate the commission or its staff's review of a subdivision plat, applicants should be required to show all historic resources on or adjacent to the property being developed. For proposals that involve the subdivision of historic sites themselves (e.g., a farmstead or an estate) the commission should consider whether or not the applicant is retaining enough land and historic features to maintain a sense of the primary building's historic setting. Significant outbuildings, family cemeteries, stone walls, and ancient trees should be kept with the lot of the historic house. Even if a barn or a farm road is too far from the house to be included in its lot, the commission may be able to negotiate with the applicant to find ways to save such resources, either as part of another lot or as a community feature.

**What factors should a commission consider in reviewing a subdivision proposal?**

The commission or its staff should consider the following factors:

- **Topography.** Does the historic site sit on a hill? Will the new development be visible from the historic site? Will new development block important views from the historic site?
- **Vegetation.** Does the setting consist of scrub, new growth, or mature growth? Does the local subdivision law require the developer to map the general location of stands of trees and indicate which ones he plans to retain? For example, are there remnants of old orchards which could be preserved?
- **Layout of lots.** Does the arrangement allow the new lots to back up to the setting of the historic site, or will the historic site front on a new road?
- **Historic features.** How can historic features be used in the development of new design alternatives? For example, can old farm lanes be used as drives or internal hiking trails?
- **Siting of buildings.** Do new buildings intrude on important views of the historic site? Can they be sited within groves of trees or behind hills to protect views from the historic property? (Depending on the local subdivision law, a developer may not be required to show the location of buildings when applying for subdivision approval).
- **Alignment of "stubout" streets.** Sometimes local governments require a developer to extend

a street to the boundary of the development to connect with a street on adjacent property that is yet to be built (the developer's street ends with a temporary dead-end). If the adjacent property contains historic resources the commission should ensure that the alignment of the stubout street does not make it impossible to protect historic sites on the adjacent property when the connecting street is built.

**What sorts of specific requests can the preservation commission make of an applicant seeking to subdivide an historic site?**

Depending on the language of the local subdivision ordinance, the commission may be authorized to request that the applicant:

- retain or incorporate into the new development major building and landscape features. For example, fence lines and stone walls can serve as property lines, farm lanes can become paths or horse trails, and farm buildings can be reused as gatehouses, or storage shelters;
- retain woodland to a depth that will effectively screen the historic site from the new development;
- create a buffer zone, and buffer features, such as berms, to screen new development;
- use a variety of high quality native planting materials;
- protect original approaches including views from the road. Many subdivisions cause roads to be widened and hedgerows or mature old trees to be destroyed. The commission can request variations in road alignment and establish "limits of disturbance" lines along the roadside to preserve the hedgerows and old trees.
- provide a site plan showing that the placement of buildings within lots and the architectural design of the buildings is compatible with the historic site.
- ensure that an appropriate party (a private owner, a property owners' or citizens' association, or some other local organization) assume responsibility for long-term maintenance of historic features that are retained.

**How can subdivision regulations be written to require consideration of historic resources?**

Typically, subdivision regulations require developers to avoid routing streets or placing lots on sensitive environmental features such as wetlands and floodplains. Subdivision regulations can be written to specifically require developers to give the same care in protecting historic resources as they do sensitive environmental features. Requirements relating to historic preservation are sometimes included in the environmental section of the subdivision ordinance as is the case in Prince George's County, Maryland. The Prince George's County ordinance includes the following "historic preservation requirements" for proposed subdivisions containing or adjacent to a historic resource:



- (1) Lots shall be designed to minimize adverse impacts of new construction on the historic resource;
- (2) Natural features (such as trees and vegetation) which contribute to the preservation of a historic resource or provide a buffer between the historic resource and new development shall be retained; and,
- (3) Protective techniques (such as limits of disturbance, building restriction lines and buffers) shall be used. (Subtitle 24, Subdivisions, Sec. 24-135.1)

In addition, to "safeguard the integrity of the historic resource", the Prince George's County subdivision ordinance allows the Planning Board to require that the developer submit a "detailed site plan for the purpose of evaluating the effect of the orientation, mass, height, materials, and design of the proposed development on the environmental setting". When a developer proposes to subdivide land containing a cemetery (and does not plan to relocate the human remains to another cemetery), the County requires even more stringent conditions to be met including a complete inventory of existing cemetery elements and their condition as well as placement of lot lines in a way that promotes maintenance and protection of the cemetery.

**What procedures should subdivision ordinances establish for subdivision proposals that affect archeological sites?**

As discussed above, Ledyard, Connecticut amended its subdivision regulations to allow the Planning Commission to require a developer to prepare an archeological assessment if, in the Commission's opinion, "there is a likelihood that significant cultural resources or undetected human burials will be adversely impacted by construction activities associated with the proposed development." The ordinance also includes a provision which obligates the Commission to seek the advice of the State Archeologist or State Historic Preservation Officer in determining the need for an assessment. If significant archeological resources are identified, the developer is required to submit a management plan describing measures to be taken to reduce the impact of new construction on the resources (such as conservation easements, redesign or relocation of roads, drainage features, or buildings). Similarly, at the earliest stages of the subdivision approval process, the Anne Arundel County, Maryland Office of Planning and Zoning routinely requires developers to conduct an archeological survey if the subdivision has known archeological sites or a high probability of containing sites. Developers are requested to avoid significant sites or to mitigate their destruction by retrieving information through excavations.

**What additional measures can be employed as part of the subdivision process to protect and preserve historic resources?**

Mandatory dedication (dedication to public use) can be a useful preservation tool. As part of the mandatory dedication requirement, many subdivision ordinances require developers to set aside a certain percentage of the land in their subdivision for public right-of-way, open space, and recreational use to ensure adequate public facilities to serve the development. If this open space area is located where there are archeological sites, for example, the sites will be protected while recreational facilities such as nature and exercise trails (carefully sited to avoid the archeological sites) can still be accommodated. The Westport, Connecticut subdivision regulations contain provisions for the establishment of "Open Space Subdivisions" in residentially zoned districts. Among the purposes of allowing such subdivisions are:

to permit the best possible design of a parcel of land after consideration of its particular topography, size, shape, soils or other unique features such as valuable trees, watercourses, waterbodies, and historical, archeological and/or paleontological sites.

**What about cluster subdivisions?**

Clustering allows the developer to develop lots smaller than those specified in the zoning and subdivision regulations and to concentrate housing units in one part of the tract to be subdivided, provided the remainder of the tract is reserved for permanent common use, often as open space. The actual number of lots is the same as if the tract had been subdivided in a conventional manner. This is important because some citizens believe clustering permits greater density when in actuality it creates the same number of lots but in a more site-sensitive layout. In jurisdictions that allow cluster subdivisions, developers can take advantage of it by including areas where historic resources are located in the undisturbed common land, while shifting development to portions of the tract where there are no historic resources. In Prince George's County, Maryland the subdivision regulations permit clustering for a variety of reasons including to "encourage compatibility with historic resources".

**Do subdivision regulations and review procedures affect historic resources in already developed areas such as historic districts and neighborhoods?**

Yes. Although subdivision is primarily thought of as affecting less developed areas, in certain cases, it can have negative implications in historic neighborhoods through what is known as resubdivision, in which traditionally large lots are split up into smaller lots. In these circumstances, the ample yards surrounding historic homes are crowded by houses built on the newly created smaller lots and the character and historic appearance of the neighborhood is changed. This was basis for the Greenwich, Connecticut Planning and Zoning Commission's denial of a property owner's application to resubdivide his property to create three lots in the town's Mill Pond Historic District. The Commission's decision

was upheld by a Connecticut trial court in part because the town's subdivision regulations include provisions for the protection of historic properties.

Resubdivisions sometimes involve what are known as "pipestem" or "flag" lots, which are distinguished by the fact that the portion of the lot that fronts on the street or the road is just wide enough to accommodate a driveway. Where subdivision regulations don't prohibit such lots, the owner of a large lot in a historic district may be allowed to resubdivide his lot by creating a pipestem lot extending behind his existing historic home. This kind of situation prompted the City of Rockville, Maryland to amend its subdivision regulations to prohibit "pipestem" lots by requiring that resubdivisions in existing residential areas maintain the area and frontage of existing lots within five hundred feet of the proposed resubdivision.

### **Conclusion**

Subdivision regulations are an important public control over private land development, especially in rural and suburban areas with large tracts of undeveloped land, but, also, in historic neighborhoods with traditionally large lots. When written to include preservation concerns, they can be a powerful tool to ensure that new development doesn't needlessly destroy historic resources. Citizens should familiarize themselves with the subdivision regulations in their own communities to determine whether or not historic preservation concerns are included.

### Sources of Information

Unless otherwise noted, the following publications are available from the Planner's Bookstore, 1313 E. 60th Street, Chicago, IL 60637-2891. Phone: (312) 955-9100, FAX: (312) 955-8312.

**The Cluster Subdivision: A Cost-Effective Approach**, Planning Advisory Service (PAS 356), 1980, American Planning Association

**Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development**, Robert D. Yaro et al. Cambridge MA: Lincoln Institute of Land Policy and the Environmental Law Foundation, September 1988.

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**Linking the Past to the Future: A Land Conservation Strategy for Waterford, Virginia**, forthcoming Fall 1992, Waterford Foundation, Inc. and National Park Service. Available from: National Park Service, Landmark Preservation, Preservation Assistance Division, P.O. Box 37127, Washington, DC 20013-7127. Phone: (202) 343-9578.

**The Subdivision and Site Plan Handbook**, David Listokin and Carole Walker, Center for Urban Policy Research, 1989, Rutgers University Press.

"Subtitle 24. Subdivisions." Prince George's County Code 1987 edition, 1989, 1990 supplements, Prince George's County, Maryland. For further information contact: Prince George's County Historic Preservation Commission, County Administration Building, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Phone: (301) 952-3520.

"Regulations Governing the Subdivision of Land," Town of Ledyard, Connecticut, Adopted: March 22, 1962, Amended: June 11, 1991. For further information contact: Town of Ledyard, Department of Planning, P.O. Box 38, Ledyard, CT 06339-0038. Phone: (203)464-8740.

**Acknowledgements:** This document incorporates material prepared for the Maryland Association of Historic District Commissions by Gail Rothrock, Preservation Planner, who also provided thoughtful comments on early drafts of the manuscript. The author wishes to thank the following additional reviewers: Teri Von Adelung Bond, Pratt Cassity, Stephen Dennis, Sue Henry, Chris Kehoe, Antoinette Lee, Al Luckenbach, Bruce Noble, Patricia Parker, de Teel Patterson Tiller, Jean Travers, and Nancy Webster.