

CITY OF LEXINGTON  
CITY COMMISSION

2001 APR 20 AM 11:40

NOTICE OF APPEAL FROM THE HISTORIC  
PRESERVATION BOARD DECISION

APPEAL BY GENE HONEYCUTT, by and through his undersigned attorney.

DECISION APPEALED FROM:

Denial of Petition 5COA-01HPB by Historic Preservation Board – 634 NE Boulevard  
Construct fence in side and back yard. The structure is a contributing structure to the  
Northeast Historic District – Gene Honeycutt, Owner and Agent.

REASONS FOR APPEAL:

- ✓ REASON 1: Denial of the petition was not made in a timely manner 30-112 (d) (7) (e) requires a decision be made within 45 days of the hearing, it was not. Sec. 30-112 (d)(7)(h) deems such a failure to be approval.
- ✓ Sec. 30-112 Historic preservation/conservation. Requires under its rules of procedure that an application must be placed on the next regularly scheduled meeting of the Historic Preservation Board. PRESENTED 1/11/01 SCHEDULED FOR THE NEXT REGULARLY SCHEDULED MEETING FEB. 6  
30-112 (d) (7) (c) Procedure – Referral to Historic Preservation Board

Upon submittal of the completed application and required submittals the city manager or designate shall place the application on the next regularly scheduled meeting.

Honeycutt made application on 01/10/2001. The application was placed on the next regularly scheduled meeting of the Historic Preservation Board. After notice the meeting was held February 6, 2001.

The Board did not issue a decision at the meeting but unilaterally continued the meeting until March 22, 2001.

- ✓ 30-112 (d) (7) (e) (2) requires "The decision of the historic preservation board shall be made at the hearing or no later than 45 days after said hearing. The time period for reaching a decision may be extended by mutual written agreement between the applicant and the historic preservation board.

Mr. Honeycutt did not request or agree to any postponement. There is no written agreement extending the 45 day time period. No subsequent notices pursuant to paragraph (d) were made.

30-112 (d) (7) (h) states that "Effect of failure to decide within time limit. Failure of the historic preservation board to act within the time limits established shall be deemed approval of the application..."

- ✓ The decision of the Historic Preservation Board being appealed from was made on April 3, 2001. The decision was made 55 days after the noticed hearing of February 6, 2001. The decision to deny Mr. Honeycutt's application was not timely and is inconsistent with 30-112 (d)(7)(h) which deems such a failure as an approval.

**REASON 2:**

The Historic Preservation Board bases its denial on the following finding:

*Fences in highly visible side and rear yards should be no greater than 48" tall if mostly open, and no greater than 36" tall if mostly closed, as design guidelines reflect the Historic Preservation Board's concern over creating long, blank, unarticulated spaces when fences, such as privacy fences are constructed near sidewalks.*

The decision ignores important issues and factual matters.

a. **Safety** -The Honeycutts requested a privacy fence because of their concern for the safety of their children. They have two children one under 2 and another age 5. They wanted a fence to allow the children to play in the yard without the fear of them wandering off. Being close to downtown the neighborhood is frequented by persons who do not live in the neighborhood. There have been incidents in the neighborhood involving child molesters and rapists. Privacy was important to them because they did not want their children to be seen by dangerous persons. A 36" fence affords no safety and cannot contain a child. A 48" fence is not sufficient to protect the children from someone reaching over the fence.

The Honeycutt's have a dog and the breeder of the dog recommends a fence of 6 feet or higher to contain that breed of dog.

Sec 30-112 Findings indicates that protection of historic structures and neighborhoods is essential to the health, safety, morals and economic, educational, cultural and general welfare of the public. The protection of the nature of the neighborhood should be consistent with the safety of its occupants and especially their children. One of the purposes of 30-112 as stated therein is the enhancement of stabilization of neighborhoods and protecting the families of the neighborhood is very important to its stabilization.

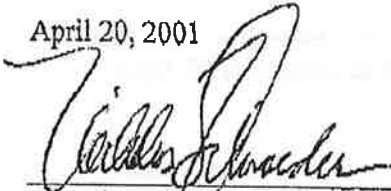
b. **Visibility** - The Honeycutts contend their side and rear yard are not highly visible, they are currently bordered by various plantings that are higher than the proposed fence.

c. **Appropriateness** - The proposed fence was designed to fit the historic nature of the neighborhood, it is not simple a board fence but involves spaced brick columns with boards between and it would not create a "long blank, unarticulated space".

d. **Similar Structures** - There are numerous other privacy fences in the neighborhood that are highly visible and are not as well designed. The Board's denial of the Honeycutts' fence application is arbitrary and inconsistent with other approved fences in the neighborhood. The area to be enclosed is the Honeycutt's back yard many homes in the neighborhood have privacy fences in their back yards.

e. **Neighbors** - Immediate neighbors signed letters indicating the proposed fence was acceptable to them.

April 20, 2001



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