

## Jack's November report

At the October meeting, the ANC did the following:

- Advised the BZA (Board of Zoning Adjustment) to deny the application for special exceptions and variances to permit an alley apartment structure at 1665 Harvard Street (5 to 0 vote);
- Advised the BZA to deny applications for special exceptions to permit rear extensions at 1739 and 1745 Harvard Street (5 to 0 vote);
- Advised the HPRB “to preserve the existing pattern of second story 'sleeping porches' with side setbacks at the rear”, specifically for the permit application for 1730 Kenyon Street (4 to 1 vote, the “no” vote mine);
- Advised the HPRB to permit the demolition of a carriage house/garage at 3305-3307 18th Street (5 to 0 vote).

This was our month for zoning issues. Three of the four topics pitted residents against residents, as neighbors objected to what homeowners wanted to do. As I noted in my October newsletter, this is a very unpleasant situation. I don't want to say “no” to any homeowner wanting to make improvements, but when the neighbors object, and have valid objections, then a choice must be made.

At **1739 and 1745 Harvard Street**, homeowners want to build extensions off the rear of their houses, to provide additional living space. Until recently, they could do as they wished, limited only by lot occupancy (60% maximum). The recent zoning regulation rewrite introduced a new restriction, allowing 10 feet beyond any neighboring rear wall as a “matter of right”, while requiring anything beyond 10 feet to get a “special exception” approval. That requires that it “shall not have a *substantially* adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property”. Yes, the neighbors have a say in the matter, and the ANC must choose.

Evidently many of the neighbors thought that these rear extensions would have “substantial” adverse effects, and how are we to overrule their opinions? So the ANC voted 5 to 0 to advise denial of the “special exception” permits.

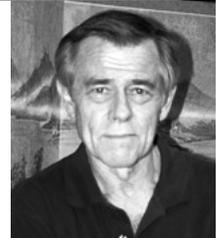
The BZA considered these on November 1, and had even more difficulty with this dreadfully phrased regulation. Because 10 feet of rearward expansion is allowed, “matter of right”, only the “adverse effects” of the extension beyond 10 feet matters, legally. How is one to distinguish between the effects of the 10 foot “allowed” portion, and the extension beyond that point? In this case, the excess beyond 10 feet is modest, two to four feet. So the BZA has to decide if the effects of those last two to four feet, *considered separately*, meet the “substantial adverse effect” specification.

After about four grueling hours of testimony and deliberation, the BZA sent the advocates off with instructions to specify exactly what effects, such as sunshine shadowing, could be attributed to the portion beyond 10 feet. They'll consider that on November 15. Meanwhile the BZA members may complain to the Zoning Commission about this extremely difficult regulation. How is one to distinguish between the 10 foot “matter of right” extension, and anything beyond that?

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### The historic preservation issue at

**1730 Kenyon** was unusual. The historic preservation office (HPO) found nothing objectionable about the proposal to add a two-story structure to the rear, as well as to make other alterations, and put this on the “consent” agenda for the September 28 HPRB meeting. But a neighbor protested, arguing that that rear structure was going to be an imposition on her own rear view.

This is entirely different from the Harvard Street rear extensions, because no zoning limits are being exceeded, and no “special exception” is required. The complaints of the neighbor might well be justified, but no zoning regulation is being violated, so no BZA approval is needed.

As I've seen happen in other such situations, when the zoning regulations provide no support in opposing a neighbor's plans, an unhappy neighbor may turn to historic preservation to object, with the argument that the project is not “compatible with the character of the historic district”. The protest from the neighbor in this case caused the HPRB to take the application off the September “consent” list and schedule it for hearing at their October 26 meeting.

I opposed this effort to prevent the owners of 1730 Kenyon from getting historic preservation approval, for two reasons. First, I object to the principle of using historic preservation as a universal, general-purpose zoning regulation, opposing something not because what is proposed is really historically incorrect, but in truth because it would affect the neighboring dwelling. Second, if we're going to be as strict in enforcing historic preservation on the alley side of our homes as we are on the street side, then all manner of work on the alley side of our homes might be prevented; backyard decks, for example. How many rear decks were there here when Mount Pleasant was first built?

I was alone on the ANC in raising these objections. No matter, I stand by them.

As for the HPRB, at their October 26 meeting they declined to object to the homeowner's permit application. The HPO noted that the alley side of this Kenyon row has already been fundamentally changed, as the sleeping porches that were once universal, in the days before air conditioning, have been removed, so there's little left that is “original” and warrants preservation. Everyone has sympathy for the affected neighbor, and the HPRB simply asked the permit applicant to take the neighbor's concerns into account, and kindly consider making changes.

The **alley apartment for 1665 Harvard** was not difficult to decide. This is a peculiar situation, the tiny alley lot lying not behind the owner's residence, but behind the neighboring residence, at 1701 Harvard Street. This is a steep slope, so the alley apartment would tower over the neighbor's residence. The location, and topography, meant that this alley apartment would be a serious intrusion on that neighbor's residence, and the commission was unanimous in opposing approval of the special exceptions and variances required to build the apartment.

The BZA hearing for 1665 Harvard will be on December 6.

The matter of the **decrepit carriage house/garage on the alley behind 3305 and 3307 18th Street** will be very troublesome. Pretty much everyone agrees that the homeowners ought to be permitted to demolish that shabby old structure and build something better (and historically correct) in its place. However, there's simply no provision in the historic preservation law allowing them to do that.

It's important to understand how boards such as the BZA and the HPRB, and officials such as the Mayor's Agent (who will in fact make this decision) decide matters. It's frequently said that we are "a government of laws, not of men". This is a crucial point, as government officials are supposed to make decisions according to written laws and regulations, not according to their personal preferences, or favored friends, or popular opinion. A government body has to decide matters according to the written law, whatever the members of that body might personally prefer, and whatever the public wants.

The law, in this case, is clear: its stated purpose is *"to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use"*. This old garage is a "contributing property" in the historic district, and that means that it must be retained. There's nothing in the law that gives the HPRB, or the Mayor, the ability to permit demolition, simply because this structure contributes very little to the historic district, its replacement might be a great improvement, and few residents of Mount Pleasant object to its demolition and replacement.

The ANC voted unanimously to endorse permission to demolish the old building. But our "advice" to the HPRB matters little. The board members might well agree that demolition of the old building and construction of a replacement makes the most sense, but there's no provision in the law allowing them to make such a decision.

The Historic Preservation Office (HPO) issued this recommendation to the HPRB: *"HPO recommends that the Board deny the concept of razing the subject building, because doing so would not retain a building that contributes to the character of the Mount Pleasant Historic District contrary to the purposes of the historic preservation law"*. Yes, that's the law, and the HPO had no choice but to make that recommendation of denial of approval.

The homeowners say that their lawyer tells them that the HPRB must take into account the cost of repair and renovation, versus demolition and new construction. I don't think so. There is a provision in the historic preservation law

for economic hardship, where "failure to issue a permit would place an onerous and excessive financial burden upon such owner". But that provision is limited to low-income owners. For residents who do not qualify as "low-income", *no financial burden, however heavy, is considered "excessive"*.

In practice, any structure considered to be "contributing" in the historic district, however plain and shabby and dilapidated, must be restored, at whatever cost to the owner, and cannot be razed and replaced. Did we residents realize this, back in 1985, when Mount Pleasant was debating becoming a historic district? That debate was all about preventing developers from demolishing nice old houses and replacing them with modern buildings. It wasn't about locking us into the present appearance of our homes, forever, whatever our own changing needs, and however costly the historically correct maintenance. As I commented at the ANC meeting, historic preservation gives the exterior appearance of our homes priority over the quality of life of the residents of those homes.

This topic was on the November 2 HPRB agenda, but has been postponed to January, at the request of the applicants.

Yet another zoning-regulation issue will be on the agenda for the November 14 ANC meeting (early in the month to avoid the Thanksgiving holiday). The **vacant lot at 1842-44 Monroe** is to be developed into a pair of "town houses" (i.e., fancy row houses). The HPRB approved the conceptual design last December.

The zoning problem arises because the developer wants to build right up to the 1850 Monroe property line. The DCRA Zoning Administrator rejected that notion, writing in July that the zoning regulations require a five-foot-wide side yard between the 1844 structure and the property line.

The residents of 1850 Monroe don't much like the 35-foot-tall building about to spring up right next to them. Nothing can be done about that, but a five-foot side yard would provide a little breathing space, and would moderate the effect of that big building going up next door. I will ask the ANC, at the November 14 meeting, to support these neighbors and advise the BZA to require that five-foot side yard on the west side of this structure.

The BZA will consider the issue on November 29.

We had a **PSA (Police Service Area) meeting on October 25**, with the new lieutenant for Mount Pleasant, Jonathan Munk. I thought there would be a fair number of residents attending, if only to meet the new lieutenant, and to complain about the crime problems currently plaguing the neighborhood, such as the theft of packages left on our porches by delivery services. But only two residents attended, and, as has commonly been the case, they were outnumbered by the MPD and DC Government people on hand. That's why we cut back on PSA meetings from monthly to quarterly.

The next PSA 408 meeting will be on January 24. These meetings continue to be held at La Casa Community Center, 3166 Mount Pleasant Street.

The next meeting of the ANC will be on Tuesday, November 14, 7:00 pm, at the Mount Pleasant Library.