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Special exceptions for 1739 and 1745 Harvard St

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.

Passed by 5 to 0 vote at the legally noticed, public meeting of ANC1D on October 24, 2017, with a quorum present. Voting “yes”: Commissioners Stewart, Romero-Latin, Karrer, Karaffa, McKay. A quorum for this commission is three; five commissioners were present.