

“Open Agenda” Notes for the October 24, 2017 meeting of ANC1D

Agenda approval

Comments from the Office of the Attorney General

Public discussion

“Each Commission shall set aside a portion of each public meeting *to hear the views of residents* within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area.”

Committee reports:

Transportation (Jon)

Public Space (Stuart)

Housing (Paul)

Secretary’s report

Minutes of the September 26 meeting (draft sent out October 1).

Treasurer’s report

Consent items: Checks to James True, \$75, postering for the October meeting; HearSay Interpreting, \$100, interpreting at the October meeting; Julio Lopez, \$30, for assistance at the October meeting.

Q4FY2017 allotment received 10/10, \$2947.65 (no disallowed expenditures)

Q4FY2017 quarterly report

FY18 budget

Unfinished business

New business

1. Special Exception and Variances for 1665 Harvard St (Stuart) (Dec 6 BZA)

Resolved, that ANC1D advises the Board of Zoning Adjustment to deny the Special Exceptions requested for 1665 Harvard St NW, Case 19629.

Why: This Commission respects the value of alley apartment dwellings, and has no intrinsic objection to them. However, this particular application entails three exceptional conditions:

- (1) The lot area available for the structure is very small, so small that three Special Exceptions are needed to permit a structure of practical size;
- (2) The lot is at the top of a steep slope, causing even a 20-foot-tall structure to be taller than the adjacent row of row houses; and
- (3) The location is not at the alley end of a lot owned by the applicant, but is at the rear of a neighbor's lot, 1701 Harvard Street.

These Special Exceptions may be granted only if each "will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps". In this case, the "neighboring property" is the immediately adjacent row house, where one would ordinarily find the owner of the alley apartment, but here one finds a neighbor with no interest in this alley apartment. Because of the small dimensions of the lot, the proximate wall of this alley apartment will be only 20 feet from the neighbor's windows. Because of the steep slope, the proximate wall of this alley apartment will lie at the level of the third-floor windows of the row house and rival the massing of 1701 Harvard from the north elevation.

It is evident, from the opinions expressed by the occupants of 1701 Harvard, that this will be a substantial imposition on their quality of life, because it will be so close to their rear wall, and because it will tower over their back yard, and their house. This is not what the Zoning Commission had in mind when it relaxed the zoning regulations to permit alley dwellings, and the extraordinary nature of this odd-shaped lot makes it a special case. If the alley apartment was being built directly behind the applicant's row house, this situation would be very different. But the "neighboring property" in this case is where one would ordinarily find the principal dwelling of the lot, owned by the applicant, who might be willing to tolerate these consequences. But here the immediately adjacent structure is owned by a neighbor, and they have made their unhappiness with this proposal very clear.

This Commission observes, therefore, that the granting of these Special Exceptions will in fact cause significant degradation of the use of the neighboring property, in this case, 1701 Harvard Street, and so should be denied.

2. Special exceptions for 1739 and 1745 Harvard St (Stuart) (Nov 1 BZA)

Resolved, that ANC1D advises the Board of Zoning Adjustment to deny the special exception applications for 1739 Harvard St NW (BZA Application No. 19560) and 1745 Harvard Street NW (BZA Application 19576).

Why: These Special Exception applications deal with nearly identical situations, a few doors apart, along this Harvard Street row. The applicants wish to build rearward extensions to their homes, extending about three feet beyond the 10 foot limit specified by 5 DCMR 205.5: "A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on an adjoining property if approved as a special exception . . .".

The ANC is compelled to determine whether the extension beyond 10 feet results in "a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property". This is a very difficult judgment to make, because the text clearly implies that some

“adverse effect” is acceptable; the ANC must somehow decide if any effect is “substantially adverse”, a vague and subjective term.

We have sought guidance from the BZA on this judgment, only to be told that “each addition should be considered on a case-by-case basis because of how much variety there is in each proposal and each property. This allows for the ANC and then the Board, to consider elements such as the size and shape of the lot, the design of the addition, sun/shadow studies provided by the applicant, and the support/opposition of adjacent residents when making a decision as to whether an application should be approved or denied” (e-mail from Allison Myers, DCOZ, Sept 29, 2017). We note that “the support/opposition of adjacent residents” is a factor that may be considered.

Neighbors along this row have in fact expressed strong objection to the proposed extensions. It is significant that the immediate neighbors of each applicant – 1737 and 1741 Harvard, in the case of 1739, and 1743 and 1747 Harvard, in the case of 1745 – have expressed opposition and cited specific instances in which the proposed extensions would have an undue adverse effect on neighboring properties. The ANC is put in the very uncomfortable position of, if we should endorse the permit application, declaring that these neighbors are wrong in their assertions that these extensions will have a substantial adverse effect on their properties.

Guidance from BZA highlights “the size and shape of the lot” as criteria for evaluating applications for special exceptions. The backyards on Harvard Street are extremely narrow and shallow compared to the rest of the city. Additions on Harvard Street may thus have a more pronounced effect on adjacent properties than elsewhere in the city with larger backyards. For instance, the post-addition backyard lengths for 1745 and 1739 Harvard are 35 and 38 feet, respectively, with widths at approximately 15 feet, while a recently approved application for a rear addition on Capitol Hill (case #19566) would have left 71.86 feet in the backyard with a width of 18 feet. With a much larger backyard, the addition on Capitol Hill may warrant approval because, with a larger backyard, that addition could have less of an adverse effect on the light/shadows of adjacent properties than a similar project on Harvard St.

Considering the need to account for neighborhood context when adjudicating special exception applications, the ANC offers the following additional information to the BZA to help in the BZA’s review of the 1739 and 1745 special exception applications:

- The immediately adjacent rear yards function as outdoor living space, in both design and fact. On the Harvard Street row, back yards are not just parking and concrete--the spaces include patios, green space, trees, and sky. The fact that these yards are so shallow and narrow means that any rear addition on an adjacent property could have a particularly pronounced adverse effect. This is a key contextual consideration regarding the weight to give immediate neighbors' concerns.
- There have been fewer objections to the proposed length of these additions for the second floors (ground level in the rear yard) than for the third (top level) floors, as ground-level second floor additions on this row would have less adverse effect on light or air available to neighboring properties. Thus, the ANC has no objections to the proposed length of the second floor extensions.

- On the third floors, abiding by the 10 foot threshold in the middle of the lot would likely be acceptable, so long as any top floor addition is in proper scale to the sizes of the lot and building. An appropriate setback from the property lines on the second story could permit additional length beyond the by-right limit.

As commissioners, we are sympathetic to the applicants in their desires to expand their modest-sized homes. We appreciate the applicants' efforts to minimize the consequences on their neighbors of their proposed extensions. However, part of our jobs as commissioners is to ensure that the Board of Zoning Adjustment take neighborhood context – like the differences between Mount Pleasant and Capitol Hill – into account when adjudicating special exception requests. As such, by taking the Harvard St context into account, we see no way to refute the judgment of the immediate neighbors that the extensions will have “substantially adverse” effects on their properties, and consequently must advise the BZA to deny the requested special exceptions.

3. 1730 Kenyon St HPRB (Stuart) (Oct 26 HPRB)

Resolved, that ANC 1D advises the Historic Preservation Review Board to preserve the existing pattern of second story “sleeping porches” with side setbacks at the rear elevation in reviewing plans for a rear addition at 1730 Kenyon Street NW (HPA 17-556).

Why: Historic preservation must be a block-by-block concern when confronted with non-uniform construction in a preservation district. While the HPO staff report correctly notes that the rear addition is not out of place in the neighborhood as a whole, the plans call for an elimination of the side setbacks on the second story and this change contrasts with surrounding structures. Page 3 of the District of Columbia Historic Preservation Guidelines on Additions to Historic Buildings specifies that a contrasting rear addition may be acceptable “if it is not visible from a public street or alley and when it does not destroy existing character-defining details, ornamentation and materials of a rear elevation.” The proposed addition contrasts with the rear elevation and is plainly visible from the alley. We find the pattern of side setbacks on the second stories of this block to be a character-defining detail, and therefore this pattern should be preserved in rear additions on this block.

4. Endorsement of Proposed Raze and Concept for Carriage House at 3305/3307 18th St NW (Jon)

Resolved, that ANC 1D advises the Historic Preservation Review Board to support the proposed raze of the carriage house at 3305 and 3307 18th St NW (HPA 17-659), and to find the conceptual design for its replacement to be compatible with the Mount Pleasant Historic Preservation District. ANC 1D designates Commissioner Stewart to speak for it with regard to this matter at the HPRB hearing on November 2.

Why: While a raze of a contributing structure in a Historic Preservation District should be a method of last resort, it is warranted in this case because of serious problems with the frame of the carriage house and with the foundation, identified by a structural report. The repair of either the frame or the foundation would entail demolition of the structure. The architectural integrity of the structure was compromised long ago with the “bump outs” into the back yards of the

houses. The proposed replacement embodies the character of the original structure and tastefully references elements of the owners' houses. Finally, the homeowners have demonstrated their commitment to preservation and restoration with the work they've performed on their houses.