

MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION
STAFF REPORT

Address:	10549 St. Paul St., Kensington	Meeting Date:	9/20/2023
Resource:	Primary One Resource Kensington Historic District	Report Date:	9/13/2023
Applicant:	Peter & Ally Magee	Public Notice:	9/6/2023
Review:	HAWP	Staff:	Dan Bruechert
Case No:	1042542	Tax Credit:	n/a
PROPOSAL:	Fence Installation		

STAFF RECOMMENDATION

Staff recommends the HPC **approve with one (1) condition** the HAWP application:

1. The approval of this HAWP only extends to the proposed 4' (four foot) tall aluminum fence to enclose the rear of the subject property. After an evaluation of the property boundary has been completed, the applicant may submit a separate HAWP for consideration of the replacement fence along the north property boundary.

ARCHITECTURAL DESCRIPTION

SIGNIFICANCE: Primary One Resource within the Kensington Historic District
STYLE: Colonial Revival/Queen Anne/Shingle
DATE: 1886

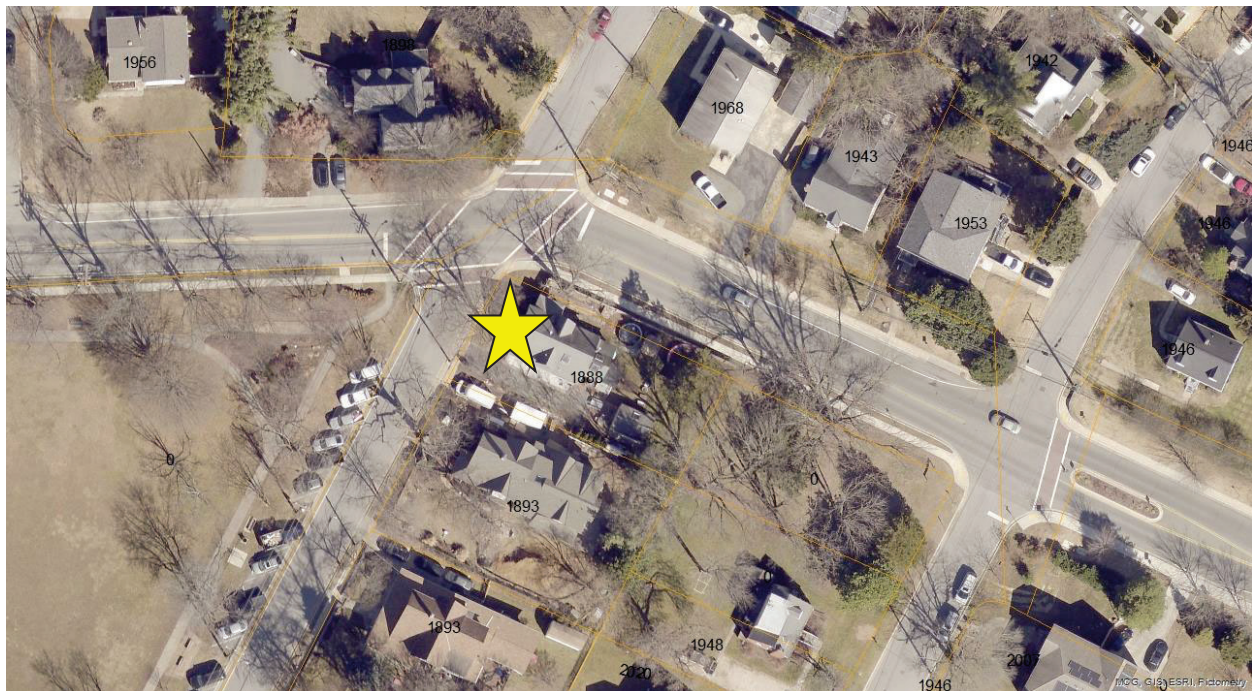


Figure 1: The subject property is located at the corner of St. Paul St. and Plyers Mill Rd.

PROPOSAL

The applicant proposes to replace a section of fence and install new fencing.

APPLICABLE GUIDELINES***Kensington Historic District Guidelines***

When reviewing alterations and new construction within the Kensington Historic District several documents are to be utilized as guidelines to assist the Commission in developing their decision. These documents include the *Approved & Adopted Amendment to the Master Plan for Historic Preservation: Kensington Historic District, Atlas #31/6 (Amendment)*, *Vision of Kensington: A Long-Range Preservation Plan (Vision)*, *Montgomery County Code Chapter 24A (Chapter 24A)*, and the *Secretary of the Interior's Standards for Rehabilitation (Standards)*. The pertinent information in these documents is outlined below.

Approved & Adopted Amendment to the Master Plan for Historic Preservation: Kensington Historic District, Atlas #31/6

The district is architecturally significant as a collection of late 19th and early 20th century houses that exhibit a variety of architectural styles popular during the Victorian period including Queen Anne, Shingle, Eastlake, and Colonial Revival. The houses share a uniformity of scale, setbacks, and construction materials that contribute to the cohesiveness of the district's streetscapes. This uniformity, coupled with the dominant design inherent in Warner's original plan of subdivision, conveys a strong sense of both time and place, that of a Victorian garden suburb.

Vision of Kensington: A Long-Range Preservation Plan

The HPC formally adopted the planning study, *Vision of Kensington: A Long-Range Preservation Plan*, and is directed by the Executive Regulations, which were approved by the County Council, to use this plan when considering changes and alterations to the Kensington Historic District. The goal of this preservation plan "was to establish a sound database of information from, which to produce a document that would serve the HPC, M-NCPPC, their staff and the community in wrestling with the protection of historic districts amidst the pressures of life in the 21st century." (page 1). The plan provides a specific physical description of the district as it is; an analysis of character-defining features of the district; a discussion of the challenges facing the district; and a discussion of proposed strategies for maintaining the character of the district while allowing for appropriate growth and change.

Montgomery County Code; Chapter 24A-8

- (a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.
- (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to ensure conformity with the purposes and requirements of this chapter, if it finds that:

- (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
 - (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
 - (3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or
 - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
 - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
 - (6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.
- (c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.
- (d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district. (Ord. No. 9-4, § 1; Ord. No. 11-59.)

Secretary of the Interior's Standards for Rehabilitation:

The Secretary of the Interior defines rehabilitation as “the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values.” The *Standards* are as follows:

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

STAFF DISCUSSION

The subject property, a Primary Resource, was originally constructed as St. Paul's Methodist Church. At the time of its construction it was a vernacular one-and-a-half story church with an austere design that lacked ornamentation. The only notable architectural features were the bell tower and a one-story vestibule at the entrance, both since removed. The Methodist congregation out-grew the church by 1889 and the church then housed the Christ Church Parish of the Episcopal Church until 1922 when it was converted to residential use. The original gable-front massing embodied in the church remains intact. The one-and-a-half story, front-gabled vernacular dwelling is set on the original stone foundation and is clad with wood German lap siding. The roof is clad with asphalt shingles and contains gabled dormers with paired three-light wood windows on its north and south sides. Fenestration consists of regularly arranged one-over-one, wood-sash, double-hung windows. The east (front) elevation has a one-story gabled porch with wood post supports. The main entrance consists of double-leaf, wood-frame, glass doors accessible from the porch. A six-light wood window is located in the gabled end above the porch. The north elevation also contains a hipped roof porch with wood post supports and a single-lead wood door located under the porch. A one-and-a-half story gabled and shed-roof addition extends from the east (rear) of the dwelling.¹

Along the north property line, there is a 6' (six foot) tall wood stockade fence. First, the applicants propose to remove the existing stockade fence and install 128' (one hundred twenty-eight linear feet) of new 6' (six foot) tall vertical board cedar fence in its place. Second, the applicants propose to enclose the rear yard with 82' (eighty-two linear feet) of 4' (four-foot) tall aluminum fence.



Figure 2: The existing stockade fence engages the northwest porch column.

Based on Staff's review of the site and the GIS map, it appears that the stockade fence may be constructed in the established right-of-way, not on the subject property's land (see *Fig. 3*, below). Staff recommends the HPC table consideration of the replacement 6' (six foot) tall wood fence until a survey of the site can be completed and a Department of Permitting Services Zoning review determines the fence location satisfies the established restrictions. A separate HAWP should be submitted for the HPC's consideration

¹ Source: Maryland Historical Trust – Maryland Inventory of Historic Properties Form for the St. Paul's Street Survey District.

once the issue of the propriety of the fence placement along the north property line has been resolved.



Figure 3: The existing stockade fence (highlighted in yellow) is outside the property boundary (shown in red).

The second item proposed by the applicant is the installation of several sections of 4' (four-foot) tall aluminum fencing to enclose the property's rear yard. The proposed aluminum fence will have an open character and a black finish (see below). Because of its location, only a 6' (six foot) wide section of the fence, between the garage and the existing fence along the south property boundary will be visible from the public right-of-way within the district.

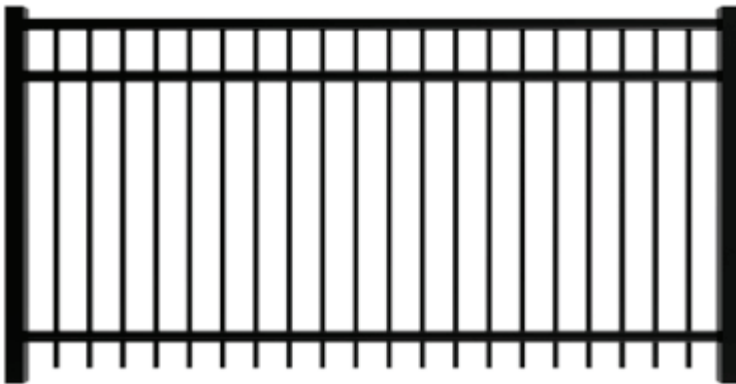


Figure 4: The proposed aluminum fence.

Staff finds the majority of the fences in the Kensington Historic District are wood, though there are a few examples of other materials, including iron and chain link. Staff find the open design and the 80' (eighty foot) distance from the public right-of-way are both factors that weigh in favor of the proposed aluminum fence and Staff supports its approval under 24A-8(b)(2) and (d).

STAFF RECOMMENDATION

Staff recommends that the Commission **approve with one (1) condition** the HAWP application;

1. The approval of this HAWP only extends to the proposed 4' (four foot) tall aluminum fence to enclose the rear of the subject property. After an evaluation of the property boundary has been completed, the applicant may submit a separate HAWP for consideration of the replacement fence along the north property boundary;

under the Criteria for Issuance in Chapter 24A-8(b)(2) and (d), having found that the proposal will not substantially alter the exterior features of the historic resource and is compatible in character with the district and the purposes of Chapter 24A;

and with the *Secretary of the Interior's Standards for Rehabilitation* #2, 9, and 10;

and with the general condition that the applicant shall present an electronic set of drawings, if applicable, to Historic Preservation Commission (HPC) staff for review and stamping prior to submission for the Montgomery County Department of Permitting Services (DPS) building permits;

and with the general condition that final project design details, not specifically delineated by the Commission, shall be approved by HPC staff or brought back to the Commission as a revised HAWP application at staff's discretion;

and with the general condition that the applicant shall notify the Historic Preservation Staff if they propose to make **any alterations** to the approved plans. Once the work is completed the applicant will contact the staff person assigned to this application at 301-563-3400 or dan.bruechert@montgomeryplanning.org to schedule a follow-up site visit.



APPLICATION FOR HISTORIC AREA WORK PERMIT

HISTORIC PRESERVATION COMMISSION
301.563.3400

FOR STAFF ONLY:
HAWP# _____
DATE ASSIGNED _____

APPLICANT:

Name: Peter & Ally MAGEE

E-mail: pm32386@gmail.com

Address: 10549 St. Paul Street

City: Kensington Zip: 20895

Daytime Phone: 631-793-1188

Tax Account No.: _____

AGENT/CONTACT (if applicable):

Name: _____

E-mail: _____

Address: _____

City: _____ Zip: _____

Daytime Phone: _____

Contractor Registration No.: _____

LOCATION OF BUILDING/PREMISE: MIHP # of Historic Property _____

Is the Property Located within an Historic District? Yes/District Name Kensington
 No/Individual Site Name _____

Is there an Historic Preservation/Land Trust/Environmental Easement on the Property? If YES, include a map of the easement, and documentation from the Easement Holder supporting this application.

Are other Planning and/or Hearing Examiner Approvals /Reviews Required as part of this Application? (Conditional Use, Variance, Record Plat, etc.?) If YES, include information on these reviews as supplemental information.

Building Number: _____ Street: _____

Town/City: _____ Nearest Cross Street: _____

Lot: _____ Block: _____ Subdivision: _____ Parcel: _____

TYPE OF WORK PROPOSED: See the checklist on Page 4 to verify that all supporting items for proposed work are submitted with this application. Incomplete Applications will not be accepted for review. Check all that apply:

- | | | |
|---|--|--|
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Deck/Porch | <input type="checkbox"/> Shed/Garage/Accessory Structure |
| <input type="checkbox"/> Addition | <input checked="" type="checkbox"/> Fence | <input type="checkbox"/> Solar |
| <input type="checkbox"/> Demolition | <input type="checkbox"/> Hardscape/Landscape | <input type="checkbox"/> Tree removal/planting |
| <input type="checkbox"/> Grading/Excavation | <input type="checkbox"/> Roof | <input type="checkbox"/> Window/Door |
| | | <input type="checkbox"/> Other: _____ |

I hereby certify that I have the authority to make the foregoing application, that the application is correct and accurate and that the construction will comply with plans reviewed and approved by all necessary agencies and hereby acknowledge and accept this to be a condition for the issuance of this permit.

Ally MAGEE

8/30/2023

Signature of owner or authorized agent

Date

Adjacent and Confronting Properties:

Kensington, MD 20895

10547 Saint Paul Street

3710 Mitchell Road

10549 Wheatley Street

3421 Plyers Mill Road

1601 Saint Paul Street

10600 Saint Paul Street

HAWP APPLICATION: MAILING ADDRESSES FOR NOTIFYING
[Owner, Owner's Agent, Adjacent and Confronting Property Owners]

Owner's mailing address

10549 saint Paul St
 Kensington, MD 20895

Owner's Agent's mailing address

Adjacent and confronting Property Owners mailing addresses

<p>_____ _____ _____ _____</p>	<p>_____ _____ _____ _____</p>
<p>_____ _____ _____ _____</p>	<p>_____ _____ _____ _____</p>
<p>_____ _____ _____ _____</p>	<p>_____ _____ _____ _____</p>

Work Item 1: new fence

Description of Current Condition:

Non-existent fence

Proposed Work:

Install small aluminum fence along back of property and adjacent (driveway) side to enclose property

Work Item 2: replace current fence

Description of Current Condition:

replace current wooden fence structure of piers will drive due to poor condition, rotted wood.

Proposed Work:

install new fencing structure along piers mill road.

Description of Property: Please describe the building and surrounding environment. Include information on significant structures, landscape features, or other significant features of the property:

Property is a residential home on Ayers Mill & St. Paul St - Kensington. Property sits across from St. Paul Park and Joseph's Park.

Description of Work Proposed: Please give an overview of the work to be undertaken:

Please see attached write up from fencing company



DEPARTMENT OF PERMITTING SERVICES

Marc Elrich
County Executive

Rabbiah Sabbakhan
Director

HISTORIC AREA WORK PERMIT APPLICATION

Application Date: 8/30/2023

Application No: 1042542
AP Type: HISTORIC
Customer No: 1473467

Comments

Can provide photo of proposed fence if required.

Affidavit Acknowledgement

The Homeowner is the Primary applicant
This application does not violate any covenants and deed restrictions

Primary Applicant Information

Location 10549 Saint Paul ST Kensington, MD 20895
Homeowner Tranchina
Homeowner Magee (Primary)

Historic Area Work Permit Details

Work Type ADD
Scope of Work Owners request to add small aluminum fence to enclose backyard of property at 10549 St. Paul Street.

(800) 486-4283

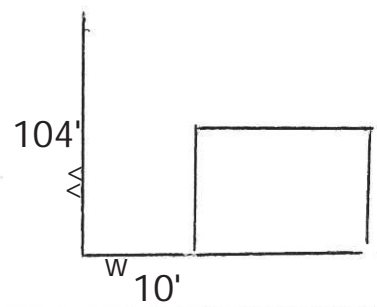
MHIC # 9615, 9615-01, 9615-02
DC # 2116

LONG FENCE

Job No. _____
Order No. _____
Customer No. _____
Date 8/19/23

Long Fence Company, Inc.
1910 Betson Court • Odenton, Maryland 21113
Ph: (301) 261-3444 • Ph: (410) 793-0600 • Fax: (301) 261-0643
www.longfence.com

BUYER'S NAME: Allison Magee
STREET: 10549 St Paul St
CITY: Kensington, MD 20895
COUNTY: Mont. 23RM3460
HM PH: _____
CELL: 215 264-9318
E-MAIL: pm32386@gmail.com



Long Fence Company, Inc. (herein called Seller) proposes to furnish materials, labor and equipment to install:

Approximately 114' of 6' high vertical board Flat Top Monticello Arched Top Mt. Vernon Dip Top
 Lattice Top other _____, style fencing. toe nail face nail tight Bd. Spacing
The vertical boards pickets of the fence sections are to be: flat, dog eared colonial gothic gothic
 other 1x4. Framing to Face in out. Fence to be stepped yes no
Posts are 4 X 4 x9' The posts are to be capped with vinyl caps. There are 3 2 X 4 horizontal runners per section.
The gate posts are - - - X - - - X - - -. The gate posts are capped with - - - caps.

All wood to be pressure treated pine, unless otherwise specified.
There is/are to be - - - single gate(s) - - - wide X - - - high. The gate is to have a: Flat Top Monticello Arched Top
 Mt. Vernon

There is/are to be - - - double drive gate(s) - - - wide X - - - high. The gate is to have a: Flat Top
 Monticello Arched Top Mt. Vernon. All gates are to include hardware.

Gates to be constructed with 2 X 6 cedar horizontal supports. All posts are to be set 30" - 36" in the ground and dry pack.
Permits: N/A City Permit(s) will be obtained by Seller Buyer

Buyer to supply Seller with copy of house plat. (For permit use only)
Seller will (will not) take down and haul old fence of approximately 114' feet.

Estimated Monthly Investment
_____ Per Month
With Approved Credit

Property pins exposed? yes no Buyer to stake? yes no Order Survey? yes no
Buyer responsible for property lines if no survey pins are in place.

Buyer has has not provided Seller with a copy of applicable H.O.A. regulations related to fences and decks.
Additional options: Retail \$ 7,361. less 38 %

coupon and volume - 2,797.
\$ 4,564.

Additional Information or Remarks:	Total Contract Price	\$ 4,564.
Buyer must be on site when installation	Deposit With Order	1,521.
crew arrives all discounts applied	Due on Day Materials are Delivered	1,521.
Financing offered price valid only with	Due on Day of Substantial Completion	1,522.
aluminum project	And/or Balance Financed	
PLEASE PAY OUR FOREMAN		

Work to begin approximately 4-6 weeks. Work to be completed approximately 1-2 days.
This projection is contingent upon obtaining approved financing, permits, H.O.A., and other conditions beyond Seller's control.

Estimate valid for 30 days for purpose of acceptance by the buyer.
Buyer agrees to pay for the goods, services and installation referred to above in accordance with the terms of this Agreement.
Buyer acknowledges that before Buyer signed this Agreement, Seller submitted the Agreement to Buyer with all blank spaces filled in and that buyer had a reasonable opportunity to examine it and that thereafter a legible executed and completed copy thereof was delivered to Buyer. Buyer has read and understands both the front and reverse side of this Agreement, and agrees to the terms and conditions as set forth herein.

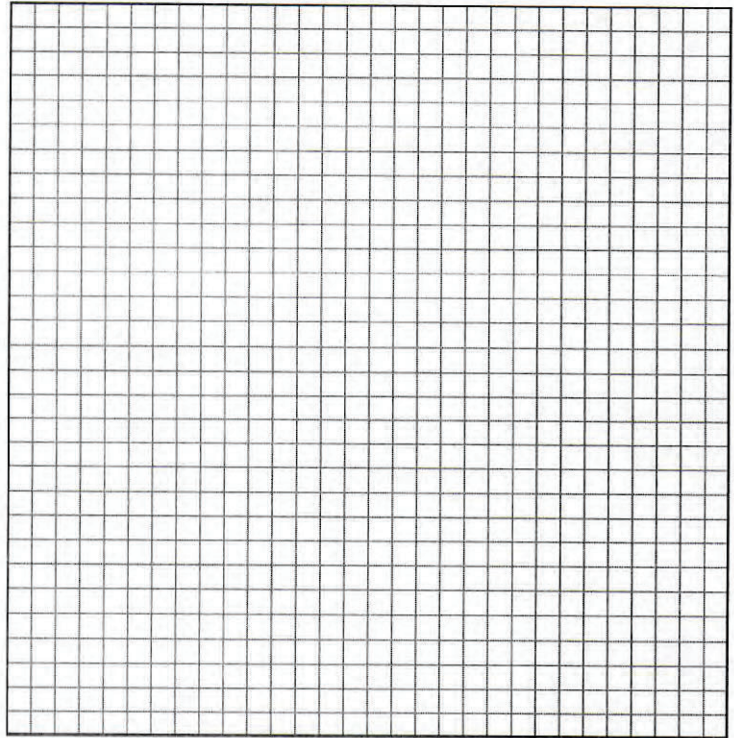
Long Fence Company, Inc. Buyer(s)

(Sales Representative's Signature) (Signature) _____ X
Date
Scott Shaub 110044
Sales Representative's Printed Name License No. (Signature) _____
Date

BUYER'S RIGHT TO CANCEL: You the buyer may cancel this transaction at any time prior to midnight of the 5th business day after the date of this transaction, or midnight of the 7th business day after the date of this transaction if you are 65 years of age or older. If you cancel within the time period noted above, the seller may not keep any of your cash down payment.

Date: 8-18-23 Job Number: _____ County: MOCO
 Name: Allison Tranchina
 Address: 10549 Saint Paul St.
 City: Kensington State: MD Zip: 20895
 Job Site Address: _____
 Home Phone: 215-264-9318 Work Phone: _____

Fence to Meet Pool Code



Project Description (Goods and Services Sold):

pm32386@gmail.com
 ally.tranchina@gmail.com

Fence Project:
 Remove and haul stockade fence.
 Install approx. 128' l/ft of 6' high 1x4 Incense Cedar Vertical Board Fence with Cedar 1x4 top trim and cap boards, 3-2x4's per section, on treated 4" posts with black caps.
 Install approx. 82' l/ft of 4' high Active Yards Black Aluminum Harbor Granite Series Fence with two 4'x4' straight top "Lockable" Gates. on all 2" posts with flat caps.
 Post all set in concrete footers.

MOCO Permit Included
Town of Ken Historic by Customer

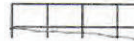
Total: \$8750-10% Discount= \$7875

***FENCE QUOTES ARE GOOD FOR 15 DAYS**

Please have the corners of your property marked clearly prior to fence installation.

Grade

Level at Top



Fence to be level with highest grade. (Customer to fill in gaps)

Following Grade



Fence following flow of ground. (Fence will be uneven at top)

Step and Level



Each section to step as dictated by the grade. May result in large gaps under the fence. (Customer to fill in gaps)

Job Notes:

All Angie's List and Web Site Discounts are included in price
 Exclusions: Core-drilling/boring/blasting, power/electric supply, seed/sod/straw, operator replacement/repair, engineering, survey.

*All posts set in dry-packed cement 24"-30 in the earth or until refusal.

*All Nails are stainless or galvanized ring shank.

Total Contract Price: \$7875
(Price valid for 15 Days)

Deposit: \$2625

Due Upon Substantial Completion: \$5250

Estimated Start Date: 3-4 Weeks

Estimated Completion Date: 1-2 Days

The projected dates are contingent upon obtaining approved financing, permits, H.O.A., or other conditions beyond Seller's control.



Customer agrees to pay the Total Price for such materials and labor, pursuant to the Payment Terms provided at left. All materials are to be #2 pressure treated southern yellow pine unless otherwise stated. Interest at the rate of 2% per month will accrue on all past due accounts. Builders Fence Company will not accept out of state checks.

BUYERS RIGHT TO CANCEL: If this agreement was solicited at a residence and you do not want the goods or services, you the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See Notice of Cancellation for an explanation of this right.

Acceptance: The construction proposal contained herein, including the specified price, payment terms, construction specifications, and other terms and conditions on the reverse side of this contract, is hereby ACCEPTED.

Builders Fence Company

Buyer(s)

 (Authorized Representative's Signature)

 (Signature)

 Date

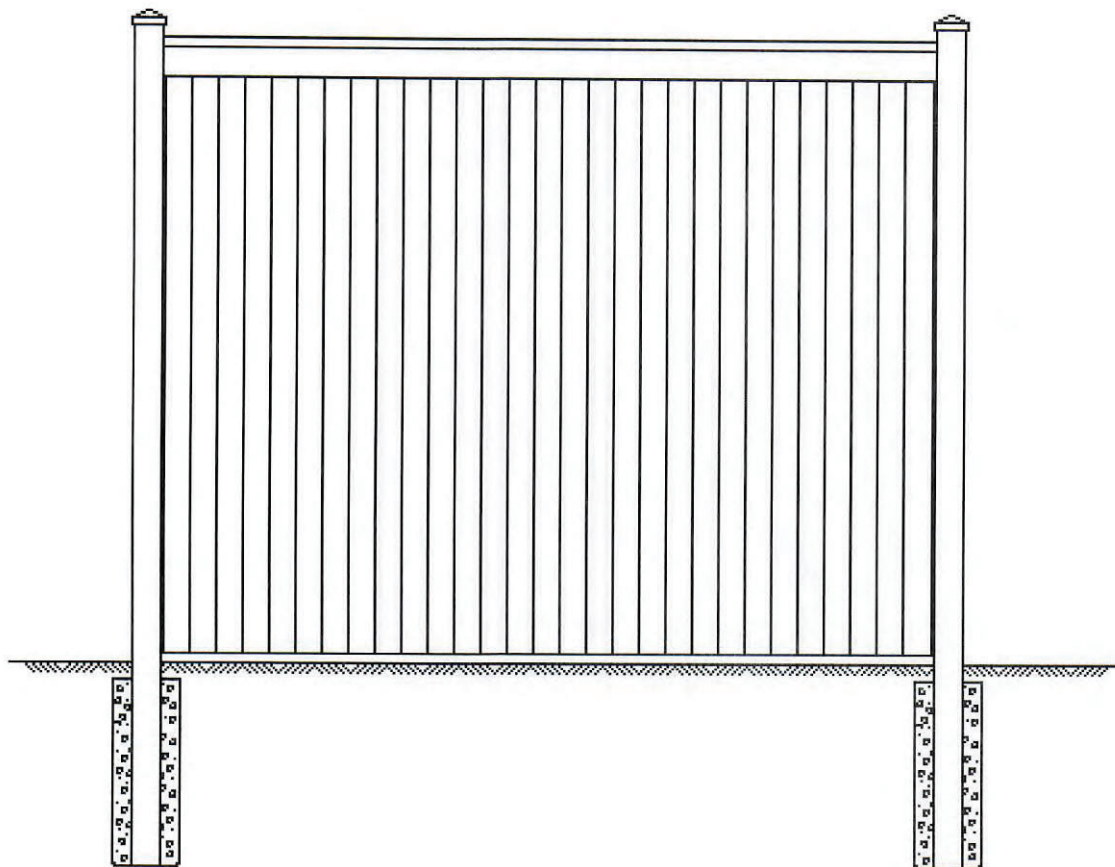
 Authorized Representative's Printed Name

 (Signature)

 Date

TERMS AND CONDITIONS

- 1. Agreement.** This Contract constitutes the entire agreement between Builders Fence Company ("Contractor") and Customer and supersedes all prior discussions, proposals or agreements by and between the parties. Modifications to the terms of this Contract shall only be enforceable if in writing, signed by both parties. Changes to the Construction Specifications and/or price after execution of this Contract shall require a written change order signed by both parties, except as expressly provided for herein. Customer represents and warrants that he/she/they are the owners of the real property identified on the front page of this Contract, upon which the Project shall be constructed, and that they are authorized to enter into this Contract for the improvements described herein.
- 2. Cancellation.** Either party may cancel this Contract without charge or obligation within seventy-two (72) hours after execution (the "Rescission Period") and all amounts paid by Customer to Contractor shall be promptly refunded. No work on the project will begin until after the expiration of the Rescission Period. If Customer cancels this Contract after the expiration of the Rescission Period but before construction begins, Customer shall pay to Contractor a cancellation fee equal to thirty percent (30%) of the deposit amount plus all costs incurred by Contractor prior to Contractor receiving written notice of cancellation from Customer. The cancellation fee shall be deducted from the deposit. The difference between the cancellation fee and the deposit shall be paid by Customer to Contractor, or the balance of the deposit, if any, shall be returned to Customer, within fourteen (14) days of cancellation. Once work on the Project has begun, this Contract may not be cancelled, and Customer shall be responsible for the Total Price, even if Customer elects not to have the Project completed. The amounts to be paid or retained by Contractor under this Section shall be deemed liquidated damages, to compensate Contractor for the expenses, lost profits and other amounts incurred, and not as a penalty or forfeiture.
- 3. Site Access, Condition and Restoration.** Customer shall provide Contractor with adequate access to the Project site and all utilities needed to complete the Project. Customer shall be responsible for clearing the entire Project site (including, without limitation, both sides of the proposed fence line, if applicable) of all materials, brush, debris and timbers used to hold back the soil prior to the Estimated Start Date. The Total Price does not include any clearing and any such work shall be billed and paid by Customer at the rate of One Hundred Dollars (\$100.00) per hour. The Total Price assumes that no rock, boulder or other obstructions shall be encountered and that the soils will be of sufficient quality to allow for normal installation processes to be utilized. Customer shall be responsible for all additional labor, materials and equipment required to remove any rock, boulders or other obstructions or to provide such additional foundations for the Project as may be required due to soil conditions. All dirt and other excavated materials shall remain on the Project site and Customer shall be responsible for removing such materials unless otherwise specified herein. Contractor assumes no responsibility for damage to any yard features or landscaping that is moved, disturbed or destroyed during the course of construction. Contractor shall have no obligation to repair or replace yard features, or to reseed or sod the yard. Customer shall be responsible for backfilling any gaps located at the bottom of the fence due to variations in grade.
- 4. Fence Location and Property Boundaries.** Customer bears sole responsibility for the location of the fence. Contractor is not responsible for determining property lines, boundaries, set-backs or easements and is not responsible for any costs associated with removing or replacing any fence that is deemed to be built outside of the property boundaries.
- 5. Project Completion and Acceptance.** The Project shall be deemed completed upon the Contractor's delivery of a Completion and Acceptance Notice which is attached to the invoice. The Project shall be deemed completed by Contractor and accepted by Customer, unless, within five (5) days after delivery of Completion and Acceptance Notice, Customer notifies Contractor in writing of Customer's non-acceptance and the reasons for such non-acceptance.
- 6. Permits and Approvals.** Customer shall be responsible for applying for and obtaining any and all required county or other local government permits, approvals and inspections, Home Owners Association approvals, copies of plat, and signed documents required for permits and other applications, except for any permits, approvals and inspections that are required by law to be requested by or in the name of Contractor or as otherwise specifically provided for herein.
- 7. Locating of Utilities.** Contractor shall be responsible for contacting Miss Utility to identify all participating public underground utilities. Customer shall be responsible for locating all non-participating public utilities and all private underground utilities and systems, such as plumbing (including septic systems and lines), gas lines, cable lines, sprinkler systems, lines and components and wiring. Contractor shall not be responsible for any damage to or the cost of repairing utilities or systems that are not properly marked or identified and Customer shall indemnify and hold Contractor harmless for and from any such costs or damages incurred by Contractor or any third-party as a result of such improper marking or identification.
- 8. Delays.** The Estimated Completion Date represents Contractor's best estimate of the time it will take to complete the Project absent any weather delays, interruptions in labor or material supplies, Acts of God, differing site conditions, payment or other defaults by Customer or other unforeseen circumstances. Accordingly, Contractor does not guarantee that the Project will be completed by the Estimated Completion Date, and shall not be responsible for any delays in completing the Project. In addition, the Total Price assumes and is based upon the uninterrupted construction of the Project. In the event Project is delayed due to the actions, failure to act or defaults of Customer, Customer shall pay to Contractor all additional costs incurred as a result of such delays, including, without limitation, a trip fee of \$150 for each additional trip required to complete the Project.
- 9. Insurance.** Customer shall carry fire, windstorm and other necessary insurance for the property upon which the Project is to be constructed. Contractor will carry workers compensation and liability insurance.
- 10. Warranty.** Contractor will provide labor at no cost to the original owner for replacement of materials considered defective by the manufacturer under the terms and conditions of the manufacturer's limited warranty for the period of one (1) year. Contractor's workmanship is warranted against defects for one (1) year from the date of completion of the Project (the "Warranty Period"), which warranty is expressly conditioned on Contractor's nameplate remaining on the structure and Customer properly maintaining the structure for the full Warranty Period. The materials utilized in the construction of the Project are subject to the applicable manufacturer's warranty, if any, and are not warranted by Contractor. Moreover, Customer has been advised and understands that wood is a natural product and, as such, shrinking, warping, cupping and cracking or checking is normal and to be expected, even with proper maintenance. Such conditions are not covered by Contractor's or manufacturer's warranty. THE EXPRESS WARRANTY PROVIDED HEREIN IS THE SOLE AND EXCLUSIVE WARRANTY MADE BY CONTRACTOR TO A MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF EVERY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FITNESS FOR INTENDED USE. CUSTOMER UNDERSTANDS THAT ANY INK OR STAMP MARKS ON THE MATERIAL ARE FROM THE MILL OR MANUFACTURER AND CONTRACTOR IS NOT RESPONSIBLE FOR THEIR REMOVAL. THIS WARRANTY IS NOT EXTENDED TO OWNER PROVIDED MATERIAL.
- 11. Remedies and Limitation of Liability.** If any of Contractor's workmanship proves defective and Customer provides Contractor with written notice of such defect during the Warranty Period and all other conditions for warranty coverage have been satisfied, Contractor shall repair the Project, which shall be Customer's sole and exclusive remedy. In the event the defect is not due to Contractor's workmanship, but rather due to the failure of the Project materials, it shall be Customer's obligation to secure replacement materials and to pursue all material warranty rights, if any, with the material manufacturer(s). In the event of a warranty repair, the Warranty Period shall not be extended. CONTRACTOR'S OBLIGATION TO REPAIR ANY DEFECTIVE WORKMANSHIP, PURSUANT TO THE TERMS OF THIS SECTION, SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RELATED TO THE CONSTRUCTION OF THE PROJECT AND CONTRACTOR'S OBLIGATIONS AND PERFORMANCE HEREUNDER. CUSTOMER SHALL NOT BE ENTITLED TO ANY OTHER DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE THEORY OF LIABILITY. Under no circumstances shall Contractor's liability hereunder exceed the maximum of (a) the amount of money actually paid by Customer to Contractor, or (b) One Dollar (\$1.00).
- 12. Customer Default.** If, for any reason, Customer fails or refuses to pay the Total Price, or any portion thereof, pursuant to the Payment Terms provided herein or to perform any of Customer's other obligations hereunder, Customer shall be in default. In such case, Contractor shall be relieved of any further obligation under the terms of this Contract, and shall be entitled to retain all funds paid to it through the date of such default and to the immediate payment of the balance of the Total Price. All materials used in the construction of the Project shall belong to Contractor until customer makes full payment of the Total Price. If Customer defaults upon its payment or other obligations hereunder, in addition to Contractor's other rights under this Contract and Virginia law (including, without limitation, the right to file a mechanics lien), Contractor shall be entitled (a) to remove all materials from Customer's property, in addition to exercising all of its other rights under this Contract and applicable state law, and (b) to recover from Customer all costs, fees and expenses (including all legal fees and costs) incurred by it, whether or not litigation is commenced.
- 13. Applicable Law; Disputes.** This Contract and the rights and obligations of the parties hereunder shall be governed and resolved exclusively by the laws of the Commonwealth of Virginia. Exclusive jurisdiction over any and all lawsuits or other actions filed to resolve any disputes arising out of or in any way related to this Contract or to enforce any right hereunder shall be in the General District and Circuit Courts of Loudoun County, Virginia, to which jurisdiction the parties hereby consent.
- 14. Severability.** It is the parties' intention and agreement that, should a court of competent jurisdiction determine that any provision or portion of any provision contained in this Contract is unenforceable, invalid or void, that the balance of the Contract or affected provision, as applicable, be enforced to the full extent possible consistent with the parties' intentions as expressed herein.



BUILDERS | FENCE |
COMPANY

Builders Fence Company
44330 Mercure Circle, Suite 140
Dulles, VA 20166
703-820-0967

6' WRC 1X4 VERTICAL BOARD - CAP & FASCIA

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1 of 1

BUILDERS FENCE COMPANY INC.

MAIL: 44330 MERCURE CIRCLE, STE. 140, DULLES, VA 20166

OFFICE: 703-820-0967

FAX: 703-661-8610

CREDIT CARD PURCHASE INFORMATION

Name (as it appears on credit card) _____

Current Billing Address _____

MC: VISA AMMEXX DISCOVER//Home Depot

Credit Card # _____

EXP. DATE ____/____

CID# (security code) #_

Amount to be charged \$

**Amount to be charged \$ (Upon Substantial
Completion)**

Customer Signature _____

Date _____







