

A Critical Reading of Chapter 10 of the City of Mount Vernon Municipal Code: Architectural Review Board (ARB)

Definitions:

Aesthetic- concerned with beauty or the appreciation of beauty.

Bogus- not genuine or true; fake.

Capitulate- cease to resist an opponent or an unwelcome demand; surrender.

Character- the mental and moral qualities distinctive to an individual.

Characteristics- qualities and features that serve to identify a person, place, or thing.

Critical Reading- the process of closely examining text in order to better understand what it means. Among other things, the process involves defining key terms, rephrasing key sections of the text for clarity, challenging claims and questioning assertions, and offering counter claims.

Finding- a conclusion reached as a result of an inquiry, investigation, or trial.

Paternalism- the policy or practice on the part of people in positions of authority of restricting the freedom and responsibilities of those subordinate to them, supposedly because it is in the subordinate's best interest. Colloquially, "father knows best".

Prevailing- 1) existing at a particular time; current. 2) having most appeal or influence.

Preserve- to maintain (something) in its original or existing state.

Sychophant- a person who acts excessively obedient toward someone important in order to gain their favor.

Rationale:

After watching several meetings of the ARB in 2021 and Q1 of 2022, I found myself wondering, "why is this necessary?". Private residential and commercial property owners appear before the ARB in order to receive a "Certificate of Appropriateness", a sort of aesthetic "seal of approval". This certificate is required for a wide array of alterations to the exterior of existing homes and buildings, or during the design of new homes and buildings. In the meetings I watched, the tone set by the ARB was often disturbing: property owner as sychophant and ARB as aesthetic lord.

So, I decided to take a close look at the section of the municipal code that authorizes the ARB (Article V, Section 40, Chapter 10), which was "amended in its entirety" in November 2009. The key sections of the text are 10-1 "Purpose", and 10-2 "Findings". The text of these 2 sections appears below in **blue** followed by my comments and questions. The entire chapter can be read here:

<https://ecode360.com/6599950> ARB forms and procedures can be read here:

<https://cmvny.com/267/Architectural-Review-Board>.

§ 10-1 Purpose.

It is the purpose of this chapter to preserve the prevailing aesthetic character of the City and its environs while permitting originality and resourcefulness in building design and appearances which are appropriate to their site and surroundings, yet preventing such design and appearances that would be unnecessarily offensive to visual sensibilities. The preserving and promoting of the character, appearances and aesthetics of the City will serve to maintain the property values within the City of Mount Vernon. Enhancing the attractiveness of the residential and business areas of the City offers an economic stability for the entire community. This chapter serves to provide procedures for an architectural review of structures henceforth erected, reconstructed or altered in the City to encourage good qualities of exterior building design, appropriate appearances and to relate such design and appearances to the surrounding sites and structures. It is also the purpose of this chapter to prevent the harmful effects of inappropriate exterior appearances of buildings erected, reconstructed or altered in any neighborhood, thus promoting and protecting the general welfare of the community and conserving the value of buildings.

My Comments, questions, concerns with the stated Purpose of the ARB

1. What are "inappropriate exterior appearances" and more importantly, what are the "harmful effects" of these appearances? If the "general welfare of the community" is at risk, shouldn't these threats be clearly and unambiguously enumerated to us without delay?
2. Is it the purpose of this chapter to create/maintain the value of buildings and homes by controlling how they look? If that is the purpose of the ordinance, as written, it will fail because it does not require prospective appraisals of proposed new buildings, building reconstructions, or building alterations. Without prospective appraisals (2 or 3 independent prospective appraisals), how is the future value of a proposed current project being estimated? What is the formula?
3. What, exactly, are appearances that are "unnecessarily offensive to visual sensibilities"? As with "harmful effects", wouldn't it make more sense for the ARB to simply list the precise characteristics that they wish us all to avoid? How do we know the ARB members are not just trying to structure the visual environment so that it doesn't unnecessarily offend their personal "visual sensibilities"? Has each member of the ARB taken a visual "preference assessment" so the community can be assured that their aesthetic judgements fair and objective and not just an expression of their personal visual tastes and interests?
4. "to preserve the prevailing aesthetic character of the city". Let's assume that instead of "character" the author meant to say "characteristics". What are the "prevailing" characteristics of the city that existed in 2009 that the ARB wishes to preserve? I know they are fond of "traditional" roofing materials such as slate and tile, but what else? Wouldn't the community be best served if the ARB listed the precise characteristics that it favors and disfavors? Wouldn't that make for a more fair and objective process?

5. All other things being equal, it is reasonable to assume that a well-maintained property will be of greater value than a poorly maintained property. However, without defining the “character, appearance and aesthetics” the city seeks to preserve, how would one support the claim that the actions of ARB help to “maintain the property values within the City of Mount Vernon”? The truth is nobody knows what effect ARB actions have on property values.

6. Building on #5, while it seems likely that "enhancing the attractiveness of the residential and business areas of the City offers an economic stability for the entire community", the impact of ARB decisions on the economic stability of the city has not been measured, and without measuring there is no way to claim that ARB decisions lead to greater economic stability. A better way to support economic stability in the city is to provide residents and businesses with a high quality of life by keeping crime rates low, roads & sidewalks well maintained, parks “clean & green”, and sewers functioning. Whether or not my neighbors have slate or asphalt shingles on their roof won’t increase my “economic stability”, but high marks on quality of life indicators will.

7. By “encourage” the city means the ARB will only grant a ‘certificate of appropriateness’ if the land owner capitulates to the ARB’s goldilocks dictates about paint colors, the number of panes of glass on proposed new windows, or the location of solar panels on a roof, for example. It is not a nurturing process, it is a coercive process.

8. An underlying assumption in this "purpose" is that residents and business owners are *incapable of acting in their own best self interest* . It assumes that, but for the ARB, we'd all be walking around averting our eyes to avoid seeing the aesthetic mess we've made of the very place we call home. This is a paternalistic and completely bogus assumption.

§ 10-2 Findings.

The City Council hereby finds that structures and architectural features with excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of buildings erected in any neighborhood adversely affects the desirability of the immediate area and neighboring areas for residential and business purposes or other use and by so doing impairs the benefits of occupancy of existing property in such areas, impairs the stability and value of both improved and unimproved real property in such areas, prevents the most appropriate development of such areas, produces degeneration of property in such areas with attendant deterioration of conditions affecting the health, safety, comfort and general welfare of the inhabitants and occupants thereof, and destroys a proper relationship between the taxable value of real property in such areas and the cost of municipal services provided therefor.

My Comments, questions, concerns with the stated Findings of the ARB

1. This is not a "finding" it's a run on sentence hosting a set of "kitchen sink" assertions.

2. The word "inappropriateness" is undefined. But, since this is a "finding" let's assume for a moment that through direct observation and systematic inquiry, in 2009 the city council "found" that certain exterior structures and features possess fixed qualities that entail "inappropriateness". What are those qualities? Why not list them? The answer: this is not a "finding", it's an unfounded assertion.

3. There is no evidence that the "exterior appearance" or "architectural features" of my home have anything to do with my "health", "safety", or "general welfare", or that of my neighbors. This is a completely bogus claim.

4. There is no evidence that the "exterior appearance" or "architectural features" of a home or building "destroys a proper relationship between the taxable value of real property....and the cost of municipal services provided." Again, a completely bogus claim.

Conclusion:

This ordinance does not offer objective, clearly articulated, repeatable aesthetic architectural standards that the community can use as a guide during commercial and residential building construction and renovation. Instead, it offers snobbery masquerading as solicitude, undefined terms, grandiose claims, and unfounded assertions. As written, it is legally dubious and philosophically without merit. It is paternalistic in the extreme and it should be repealed. The ARB as a separate land use board should be disbanded and the building department, as part of the permitting process, should work directly with private property owners to assist them with visual aesthetic decision-making as needed. Standards should be objective and published for all to see.