

“Open Agenda” Notes for the March 20, 2018 meeting of ANC1D

Agenda approval

Councilmember Brianne Nadeau

DC Fire and EMS Deputy Fire Chief John Donnelly

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.”

Chair's report

Vice-chair's report

Committee reports:

Transportation (Jon)

Public Space (Stuart)

Housing (Paul)

Secretary's report

Minutes of the February 23 meeting (draft sent out February 21).

Treasurer's report

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

Unfinished business

New business

1. 1665 Harvard St BZA application (Stuart)

Resolved, that ANC1D advises the Board of Zoning Adjustment to deny the Special Exceptions and variances requested for 1665 Harvard St NW, Case 19629, and to scrutinize and confirm the status of this property as a tax lot.

Why: This Commission appreciates the substantial reduction in size made by the applicant, responding to ANC concerns expressed last month and in October 2017. The height of the structure has been reduced from over 20 feet to 12 feet, and what was a garage and an alley apartment is now only a garage with overhead storage.

This Commission has no objection to an alley garage, per se. Under ordinary circumstances, this Commission would not object to the BZA allowing a small number of modest variances to permit a garage. But this is no ordinary circumstance. This situation is unique because the location of this tiny lot is directly behind the dwelling at 1701 Harvard Street, which is home to a different owner than the owner of the alley lot in question. Indeed, if this lot were part of the lot at 1701 Harvard Street, it is unlikely that building a garage would require any zoning relief at all.

History of the Mount Pleasant ANC and Lot 826

The current application is similar to that filed in 2008 for this location, a garage which was to be 16 feet tall. In October 2008, this ANC advised, by unanimous vote, against permitting variances for that proposal, arguing as follows:

“Any building constructed on this tiny lot would face the rear of the home on lot 826, 1701 Harvard Street. With a roof height of 16 feet above the backyard ground level, only 17 feet from the existing row house at 1701 Harvard, this construction will clearly have an adverse effect on the light and air of that dwelling.



“Though some neighbors favor this construction, the residents of 1701 Harvard are very unhappy at the prospect of a garage being built on that location. They have a valid complaint, and ANC1D advises that this application for a zoning variance be denied.”

Rationale for ANC 1D Recommending Denial

The current application only slightly modifies these dimensions. The proposed structure is 12 feet tall and would be 19 feet from the back of the 1701 dwelling. In their statement and plans, the applicant has not met the burdens of proof necessary for the BZA to approve zoning relief for this project. Specifically, the applicant does not meet the burden of proof to overcome the following tests for granting zoning relief:

- 1. Showing that the garage would not cause substantial detriment to the public good;**

2. Showing that the garage would be consistent with the Zoning Regulation intent of controlling building bulk; and
3. Showing that the BZA must grant zoning relief because failing to grant relief would cause an exceptional situation resulting in a practical difficulty.

These reasons are explained in greater detail in the subsequent three sections.

Detriment to the Public Good

First, before permitting a variance, the BZA must find that “granting the request would not cause substantial detriment to the public good.” This Commission believes that, due to the height of the proposed garage and its proximity to the adjacent residences (particularly at 1701 Harvard St), the garage would be a “detriment to the public good” by blocking light and air flow of the adjacent neighboring properties. On a communitywide level, another detriment to the public good would be how the proposed garage, fence, and gate would obstruct pedestrian sightlines between a public walkway and a public alleyway. Currently, the lack of any structure in this lot allows pedestrians a clear view of oncoming alley traffic from the west. The construction of a garage and fence on this lot without considerable side setback will greatly reduce the ability of pedestrians to see oncoming traffic and thus increases the chance of cars hitting pedestrians.

Inconsistent with Intent and Purpose of Zoning Regulations

Second, the BZA must also find that “granting the request... would not be inconsistent with the general intent and purpose of the Zoning Regulations.” The Zoning Regulations for Mount Pleasant’s RF-1 district are explicitly intended to “control the location of building bulk in relation to adjacent lots and streets, by regulating rear setbacks, side setbacks, and the relationship of buildings to street lot lines”. According to the Office of Planning (OP), the intent of these regulations is to avoid proximate obstructions and prevent disorderly development—which will both occur if the BZA approves this application.

No Existence of Exceptional Situation Resulting in a Practical Difficulty

Third, for two of the variances requested, the applicant must show that the BZA not granting zoning relief will create an "exceptional situation resulting in a practical difficulty." The OP claims that the applicant did not meet their burden of proof to show a “practical difficulty” in a previous set off plans. The applicant uses the property for vehicle parking now, and, as depicted in the new plans, the applicant still proposes to build a garage for vehicle parking. Here is the relevant passage from the OP report:

"...the application does not demonstrate how adherence to the regulations would be a practical difficulty to the applicant as the current use as surface parking could continue, as the Board discussed in the previous decision in Order No. 17833, and as the property has continued to be used since that case was denied."

The OP report further commented that this application does not meet the "practical difficulty" test because the applicant has not adequately demonstrated that a car could not fit into a by-right structure. Again, here's the relevant passage from the OP report:

"In this application, the applicant is seeking a variance from the requirement for setback from

FIG 1: BY-RIGHT GARAGE

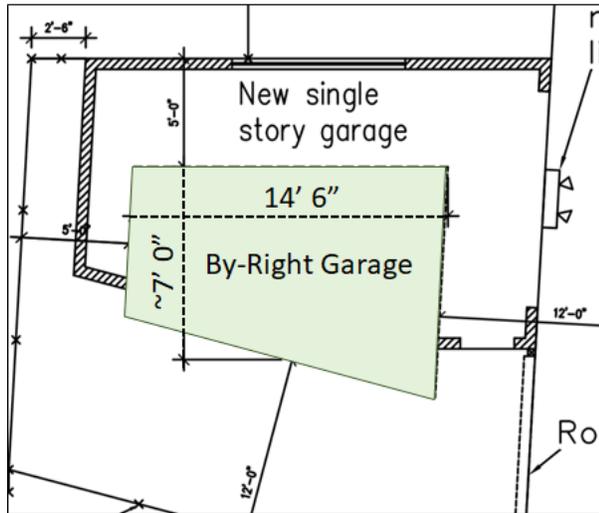
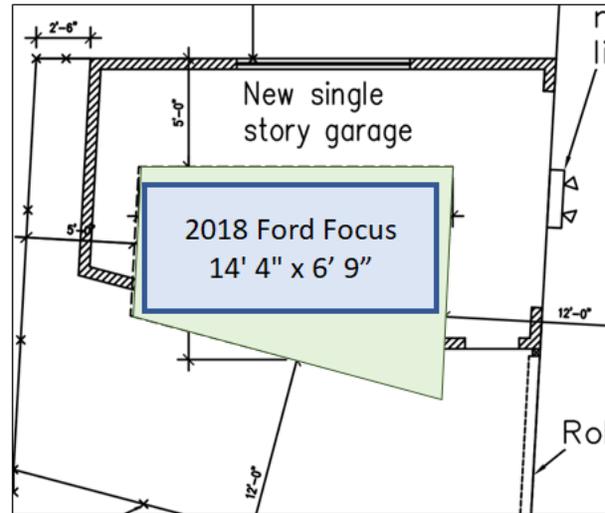


FIG 2: BY-RIGHT GARAGE WITH VEHICLE



the centerline of the alley - 12 feet required at north, 7.5 feet proposed; 12 feet required at east, 4.75 feet proposed. However, the Applicant has not adequately demonstrated that should the setback from the alley centerline (from either alley) be increased, a car could not fit in a garage at this location."

It is the view of this ANC that even a small by-right garage could house a normal-size car. The applicant has indicated that a by-right garage would be 14' 6" long and about 7' wide at its most narrow point. The 2018 model year Ford Focus is 14' 4" long and 6' 9" wide. From this ANC's perspective, the applicant could build a by-right garage—or something extremely close to by-right in size—and still park a car in the garage (see Figures 1 and 2 below).

Record Lot Treatment

Finally, regarding the record lot issue, the applicant has argued that this particular lot may be converted from a tax lot to a record tax as a matter of right, without requiring a variance, due to historical circumstances. However, legitimate doubts have been raised about the historical facts concerning this lot, as well as the correct interpretation of how such conversions should be made. The BZA should investigate and verify the factual statements of the applicant and interested parties about the history of this lot and whether a variance to treat it as a record lot is unnecessary. The BZA should be confident in its analysis before ruling on this matter.

Conclusion

For the reasons stated above, this ANC recommends that the BZA deny zoning relief for the garage as-proposed in this case. Although we are sympathetic to the need for parking in our community, we do not believe that the applicant here has met their burden of proof to show that zoning relief (1) is not a detriment to the public good; (2) is consistent with zoning regulations; and (3) is required to overcome an exceptional situation resulting in a practical difficulty.

2. Zoning Commission Case no. 17-23 – side yards in RF zones (Jack)

Resolved, that ANC1D advises the Zoning Commission to reject the proposed amendments of ZC Case 17-23 that would eliminate side yard requirements for semi-detached row house structures

in Residential Flat zones.

Why: The text of the proposed amendments (to Subtitle E, Residential Flat (RF) Zones §§ 207, 307, 407, 507, and 607) would eliminate all side yard requirements for houses in RF zones, including for semi-detached dwellings: “207.1 No side yards are required . . .”. This appears in fact to conflict with the proposed definition for semi-detached dwellings, namely “a building that has only one (1) side yard”. The “no side yards are required” language appears to supersede the “only one (1) side yard” definition.

Implicit in the “no side yards” regulation is the notion that an addition to the end of a row is a possibility that should not be foreclosed by the provision of a side yard. But there are many situations in which extension of an existing row house is impractical, e.g., on a corner lot, or where the adjacent lot is occupied by a detached house. The corner-lot situation has been referred to by the Office of Planning in ZC testimony (11 December 2017): they could “set down an alternative semi-detached definition for when it hits a corner lot so that there is that setback on 13 the corner lot for when it turns the corner”. This hints at a fundamental problem of having no side lot at the exposed end of a row, namely, access for maintenance, such as painting.

In addition to the corner-lot situation, the case of an adjoining lot occupied by a detached house presents a problem of access for maintenance; that end wall could be accessed only by intrusion onto the neighboring property. Furthermore, the owner of that adjacent lot would likely be dismayed by the appearance of a 35-foot blank wall right on his property line. This is a prescription for conflict, and for legal disputes over access to the neighboring property as required for maintenance of the end-row house.

As is implied by the text of the proposed definition of a semi-detached dwelling, the end unit of a row should be required to have a five-foot side yard, excepting only situations where an extension of that row is a possibility that should, for good reason, not be foreclosed. If a five-foot side yard results in a lot being too small for the construction of a dwelling, a variance may be sought.

3. Crosswalk safety enhancements for Park Road (Jack)

Resolved, that ANC1D asks DDOT to implement pedestrian safety improvements for the pedestrian crosswalk on Park Road, at the Klingle/Walbridge intersection.

Why: Park Road is a minor arterial characterized by heavy east-west traffic passing through Mount Pleasant. Because the westbound continuation of Park Road is not a sharp turn, drivers tend to come around the bend without slowing, and it is not uncommon to see drivers taking the right turn on red, despite the "right turn on green arrow only" sign, threatening the safety of pedestrians crossing during their proper "walk" light.

Curb extensions would enhance the visibility of pedestrians about to step into the street, currently significantly obscured by roadside poles. A raised



crosswalk would highlight the existence of the crosswalk, and would perhaps slow traffic rounding that bend. Similar raised crosswalks currently exist at two locations on Park Road, one at 19th Street, just a block away, and one just across Beach Drive, where Park Road becomes Tilden Street.



5. Adequate Time to Review Office of Planning Staff Reports (Stuart)

Resolved, that ANC1D advises the Office of Planning (OP) to publish staff reports for zoning relief and historic preservation review cases at least five business days in advance of the hearing at the relevant District of Columbia board or commission (including but not limited to hearings before the Board of Zoning Adjustment, the Zoning Commission, and the Historic Preservation Review Board).

Why:

As ANC Commissioners, we are members of the community who serve our neighbors as representatives to the District of Columbia government. Although each of us brings a diverse array of experience to the ANC, we are not experts in architecture, historic preservation, or zoning law. Therefore, we often rely on the staff reports published by the Office of Planning to provide background on zoning relief or historic preservation cases. The ANC uses these reports to inform our resolutions that advise relevant District agencies.

The ANC deeply appreciates the hard work that goes into producing each staff report from OP. However, for recent cases, the OP has not released the staff reports until only days before the associated hearing. For instance, as of March 18, 2018, the OP has not yet published a staff report for case 19629, which the Board of Zoning Adjustment will hear on March 21, 2018. The fact that ANC Commissioners and community members typically have—at most—two or three days to review OP staff reports is unacceptable. The lack of time to review the OP reports places an undue burden on commissioners and community members alike, as we all rush to familiarize ourselves with the report before the relevant hearing occurs. If OP is unable to publish reports at least five business days before hearings, then OP should require that applicants submit their paperwork earlier or automatically postpone hearings. Both options would ensure that ANC commissioners and community members have adequate time to review the reports.

6. Approve expansion of Suns Cinema (Yasmin)

Resolved, that ANC1D advises the ABC Board that it has no objection to the current request by Suns Cinema Inc., License ABRA-098888, for an expansion of its operations.

Why: Suns Cinema is a small operation that poses little threat of disturbance to the neighborhood.