

Historic Designation without Representation

Public Review of “Substantial Renovations” Challenges in Historic Districts

By Adam Beebe



Introduction

As the outgoing Executive Director of Advisory Neighborhood Commission 2F (ANC 2F), which includes four different historic districts, I have witnessed firsthand the implications of a historic district on home and property owners- particularly those who find themselves engaging in the public participation portion of the historic review process. The public participation process usually involves applicants presenting before their ANC and requesting the Commissioners’ support. During my five-year tenure (as

a paid employee, not an elected Commissioner), ANC 2F recommendations were given "[great weight](#)" in over sixty applications for historic concept and design review within the 2F boundaries.

As with any matter of such great complexity, historic districts— a policy and preservation tool that exists for primarily good reasons— have both positive and negative impacts. Similarly, although the public participation process that accompanies the historic review process exists to improve the final outcome of a project, in some instances the process imposes an unreasonable burden on property owners. It is undeniable that the extra permitting steps required by the historic review process place additional time- and financial-related burdens on home and property owners. The extent of this burden is frequently minimal and it varies from case to case. However, the burden can be especially acute- and even prohibitive- in cases where the desired changes cannot be approved by a relatively straightforward design review (aka a "desk review" conducted by the Historic Preservation Office [HPO] staff), and instead require a more involved historic concept review by the Historic Preservation Review Board (HPRB). Why? Because of the public participation process. The public participation process and the "great weight" afforded to ANCs can have a profound impact on the outcome of a project- and by extension the burden on the property owner; it is the true wildcard in the historic review process.

Property owners in ANC 2F are fortunate that their ANC has long consisted of elected Commissioners and residents serving on the ANC's Community Development Committee who are knowledgeable of historic preservation guidelines; sensitive to the sometimes-conflicting tensions between preservation, development, and affordable housing; and genuinely supportive of compromise when various community stakeholders hold conflicting views. However, no two ANCs are alike. From one ANC to another there is incredible variance in Commissioner personalities and agendas; the experience and expertise of the Commissioners and committee members who make determinations on historic compatibility; the transparency and efficiency of ANC processes; and extent to which any one community actor can sway or even determine the outcome of a given application in a historic district. This lack of consistency across ANCs and the resulting unpredictability of the public participation process manifest in four ways that pose potentially enormous burdens for individual property owners in historic districts that seek to make changes that are considered "major" or "substantial" by HPO.

Lessons Learned

First, the public participation process itself *can be* extremely burdensome for homeowners. This is especially true for those not familiar with their ANC's historic review process; residents who live in ANCs that are poorly managed; and individuals whose financial, health or employment circumstances make it difficult to meaningfully participate in the public review process. Although ANC 2F runs with relatively great transparency, efficiency, and consistency, I have heard horror stories from applicants who never received a response from their ANC despite multiple attempts to make contact; applicants who were misinformed about the ANC's review process; and applicants who were unable to meaningfully engage with their ANC in a timely manner because of the ANC's internal dysfunction and/or meetings that were suddenly canceled or not properly noticed. For this reason, many developers as well as those who have previously been through the public participation portion of the historic review process are compelled to hire attorneys and/or architects with experience presenting to ANCs, or consultants whose job it is to navigate the complexities of the public review process. Additionally, even the best functioning ANCs often have review timelines that require an applicant to first present to a committee of the ANC several weeks before the the Commissioners take a formal vote and send their recommendation to HPO or HPRB. This process can add months to an application's timeline as well as additional expense (i.e. attending evening meetings, printing presentation boards, preparing copies of presentation packets), which can prohibit meaningful participation in the process if you're a member of a low or fixed income household, an elderly resident, or an individual with a non-conventional work schedule.

Second, there is room for enormous subjectivity and bias in the public participation process. Although some historic requirements are extremely straightforward (e.g., approved vs. unapproved materials), many others are subject to determination of "compatibility" with the historic fabric of the neighborhood in terms of massing, size, architectural detail, scale, etc. HPO staff and HPRB board members regularly exercise their professional judgment on what is and is not considered compatible. What is more worrisome is that ANC Commissioners and committee members do as well, but usually with much less experience or expertise in architectural history. Depending on the ANC, its composition, and its processes (or lack thereof), individual ANC Commissioners, committee members, or community members (especially those residing near the project in question) can greatly influence how the ANC determines "compatibility" and the subsequent "great weight" that HPO or HPRB must consider. *A single influential individual can stonewall the public review process.* Furthermore, although some historic districts have clear and readily available guidelines for what is considered "consistent" or

“compatible,” many do not, which leaves great room for subjectivity. Ultimately, it's easy to see how an ANC can make a determination that is consistent with the view of the loudest or most organized voice(s), but not necessarily reflective of the preferences of the entire community or the most compatible design.

Third, applicants *sometimes* find themselves between a rock and a hard place when the HPO's and the ANC's views are at odds. In my experience with ANC 2F, it was not uncommon that the committee and/or Commission's determination of "compatibility" substantively differed from that of the HPO staff. At times, applicants find themselves in a difficult situation; on one hand, they've been advised by HPO staff on certain design elements that the applicants understand to be important for securing historic approval, and on the other hand, the ANC indicates it will vote to oppose the application unless said design elements are altered. Well intentioned applicants must then make a calculation between how much "great weight" HPO staff and/or the HPRB will ultimately afford the ANC, and how much of a delay/inconvenience/expense/obstacle will result from not securing the ANC's support. Ultimately, even the most process-abiding applicant can find him or herself to be the unenviable monkey in the middle.

Finally, the public participation process itself can be a nebulous and constantly changing target. There are a lot of individuals who can choose to be involved in the public participation process. Although only ANCs are afforded "great weight" by HPO and HPRB, community organizations, businesses, and individual neighborhood residents all have opportunities to weigh in, and by objecting, potentially delaying and/or altering the outcome of an historic application. Even if an ANC votes to support an historic application, an individual's testimony at an HPRB hearing can cause the board alter the course of its deliberation or delay its decision altogether, which imposes additional time and cost considerations on property owners. And unfortunately, for as many times as this last-minute opposition improves the ultimate outcome, *it's as common that such instances are in reality obstructive tactics*—that sometimes result in the applicant compensating the opponent monetarily in order to drop opposition. While it is uncommon for one or even a few individuals to greatly influence the outcome before the HPRB when the project is otherwise supported by HPO, it can and does happen. Perhaps more common is when the applicant is a developer, and the occurrence of being "held hostage" or "paying to play" is a familiar scenario for overcoming a recalcitrant opponent.

Conclusion

To be clear, HPO states that it conducts expedited reviews on "more than 95 percent of [historic] permit applications... without unnecessary delay or an undue burden on the applicant." And in my experience, HPO staff is consistently helpful, extremely knowledgeable, and reliably responsive. All projects stand to benefit from early and ongoing engagement with HPO staff. But even if the nightmare scenarios above aren't common among home and property owners in historic districts, those who wish to pursue what are considered "major changes" or "substantial alterations" to their homes or properties are ultimately subject to a public participation process that can be unpredictable and without any certainty of outcome, which is a significant challenge for any individual property owner trying to decide how to plan and budget for a project- especially community members with fixed or limited resources.