

O. Kenneth Hand, Jr.  
2228 Patterson Ave  
Louisville, KY 40204

05/27/16

Ms. Savannah Darr  
Historic Preservation Specialist  
Louisville Metro Planning & Design Services  
444 South Fifth Street, Suite 300  
Louisville, KY 40204

Dear Ms. Darr,

Pursuant to our previous correspondence, please accept this document as my formal appeal of the ruling made by the Historic Landmarks and Preservation Districts Commission in regards to my retaining wall (Case number 16COA1076).

I first wish to express that I fully support the spirit of historic preservation. Having grown up in a historic town which was ill prepared for growth and change, I've witnessed the sad consequences of a community not having established guidelines for proposed buildings in or near historic districts. While change is inevitable, I firmly believe that historic preservation entities such as the Cherokee Triangle Architectural Review Committee (referred hereafter as "ARC") can, and should, play an important role in *managing* that change.

In fact, it is in part because of my support of historic preservation that I find the ARC's ruling in my case so distressing. For a myriad of reasons that I will outline below, the ARC's ruling in my case is ***clearly erroneous as to a material finding of fact related to whether [my retaining wall] complied with the guidelines. Furthermore, it's clear that the ARC has ruled in a capricious and arbitrary manner.***

Consequently, my appeal is based on the following:

1. The committee has provided no substantive statements as to how my wall is contrary to any established guidelines.
  - a. The documentation of the committee's ruling includes a site design checklist that lists twenty-four (24) design guidelines. In my case, the committee commented on only three (3) of the guidelines: ST1, ST8, and ST10. None of the comments represents any substantive reason why my wall should be disapproved. In fact, the comment in reference to guideline ST8 actually validates the appropriateness of my wall, stating "The limestone is a historically appropriate material." The other two comments referencing ST1 and ST10 are baseless, as I will detail below.
2. The first comment entered, in regards to guideline ST1, states "See conclusions," the main points of which are as follows:
  - a. "While the limestone is a historically accurate material, its stacking pattern is not necessarily appropriate for the District."
  - b. "...the applicant [should] pursue better vegetation rather than a wall."
  - c. "The grade change is not so significant to warrant a retaining wall."
  - d. "The majority of the yards in Cherokee Triangle slope toward the street."

In regards to 'a':

This finding is absurd. How can any responsible group rule that an entire wall must be completely taken down (as opposed to modified, even) based on a stacking pattern "not necessarily" being appropriate? By definition, "not necessarily" means that something **may or may not** be the case. Therefore, the leading statement of the

committee's conclusion is anything but conclusive. Rather, they are stating that the stacking pattern **may or may not** be appropriate. How could the committee rule on the appropriateness of something if they, themselves, cannot determine if it is appropriate? How could the committee deem the wall surrounding the side and rear of my property was appropriate (approved in 2009) and then deem as inappropriate a wall of the same height, width, style, and made with the exact same stones as the previously approved wall? As a point of clarification, this previously approved wall is not merely in the rear of house, facing the alley; rather, it extends along heavily trafficked Willow Avenue from which it is easily seen. Finally, how could any qualified committee have the slightest doubt as to the appropriateness of dry-stacked limestone in the Cherokee Triangle? Existing examples of dry-stacked limestone construction in the Triangle are multitude. In fact, some of the Triangle's most notable features make use of this construction. If the ARC can't decide if dry stack limestone "may or may not be appropriate," I suggest they should act quickly on the following, just to name a few of many, many examples:

Daniel needs a new place to stand....



Mildred needs to replace her bridge rails with steel girders...



The entire enclosure of Baringer Spring, especially this **dry-stack limestone retaining wall**, must come down...



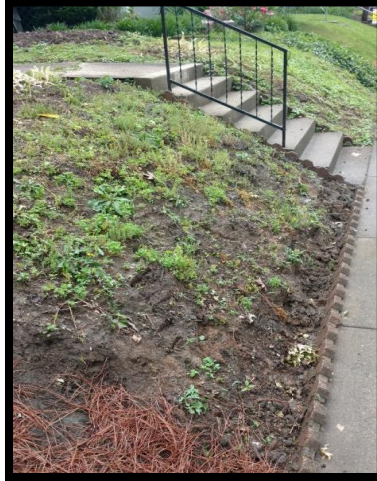
A Viking ship in the Triangle is terribly off course. Worse, it's enclosed in a dry-stack limestone arch...



In regards to 'b':

I most certainly did "pursue better vegetation" rather than a wall. By all means, I was in no hurry to spend over \$5,000.00 on a wall if simply planting different grasses, etc., would have sufficed. The fact is, however, that experiments with plantings did little to nothing to stem the rapid erosion of my property.

In fact, this yard is two doors down from mine and has the same slope my yard once had. This is what "better vegetation" looks like after a few rainstorms:



In regards to 'c':

By what means does the committee determine that the grade change is "not so significant" as to warrant a retaining wall? I resisted the expense and hassle of building a retaining wall but ultimately found it "warranted" by the simple fact that I was losing my yard in avalanches of mud that slid off the "not so significant" slope onto the sidewalk. Consequently, the sidewalk in front of my house would regularly be coated with up to a ¼ inch of slick mud, representing a serious slipping hazard to the many walkers and joggers who routinely transit Patterson Ave to and from Cherokee Park. We live in a litigious society. I have little doubt that I'd face the threat of legal action should someone injure him or herself on an unkempt sidewalk in front of my house and coated with my yard's mud. Having officially denied –on record– my attempt to mitigate the public's risk of injury, the ARC members as a whole and individually would also face such legal action. Are the members aware of this liability? I consulted several landscapers, all of whom have extensive experience in the Highlands. Their unanimous recommendation was to build a retaining wall (one taller than the mere three inches suggested by the ARC's ruling). What expert did the ARC consult concerning the particular significance of my yard's grade change? Did he or she survey the property? Can he or she guarantee my yard won't continue to erode?

In regards to 'd':

How does the statement that "the majority of yards in Cherokee Triangle slope toward the street" have any bearing whatsoever as to whether my yard's slope does or does not require a retaining wall? Of course many yards in the Triangle slope toward the street. That is why many of those yards have retaining walls. Furthermore, slopes and yards are not static. Erosion happens. Slopes steepen and / or flatten. It's a function of time, wind, and rain. It's happening in the Triangle. It will continue to happen. Just because a certain street has not had many homes with retaining walls in the past does not mean that they will never need them in the future. How can the ARC not understand this? Do the members believe that those of us who have built walls or those who've applied to do so are simply spending money frivolously? Statements made by ARC members during the hearing about how the yards used to be some 30 years ago are not only immaterial, they are indicative of a certain nostalgia induced denial. One can hardly feel as if the ARC members are basing their decisions on fact versus emotion in light of such comments. During the meeting, there was no more shocking example of this as when one review board member remarked that if she "...had a terminal illness she'd blow us all up."

3. The second comment entered, in regards to ST8, states, “The limestone is historically appropriate material.”

I most certainly agree. That is why I used it, even though other materials would have been much less expensive. It is also why I took the time (and expense) to hire someone skilled at dry-stack limestone construction to build the wall. At my direction, he made it exactly like the rest of my yard’s retaining wall. In fact, many of the stones used in the new, front wall are stones left over from the previously constructed wall –the very one which the ARC approved in 2009. This inconsistency is baffling.

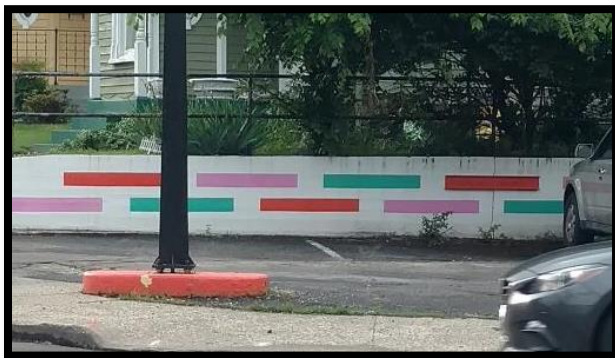
4. The third comment entered, in regards to ST10, states, “Not a large grade change, no historic precedent. Rear retaining wall approved in 2009.”

As to the ARC’s assessment of the grade change, there is no evidence that the members are basing their assessment on anything other than conjecture; or, just as ridiculous, the notion that just because a yard’s slope didn’t require a retaining wall in the past, then it won’t ever require one in the future. Finally, the fact that the three words “no historic precedent” are immediately followed by the sentence, “Rear retaining wall approved in 2009,” illustrates how **capricious and arbitrary** the ARC’s ruling is.

5. There are 21 other points to the Historic Landmarks and Preservation Districts Commission’s “Design Guideline Checklist.” In my case, not one of those 21 points has any finding or comment entered.

My wall is in compliance with those guidelines, just as the side and rear portion of the same, exact wall was found to be in compliance with the guidelines by the ARC in 2009.

By contrast, here are just a few of the things in the Triangle that are clearly NOT in compliance with those guidelines:



I’m curious how my retaining wall could be any less appropriate than one of the above Triangle “features.”

Respectfully,  
O. Kenneth Hand Jr.