

concern, have more to do with the desire to stop someone from diminishing the view from their deck or to halt the construction of nearby apartment buildings or shopping centers in their backyards. While these are legitimate concerns, they are essentially self-centered, not public-centered. Neighbors seem to realize the inappropriateness of these self-centered concerns, because their rhetoric (as is the developers' rhetoric) is often disguised as protection of the public. Design review is not even effective at controlling the self-centered problems, since the common result of review will be to put a pretty face on a problem. Zoning is a much more powerful and direct tool to address size, layout, and location, but public officials are reluctant to use it. Reducing the size of buildings or denying a permit does not add to the tax base or economic growth, and promoters of large projects tend to wield political influence.

Community aesthetic input seems most legitimate when a public space is involved. Cincinnati's Fountain Square, for instance, is the subject of much public debate about its design, most of it by people who have a special interest, but at least some of which is genuine concern for the symbolic and public role that it has.

## Freedom

The flip side of power is freedom. Unlike some of our international friends, the spirit of community in this country is heavily tempered by the belief in the rights of the individual. A somewhat related concept is the view that diversity—taken to mean varying perspectives, disagreements, and cultural differences—is a strength for society as a whole because it provides a wealth of criticism and a wealth of ideas: it keeps us on our toes. The constitution protects the individual from the power of the collective government and allows diversity to flourish.

*Is design review a violation of the First Amendment right to free speech?* The answer rests on two questions: 1) Are architecture and other aspects of the built environment protected as "speech" under the Constitution? 2) Can the government show a legitimate interest that would override the protection afforded to free speech in this case?

Although there has not been a single case adjudicated on the specific issue of architecture and the First Amendment, nearly all legal theorists who have approached the subject of aesthetic legislation (notably Williams, 1977; Poole, 1987; and Costonis,

1982) agree that architecture should be given the protection afforded to most forms of symbolic expression. In what appears to be an interesting contradiction, recent cases have expanded First Amendment protection to cover "commercial speech" such as signs and advertising, while at the same time the courts have overwhelmingly supported the increase in the regulation of design.

Although the language of the First Amendment clearly states that "Congress shall make no law . . . abridging the freedom of speech," there are many examples of laws in the United States that make it clear that freedom of speech is limited. In order to demonstrate that regulations and practices of design review are legitimate limits on First Amendment freedoms, theoretically a jurisdiction would need to define a very powerful public interest that would override the protection of free speech. It seems to be a dubious assertion to claim that the public interest is substantially served by controlling the color of awnings or requiring that the style of new construction is compatible with existing buildings. Even if the test requiring a substantial government interest could be met, this interest would have to be justified on grounds (such as public safety) that are not related to the suppression of an aesthetic message. In other words, it seems clear that laws that have *as their primary purpose* the curtailing of aesthetic styles or the forcing of homogeneity (known in architecture as "contextuality") would encounter First Amendment problems.

*Why is it important to concern ourselves with extending First Amendment protection to architectural expression?* One of the purposes of the First Amendment is to protect the individual from the tyranny of the majority. Design review/design guidelines can be interpreted as a way of reinforcing a majority-based, cultural bias (i.e., historic, white, European), especially in a threateningly pluralistic architectural and cultural milieu. Architecture is like a beacon, announcing the status, values, and interests of its culture, its creators, and its inhabitants. It could even be argued that the communicative message of architecture is so strong that community leaders, in formulating design controls, are simply trying to control the message. By excluding certain culturally diverse architectural languages or unpopular architectural styles, we literally suppress a minority viewpoint and prevent those with a different, even critical, perspective from speaking. Thus, if you believe that cosmetic imitation of quaint New England village architecture is false and damaging to