Historic Preservation in Mount Pleasant, 20 years on

SPECIAL NEWSLETTER

Jack McKay, March 25, 2007

Jack McKay
3200 19th St, Tel. 462-8692
jack.mckay@verizon.net
http://DCJack.org

In October, 1986, the Historic Preservation Review Board (HPRB) voted to designate Mount Pleasant a "historic district". That designation brought a lot of additional regulation onto residents of the neighborhood, as if we don't have enough zoning and building code and public space regulations already. This was controversial at the time, and perhaps now is a good time to review the consequences of being designated "historic". After 20 years of experience as a designated historic district, are Mount Pleasant residents happy with it, or not? If not, can we improve this system?

The purpose of historic district designation

As Mount Pleasant became a hot real estate area, pressure has come from developers for bigger, more modern houses and condominiums. Some developments have clashed with the traditional row-house style of the neighborhood. Also, some residents (like me) were making fairly drastic changes to the exteriors of their homes, commonly removing those covered front porches that can be unsightly maintenance problems. In my row, for example, eight of the 12 houses no longer have covered front porches. Historic district designation is intended to fend off "incongruous" development, and to prevent homeowners from making substantial changes to the outside appearance of their homes. I don't think anyone objects to the limitations on developers, but the burdens imposed on us homeowners, severely limiting the alterations we are allowed on our own homes, can be troublesome.

The problems with historic district designation

A stated purpose of District's historic preservation law is "to assure that alterations of existing structures are compatible with the character of the historic district". But how does one define "compatible"? How does one define "the character of the historic district"? This vague and subjective statement puts enormous power in the hands of the bureaucrats of the Historic Preservation Office (HPO) who enforce this law. In practice, in Mount Pleasant, this regulation has meant forcing residents not only to keep the exteriors of their homes unchanged, sometimes despite the desires and needs of the residents, but forcing them to emulate in detail whatever styles are seen in their neighbors' houses, simply to look all alike. "Compatible" too often has come to mean "peas in a pod" uniformity.

The District's historic preservation law commands the bureaucracy to require that all alterations be "compatible" with the "historic character" of the district. In Massachusetts, by contrast, the bureaucracy is required to issue permits unless it can prove that the proposed work would be "incongruous" to the historic district. District law puts all the power in the hands of the bureaucracy; Massachusetts law puts the burden of proof on the bureaucracy. District law gives the homeowner no rights; if the HPO inspector, backed up by the HPRB, says that the homeowner's project is not "compatible", that resident has little recourse. Even if the decision is appealed to the Mayor's Agent, that person is bound by the same "compatible" rule, and invariably sides with the bureaucrats who have denied the permit.

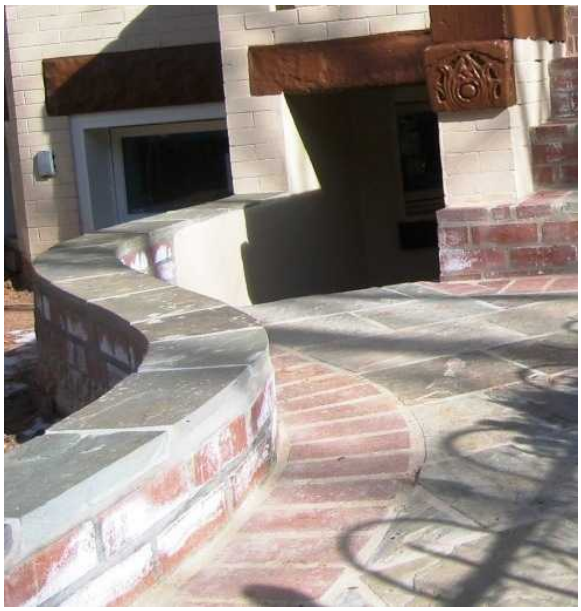
* **You may not be allowed improvements to your property.** For example, the traditional style of this neighborhood is for bare concrete steps and stairs and front walks. Improving these steps and walks with, for example, paving stones, or natural stone, is not allowed. For another example, many of our old row houses are afflicted with leaky, sticking windows, and some residents want to replace them with modern, energy-efficient windows. The modern technology is vinyl – PVC – but don't even think of trying that here. Another example: an Irving Street resident wants to add a front entrance to her basement apartment; but the HPO says no, her neighbors don't have basement entrances visible from the street, so she mustn't be allowed one, either.

* **You will have to get permits for work that ordinarily requires none.** According to the regulations, "a permit is required for various minor repairs to historic landmarks or properties within historic districts, even though a permit is not required for the same work on non-historic properties." Brick pointing and window replacement are examples. Permits must be obtained for the "construction or replacement of a retaining wall, fence, deck, patio, garden storage shed", *even if these are not visible from the street*.. Besides the cost of such additional permit filings, many residents, and some contractors, are unaware of these additional permit requirements, and find their jobs interrupted by "Stop Work" orders.

* **You may be denied even some minor changes to your home.** In any other neighborhood you're free to put a little dish out front to receive satellite TV, but those are not allowed in a "historic" district. If that's the only location from which you can get the satellite signal, tough luck for you. Also, if you want to install a solar energy system, it better not be visible from the street. Massachusetts historic preservation law has a specific exclusion to encourage solar energy systems. The District's law doesn't.

* **It doesn't matter how much it may cost for you to follow the historic regulations.** It doesn't matter how expensive home maintenance according to historic standards may be, nor how limited your finances are. The only consideration of cost is this: a permit may be issued, even for work that is not "compatible", if "failure to issue a permit . . . will result in unreasonable economic hardship to the owner." Unfortunately, in order to be an "unreasonable economic hardship", for homeowners who are not poor, permit denial must amount to a "taking" of an owner's property. Legally, a "taking" means one hundred percent, that is, the property must be rendered entirely useless for any purpose. The demands of historic district regulation in DC may bankrupt the homeowner, but that's not, according to the law, an "unreasonable economic hardship".

  Compare Massachusetts, which allows exceptions in cases of "substantial" financial hardship. The District's law appears to me to be much more stringent than Massachusetts law. Why?



I thought this was a very nice-looking front walk, elegant, and artistic, but perfectly "compatible" with our neighborhood. The Historic Preservation Office disagreed, and forced the owner to remove the stone topping of the curved wall, and to cover the brickwork with bare concrete. The HPO also objected to paving the front walk with stone, and would have denied permits for that, had the owner not already built it when the bureaucrats were notified. Bare concrete is the style being forced on the neighborhood, because everything is supposed look as if it was built before 1949.

* **You cannot get an exception for disabilities.** Other jurisdictions permit exceptions, where the residents have special needs. In Massachusetts, for example – a state with plenty of history – residents can apply for "certificates of hardship", and be allowed some deviation from the historic regulations. But the District law allows no such exceptions. The HPO bureaucrats struggle to find solutions that satisfy the law, yet allow the disabled access to their homes. Commonly this means putting ramps and rails behind the house, out of sight. In my opinion, commanding disabled residents to use their back doors, depriving them of the convenience and dignity of entering the front doors of their own homes, is cruel.

Can these deficiencies be fixed?

Other cities invoke "neighborhood conservation districts" to deal with the problem of incongruous development. This avoids the great pit of "historic" compatibility, allowing flexibility in regulations, to fend off incongruous development without forcing residents into the costly morass of historic preservation. Neighborhood conservation districts also allow local control of the rules and the decisions, instead of turning the neighborhood over to bureaucrats who don't live here, and who apply a one-size-fits-all system to our unique neighborhood.

Unfortunately, this was not an option in 1986, and may not be an option now. Fortunately there is some latitude built into the District's historic preservation law, and perhaps the HPO/HPRB bureaucrats can be persuaded to be less rigorous in the application of their rules to our neighborhood.

Is historic district designation a popular success?

In Massachusetts, historic district designation requires a two-thirds majority vote of either a city council, or a town meeting. This is my question today, after 20 years of Mount Pleasant being a designated historic district: *would historic district designation win a two-thirds majority among Mount Pleasant homeowners today?*