Constitutional Architecture: The First Amendment and the Single Family House

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The Article argues that the exterior design of a private single-family house is a First Amendment-protected expression for the inhabitants. When a municipality applies aesthetic standards to regulate this expression, it must justify its regulation by establishing a substantial governmental interest; that interest must be advanced by application of narrowly and clearly defined standards.

INTRODUCTION

In January, 1991, Margaret P. Gilleo offended the aesthetic sensibilities of the City of Ladue, Missouri by placing "an 8.5- by 11-inch sign in the second story window of her home stating, 'For Peace in the Gulf.'"[1] The municipality responded by enacting an ordinance which, with ten exceptions, prohibited all signs; the ordinance was based largely on aesthetic concerns.[2]

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1. City of Ladue v. Gilleo, 114 S. Ct. 2038, 2040 (1994).
2. The city was animated by a fear that the:
proliferation of an unlimited number of signs . . . would create ugliness, visual blight and clutter, tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially

Ms. Gilleo challenged the ordinance. The United States District Court, granting her motion for summary judgment, found that the ordinance violated the First Amendment.[3] The Eighth Circuit agreed.[4] And, on June 13, 1994, so did the Supreme Court which found, without dissent, that "[a] special respect for individual liberty in the home has long been part of our culture and our law . . . ; that principle has special resonance when the government seeks to constrain a person's ability to *speak* there."[5] The Court distinguished a municipality's "constant and unavoidable" need to regulate expressive uses of public forums from its "much less pressing" need to regulate a citizen's expressive use of her private house.[6]

Although every court agreed that the municipality overreached itself in pursuing Ms. Gilleo's little sign, its pursuit was founded on what has become an acknowledged governmental interest: aesthetic regulation. As the Supreme Court characterized it in *Gilleo*, the municipality relied "squarely" on a "content-neutral justification for its ordinance" by claiming that it promoted "aesthetic values unrelated to the content of the prohibited speech."[7]

This Article will discuss the application of legislatively-defined aesthetic values to the exterior design of a private single family house, arguing that such regulation is subject to a rigorous First Amendment review. Using the philosophy of architect Robert Venturi, this Article will argue that the exterior design of the single family house speaks on behalf of the inhabitants, expressing who they are and how they choose to live. The Article argues that the content of this expression is made as clearly as if written or spoken and is entitled to First Amendment protection. Any municipality seeking to restrict that expression under

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impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children.

Id. at 2041.

3. 774 F. Supp. 1564 (D. Mo. 1991).

4. 986 F.2d 1180 (8th Cir. 1993).

5. 114 S. Ct. at 2047 (citations omitted). Justice O'Connor filed a concurring opinion because she "would have preferred to apply our normal analytical structure in this case which may well have required us to examine this law with the scrutiny appropriate to content-based regulations." *Id.* at 2048. However, she joined the Court's opinion stating, "I agree with its conclusion . . . that even if the restriction were content-neutral, it would still be invalid . . . ." *Id.*

6. *Id.* at 2047.

7. *Id.* at 2042. Not every court has been willing to assume that such ordinances are content-neutral. *See, e.g.*, Whitton v. City of Gladstone, 63 U.S.L.W. 2724 (8th Cir. 1995), where the court found that another Missouri city's ordinance restricting the posting of political signs for ostensibly aesthetic-based reasons was content-based; was, therefore, subject to strict scrutiny; and, under that scrutiny, was invalid as imposing unconstitutional restrictions of First Amendment rights.

the guise of aesthetic regulation must establish a sufficiently substantial need to do so under narrow, clearly defined standards.

Section I analyzes *Gilleo* and the three Supreme Court decisions underlying it, decisions which dealt with a municipality's authority to regulate outdoor signs; each decision required at least a passing discussion of aesthetic values as a legitimate regulatory interest. Section II introduces Robert Venturi. Section III describes how the house itself, in its exterior design, is a form of speech for the people who inhabit it, a way of expressing who they are and how they choose to live. The house is a form of individual expression which, section IV argues, is entitled to First Amendment protection. Section V describes the genesis of aesthetic regulation and its threat to First Amendment values. Section VI suggests how those values can be protected from governmental intrusion, arguing for a constitutional architecture which accepts the value of variety in the exterior design of private single family houses.

I.

Ms. Gilleo's hanging of a little protest sign in the window of her house had Supreme Court support, even as to its placement. On May 10, 1970, Harold Spence hung a United States flag from an upper floor window of his apartment which was located on private property.[8] Mr. Spence used tape to attach a peace symbol to the 3 by 5-foot flag which he then hung upside down to protest the Cambodian invasion and the Kent State killings, both of which had occurred a few days earlier.[9] Mr. Spence was arrested and convicted for improperly using the United States flag, a conviction affirmed by the Washington Supreme Court.[10]

The United States Supreme Court reversed, finding that Mr. Spence's "activity, combined with the factual context and environment in which it was undertaken, lead to the conclusion that he engaged in a form of protected expression."[11] Mr. Spence used "a privately owned flag" which was "displayed . . . on private property" with no intent "to incite violence or even stimulate a public demonstration."[12] Under these

8. Spence v. Washington, 418 U.S. 405, 406 (1974).
9. *Id.* at 405-06, 408.
10. *Id.* at 408.
11. *Id.* at 409-10.
12. *Id.* at 408-09.

circumstances, the Court said it "must examine with particular care the interests advanced by [the state] to support its prosecution."[13]

The state did not advance an interest which could sustain Mr. Spence's conviction. He did not breach the peace.[14] He did not impose his ideas on passersby; those "who might have been offended could easily have avoided the display."[15] He could not "be punished for failing to show proper respect for our national emblem."[16]

The state was left with arguing that it had "an interest in preserving the national flag as an unalloyed symbol of our country."[17] The Court, assuming that this was a valid interest, still reversed the conviction because Mr. Spence displayed his flag "as a flag of his country in a way closely analogous to the manner in which flags have always been used to convey ideas."[18] Mr. Spence's ideas were conveyed in a manner which "was direct, likely to be understood, and within the contours of the First Amendment."[19]

Although there are clear parallels between Mr. Spence's and Ms. Gilleo's protests, the Supreme Court did not rely on *Spence* to support its decision in *Gilleo*, perhaps because the state in *Spence* did not advance an aesthetic interest in controlling the individual's conduct.[20] Instead, *Gilleo* relied on three decisions which had reviewed "the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs";[21] each decision required at least a passing discussion of aesthetic values as a legitimate municipal regulatory interest.

The first decision was *Linmark Associates, Inc. v. Township of Willingboro* which presented "the question whether the First Amendment permits a municipality to prohibit the posting of 'For Sale' or 'Sold' signs" in an effort to reduce white-flight.[22] The Court, although characterizing the ordinance as "enacted to achieve an important governmental objective," found that it violated the First Amendment.[23]

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13. *Id.* at 411.
14. *Id.* at 412.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 415.
19. *Id.*
20. The *Gilleo* Court did cite *Spence* in support of the principle which affords a special respect for individual liberty in speaking at one's home, a place where the municipality's need to regulate is much less pressing than in public forums. *See Gilleo*, 114 S. Ct. at 2047.
21. *Id.* at 2042.
22. 431 U.S. 85, 86 (1977).
23. *Id.* at 95.

The *Linmark* Court began by reviewing decisions invalidating advertising restrictions on abortion services and prescription drug prices, noting that "the societal interest in 'the free flow of commercial information' . . . is in no way lessened by the fact that the subject of the commercial information here is realty rather than abortions or drugs."[24] The municipality's argument that the ordinance only restricted one method of communication was unavailing. The Court first responded that "serious questions exist as to whether the ordinance 'leave[s] open ample alternative channels for communication.'"[25] The alternatives were more costly, involved less homeowner autonomy, were less likely to reach a wide audience, and "may be less effective media for communicating the message that is conveyed by a 'For Sale' sign in front of the house to be sold."[26]

Second, the Court responded that the municipality was "not genuinely concerned with the place of the speech—front lawns—or the manner of the speech—signs."[27] The municipality did not seek "to promote aesthetic values or any other value 'unrelated to the suppression of free expression.'"[28] The municipality did not seek "to restrict a mode of communication that 'intrudes on the privacy of the home, . . . [or] makes it impractical for the unwilling viewer or auditor to avoid exposure' . . . ."[29] The municipality did not seek to control the place or manner of speech which produced "a detrimental 'secondary effect' on society."[30]

What the municipality had sought to do was proscribe "particular types of signs based on their content because it fears their 'primary' effect—that they will cause those receiving the information to act upon it."[31] The municipality sought to proscribe information "of vital interest to . . . residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families."[32] The municipality could not, under the First Amendment,

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24. *Id.* at 92 (citation omitted).
25. *Id.* at 93 (alteration in original).
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 94.
30. *Id.*
31. *Id.*
32. *Id.* at 96.

"restrict the free flow of these data because it fears that otherwise homeowners will make decisions inimical to what the [municipality] views as the homeowners' self-interest and the corporate interests of the [municipality]: they will choose to leave town."[33]

The second sign decision relied on in *Gilleo* was *Metromedia, Inc. v. City of San Diego*, a decision which Justice Rehnquist likened to "judicial clangor," a "virtual Tower of Babel, from which no definitive principles can be clearly drawn."[34] The municipality, acting to reduce traffic hazards and improve aesthetics, banned fixed-structure, off-site signs containing either commercial or non-commercial communication; it permitted on-site commercial advertising.[35] Companies engaged in the outdoor advertising business claimed, among other claims, that the ordinance was invalid on its face under the First Amendment.

The Court's plurality opinion began by noting that "[e]ach method of communicating ideas is 'a law unto itself' and that law must reflect the 'differing natures, values, abuses, and dangers' of each method"; *Metromedia* dealt "with the law of billboards."[36] The plurality described billboards as "a well-established medium of communication, used to convey a broad range of different kinds of messages" on large, permanent structures designed to stand out from their surroundings.[37] Such structures create "a unique set of problems for land-use planning and development."[38] Government can regulate the non-communicative aspects of billboards but when that regulation "impinges to some degree on the communicative aspects, . . ." the courts must "reconcile the government's regulatory interests with the individual's right to expression."[39]

That reconciliation was made more difficult by the banning of both off-site commercial and off- or on-site non-commercial communication. As to the former, the plurality applied this four part test:

> (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective.[40]

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33. *Id.*
34. 453 U.S. 490, 569-70 (1981).
35. *Id.* at 493-96.
36. *Id.* at 501 (quoting Kovacs v. Cooper, 336 U.S. 77, 97 (1949)).
37. *Id.* at 501-02.
38. *Id.* at 502.
39. *Id.*
40. *Id.* at 507.

The *Metromedia* plurality quickly disposed of the first, second, and fourth criteria. In particular, the plurality said it was "far too late to contend" that traffic safety and aesthetics are other than substantial governmental interests.[41] The plurality then found that the third criterion was satisfied, expressing a reluctance "to disagree with the accumulated, common-sense judgments of local lawmakers . . . that billboards are real and substantial hazards to traffic safety."[42] Similarly, the plurality said it was "not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an 'esthetic harm'"; however, these "esthetic judgments are necessarily subjective, defying objective evaluation, and for that reason must be carefully scrutinized to determine if they are only a public rationalization of an impermissible purpose."[43] The plurality found that "insofar as [the ordinance] regulates commercial speech . . . " it passed constitutional muster.[44]

Not so, however, in its prohibition of on-site billboards used for non-commercial communication. Although the municipality could distinguish between on- and off-site commercial communication, it did "not have the same range of choice in the area of non-commercial speech to evaluate the strength of, or distinguish between, various communicative interests."[45] Simply put, the municipality could not "choose the appropriate subjects for public discourse."[46] Because it had attempted to do so, it reached "too far into the realm of protected speech . . . " and the ordinance was, according to the plurality, "unconstitutional on its face."[47]

Now arose the clangor of which Justice Rehnquist complained. Justices Brennan and Blackmun, concurring in the judgment, concluded that the municipality "failed to provide adequate justification for its substantial restriction on protected activity."[48] Unlike the plurality,

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41. *Id.* at 507-08.
42. *Id.* at 509.
43. *Id.* at 510. The Court noted that "there is no claim in this case that San Diego has as an ulterior motive the suppression of speech, and the judgment involved here is not so unusual as to raise suspicions in itself." *Id.*
44. *Id.* at 512.
45. *Id.* at 514.
46. *Id.* at 515.
47. *Id.* at 521.
48. *Id.* at 528.

which hesitated to question the municipality's accumulated judgments, these justices were not "so quick to accept legal conclusions in other cases as an adequate substitute for evidence *in this case* that banning billboards directly furthers traffic safety."[49] Nor were these Justices so quick to accept the municipality's judgment on aesthetics, a judgment which "may not be exercised in contravention of the First Amendment"[50]:

> Of course, it is not for a court to impose its own notion of beauty on San Diego. But before deferring to a city's judgment, a court must be convinced that the city is seriously and comprehensively addressing aesthetic concerns with respect to its environment. Here, San Diego has failed to demonstrate a comprehensive coordinated effort in its commercial and industrial areas to address other obvious contributors to an unattractive environment.[51]

That showing was indispensible "where, as here, there is an infringement of important constitutional consequence."[52]

Justice Stevens, dissenting in part, was persuaded that "a wholly impartial total ban on billboards would be permissible."[53] He thus found it "difficult to understand why the exceptions in San Diego's ordinance present any additional threat to the interests protected by the First Amendment."[54] Chief Justice Burger, dissenting, found that the city has the authority to "protect its citizens' legitimate interests in traffic safety and the environment by eliminating distracting and ugly structures from its buildings and roadways, to define which billboards actually pose that danger, and to decide whether, in certain instances, the public's need for information outweighs the dangers perceived."[55] Justice Rehnquist, dissenting, agreed "substantially" with the Chief Justice and Justice Stevens, regretting that "none of the views expressed in the other opinions . . . come close enough to mine to warrant the necessary compromise to obtain a Court opinion."[56]

Three years later, the Court acted to mute the *Metromedia* clangor in *City Council of Los Angeles v. Taxpayers for Vincent*,[57] the third sign decision relied on in *Gilleo*. A municipal ordinance prohibited sign-posting on public property. Again, the question was whether this

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49. *Id.*
50. *Id.* at 530.
51. *Id.* at 531.
52. *Id.* at 533.
53. *Id.* at 553.
54. *Id.*
55. *Id.* at 557.
56. *Id.* at 569-70.
57. 466 U.S. 789 (1984).

abridged the First Amendment. The Court, in an opinion authored by Justice Stevens, decided that it did not.

The Court found that the ordinance, as written and as applied, was "a viewpoint-neutral regulation . . . ."[58] Since the parties agreed that the municipality could constitutionally "attempt to improve its appearance, . . ." an interest which "is basically unrelated to the suppression of ideas", the Court asked "whether that interest is sufficiently substantial to justify the effect of the ordinance on [the citizens'] expression, and whether that effect is no greater than necessary to accomplish the City's purpose."[59]

The *Vincent* Court, reconciling the plurality and dissenting opinions in *Metromedia*, "reaffirmed" what it characterized as *Metromedia's* majority conclusion: "The problem addressed by this ordinance—the visual assault on the citizens of Los Angeles presented by an accumulation of signs posted on public property—constitutes a significant substantive evil within the City's power to prohibit."[60] The *Vincent* Court also concluded that the prohibition was properly tailored to address this evil.[61]

Again using *Metromedia* as if it sang in harmony rather than rang in clangor, the *Vincent* Court said that "[a]s is true of billboards, the esthetic interests that are implicated by temporary signs are presumptively at work in all parts of the city," interests that "are both psychological and economic."[62] Those interests were "sufficiently substantial to justify this content-neutral, impartially administered prohibition against the posting of . . . temporary signs on public property"; that "application of the ordinance does not create an unacceptable threat to the 'profound national commitment to the principle that debate on public issues should

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58. *Id.* at 804.
59. *Id.* at 805.
60. *Id.* at 807.
61. *See id.* at 810.

> With respect to [the] signs posted . . . it is the tangible medium of expressing the message that has the adverse impact on the appearance of the landscape. . . . Here, the substantive evil—visual blight—is not merely a possible byproduct of the activity, but is created by the medium of expression itself. . . . [T]he application of the ordinance in this case responds precisely to the substantive problem which legitimately concerns the City. The ordinance curtails no more speech than is necessary to accomplish its purpose.

Id.

62. *Id.* at 817.

be uninhibited, robust and wide-open.'"[63] In what would be a significant aside for Ms. Gilleo, the Court suggested that

> the validity of the esthetic interest in the elimination of signs on public property is not compromised by failing to extend the ban to private property. The private citizen's interest in controlling the use of his own property justifies the disparate treatment. Moreover, by not extending the ban to all locations, a significant opportunity to communicate by means of temporary signs is preserved, and private property owners' esthetic concerns will keep the posting of signs on their property within reasonable bounds.[64]

Justice Brennan, joined by Justices Marshall and Blackmun, dissented in *Vincent*, finding the Court's analysis "seriously inadequate" because it "failed to develop a reliable means of gauging the nature or the depth of the City's commitment to pursuing the goal of eradicating 'visual clutter.'"[65] The dissent characterized the Court's review of the ordinance as "cursory" and overly deferential to the municipality's aesthetic judgment.[66] The dissent argued that "it is only when aesthetic regulation is addressed in a comprehensive and focused manner that we can ensure that the goals pursued are substantial and that the manner in which they are pursued is no more restrictive of speech than is necessary."[67]

These three sign decisions—*Linmark*, *Metromedia*, and *Vincent*—provided the foundation for the Court's analysis in *Gilleo*. The three decisions established that although signs were a form of protected expression, "they pose distinctive problems that are subject to municipalities' police powers."[68] Using that analysis, the municipality in *Gilleo* argued that its ordinance prohibiting the hanging of a small protest sign from the second floor window of Ms. Gilleo's private house was based on the "content-neutral justification" of promoting "aesthetic values unrelated to the content of the prohibited speech."[69]

The *Gilleo* Court began by assuming that the ordinance was "free of impermissible content or viewpoint discrimination"; it also noted the

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63. *Id.* (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)).
64. *Id.* at 811. The *Gilleo* Court also stated that,
> [i]t bears mentioning that individual residents themselves have strong incentives to keep their own property values up and to prevent "visual clutter" in their own yards and neighborhoods—incentives markedly different from those of persons who erect signs on others' land, in others' neighborhoods, or on public property. Residents' self-interest diminishes the danger of the "unlimited" proliferation of residential signs that concerns the City of Ladue.

114 S. Ct. at 2047.
65. 466 U.S. at 827.
66. *Id.*
67. *Id.* at 830-31.
68. *Gilleo*, 114 S. Ct. at 2041.
69. *Id.* at 2042.

municipality's "concededly valid" interest "in minimizing the visual clutter associated with signs."[70] That interest, however, was "no more compelling than the interests at stake in *Linmark*" and the "impact on free communication" was "manifestly greater."[71] *Linmark*'s ordinance "applied only to a form of commercial speech"; the City of Ladue's ordinance applied to "even such absolutely pivotal speech as a sign protesting an imminent governmental decision to go to war."[72]

The *Gilleo* Court also distinguished *Vincent*. The means of communication at issue in *Vincent*—"signs placed on public property"—were not unique nor did the ordinance bar the taxpayers from using other means of effective communication.[73] However, Ladue's ordinance "almost completely foreclosed a venerable means of communication that is both unique and important."[74] Residential signs like Ms. Gilleo's "have long been an important and distinct medium of expression" which can "both reflect and animate change in the life of a community."[75] Ladue's ordinance had "closed off" an important medium of speech for which there was no adequate substitute.[76] And, as the Court added, "a person who puts up a sign at her residence often intends to reach *neighbors*, an audience that could not be reached nearly as well by other means."[77]

When added to the previous sign cases, *Gilleo* demonstrates that a municipality, acting to promote an aesthetic interest by an ordinance which is content-neutral toward the regulated expression, may still transgress the First Amendment by unduly foreclosing an effective opportunity to transmit that expression, especially when a private citizen uses private property to make a non-commercial statement. This Article, using the writings and buildings of Robert Venturi, will argue that the privately owned single-family house is itself a statement, an expression

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70. *Id.* at 2044-45.
71. *Id.* at 2045.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *See id.* at 2046.
Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text and picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker". . . .[T]he identity of the speaker is an important component of many attempts to persuade.
Id.
77. *Id.*

in its external design of the views and values of the inhabitants, an expression which a municipality may aesthetically regulate only if it establishes a sufficently substantial need to do so under narrow, clearly defined standards.

The City of Ladue again provides an example of what is at stake. In *State ex rel. Stoyanoff v. Berkeley*, a Ladue ordinance established an architectural review board authorized to approve building plans and specifications.[78] The ordinance sought to ensure that buildings "conform to certain minimum architectural standards of appearance and conformity with surrounding structures, and that unsightly, grotesque and unsuitable structures . . . be avoided, and that appropriate standards of beauty and conformity be fostered and encouraged."[79]

The Stoyanoffs applied for a permit to build a single-family house which, although "unusual in design," complied with all building codes and regulations.[80] The architectural review board refused to issue the permit because, as the building commissioner stated, the house was "a monstrosity of grotesque design, which would seriously impair the value of property in the neighborhood."[81] The Stoyanoffs sued to compel issuance of the permit. The trial court granted their motion for summary judgment, a grant which was reversed on appeal.

The Missouri Supreme Court analyzed the ordinance in terms of its effect on general welfare. Although the Stoyanoffs' proposed house did "not descend to the 'patently offensive character of vehicle graveyards,'" it was "a highly modernistic residence" proposed for an area "where traditional Colonial, French Provincial, and English Tudor styles of architecture are erected."[82] The court said it was "certainly in keeping with the ultimate ideal of general welfare" to "preserve and protect existing areas in which structures of a general conformity of architecture have been erected."[83] The court, characterizing the area under consideration as "clearly . . . a fashionable one," quoted the following from a Louisiana decision: "If by the term 'aesthetic consideration' is meant a regard merely for outward appearances, for good taste in the matter of beauty of the neighborhood itself, we do not observe any substantial

78. 458 S.W.2d 305 (Mo. 1970).
79. *Id.* at 306-07 (quoting Ordinance 131, which is at issue).
80. *Id.* at 306. Photographs of the proposed design showed "the residence to be of a pyramid shape, with a flat top, and with triangular shaped windows or doors at one or more corners." *Id.* at 308.
81. *Id.* at 307.
82. *Id.* at 310.
83. *Id.*

reason for saying that such a consideration is not a matter of general welfare."[84]

The municipality entrusted a three-member board with the task of determining whether the exterior design of a proposed house was in good taste. The board's chair initially determined if the proposed house conformed "to proper architectural standards in appearance and design," if it conformed to "the style and design of surrounding structures," and if it was "conducive to the proper architectural development of the city."[85] If the house so conformed, the board's chair approved the application; if not, he referred it to the full board which would "disapprove the application if it determines the proposed structure will constitute an unsightly, grotesque, or unsuitable structure in appearance, detrimental to the welfare of surrounding property or residents."[86]

The Stoyanoffs argued that these standards were inadequate, clothing the board with unreviewable discretion. The court disagreed, finding the general standards "sufficient" and finding it proper to evaluate the exterior design of a proposed house "with reference to the character of the surrounding neighborhood and to the determination of any adverse effect on the general welfare and preservation of property values of the community."[87]

We do not know why the Stoyanoffs wanted to build their pyramid-shaped house in a Queen Anne neighborhood other than the obvious: they wanted to live in that house in that place. Perhaps they were early New Age, finding a source of psychic power in pyramids; perhaps they were *avant-garde*, wanting to express the virtues of a new type of residential architecture; perhaps they were iconoclasts, attacking the staid architectural beliefs of their neighbors; perhaps they just liked what the design said. We just don't know.

What we do know is that the municipality prevented them from expressing themselves through the exterior design of their house because the municipality considered their expression grotesque and unsuitable and a threat to what it regarded as its special ambience. Considerations less offensive to the First Amendment underlay the same municipality's

84. *Id.* (quoting State *ex rel.* Civello v. City of New Orleans, 97 So. 440, 444 (La. 1923)).
85. *Id.* at 310-11.
86. *Id.* at 311.
87. *Id.* at 312.

attempt to squelch Ms. Gilleo's expression, an attempt which failed a First Amendment review. The Stoyanoffs' expression should also have received a First Amendment review under which the municipality would not have been permitted to squelch their expression.

II.

In both *Stoyanoff* and *Gilleo*, the municipality used a legal aesthetics standard to justify its actions, a standard which is difficult to define and easy to abuse and, frankly, a pain for courts to analyze and evaluate under traditional legal principles. Yet, as John Costonis, the leading analyst of legal aesthetics, has forcefully argued, "we are condemned to come to terms with aesthetics, whether we like it or not."[88] As he noted, legal aesthetics "is a product of the tension between two sets of values with different sources, goals, and legal champions."[89] It is not a "blissful marriage."[90] Compounding the tension is architecture's protean nature. Things change: new expressions gain currency, old symbols are reevaluated, viewer perception is awakened, what was thought absolute is seen as ambiguous. Stasis is not healthy.

Until the later 1960's and early 1970's, American architectural thought was dominated by a modernist school, rigidly geometric, deliberately unsymbolic.[91] That domination was challenged and ultimately overthrown, a rebellion instigated and continued by the words and work of Robert Venturi. Beginning with his gentle manifesto, *Complexity and Contradiction in Architecture*,[92] Venturi "looked with fresh eyes at the

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88. JOHN J. COSTONIS, ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE 15 (1989). He added that lawmakers "must attend to these considerations unless they are prepared to shut down land use regulation in its entirety." *Id.*

89. *Id.* at 36.

90. *Id.* He said "[a] blissful marriage of law and aesthetics assumes that end-state values, newly received into the law by legislators and administrators, will respect constitutionally based process values, whose ultimate guardians, of course, are the judges." *Id.*

Another analyst has noted that the law itself "is a builder of worlds. Through constitution-framing, legislation, and adjudication, law structures individuals into patterns of rights and responsibilities. Decisionmakers conceive an image of legal reality that becomes concrete through state enforcement." Laura S. Fitzgerald, *Toward a Modern Art of Law*, 96 YALE L.J. 2051 (1987).

91. *See* Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 791-92 (1993).

92. ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE (2d ed. 1977) [hereinafter COMPLEXITY AND CONTRADICTION]; *see also* CHARLES JENCKS, MODERN MOVEMENTS IN ARCHITECTURE 221-22 (1973).

> Venturi's gentle manifesto has had an extraordinary impact in architectural circles. . . .[H]is arguments for an "inclusive architecture" which can use any

architectural landscape of America" and "challenged prevailing thinking."[93] He changed "the course of architecture in this century, allowing architects and consumers the freedom to accept inconsistencies in form and pattern, to enjoy popular taste."[94] He rediscovered and publicized the content "of honest architectural meaning: forms that mean something as a slope usually means a roof, . . . "[95]

Venturi, who (and whose work) is described as "urbane, cultured, deeply responsive to history and art and unusually understanding of existing values," has offered solutions, in his writing and his building, which reflect "an extremely sophisticated, subtle, sympathetic, and sometimes wry, sensibility."[96] He provided "intellectual legitimacy and depth" for what was an incipient dissatisfaction with architectural rigidity and conformity; he intellectually and physically demonstrated how to satisfy a need for a rich and varied architecture which celebrates irony and metaphor and even vulgarity.[97] The Stoyanoffs might well have

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> elements whatever . . . have effectively challenged the prevailing exclusivist arguments for purity and restriction. . . . In a sense his polemic is directed against the idea of an historicist sensibility which wants to restrict the available metaphors to those which are only current or technologically up to date. The idea is that in the age of travel and tourism, the age of the "museum without walls", this restriction is no longer relevant and furthermore that in any large city with its plurality of sub-cultures, such limitation is highly paternalistic.

Id.

93. THE PRITZKER ARCHITECTURE PRIZE: 1991: PRESENTED TO ROBERT VENTURI (Unpaged). The Pritzker Award is "architecture's rough equivalent of the Nobel Prize." Paul Goldberger, *Robert Venturi, Gentle Subverter of Modernism*, N.Y. TIMES, Apr. 14, 1991, at H36.

94. THE PRITZKER ARCHITECTURE PRIZE, *supra* note 93.

95. Nathan Silver, *Learning From Las Vegas*, N.Y. TIMES, Apr. 29, 1973, § 7 at 6, 7 (book review).

96. Ada L. Huxtable, *The Venturi 'Anti-Style' of Architecture*, N.Y. TIMES, Jan. 30, 1977, at D27.

97. Moshe Safdie, *Private Jokes in Public Places*, ATLANTIC MONTHLY, Dec. 1981, at 66; *see also* Christopher Mead, *Introduction: The Meaning of "Both-And" in Venturi's Architecture*, *in* THE ARCHITECTURE OF ROBERT VENTURI 3 (Christopher Mead ed., 1989).

> This shift from a search for the singular and abstractly homogeneous solution to the study of multiple and actually heterogeneous solutions has both informed the ongoing debate over what is significant in contemporary architecture and made Venturi a symbol of the current confusion. . . . Such an architect, and such an architecture, eludes the easy categorizations of stylistic judgment and leaves one with the awkward certainty that his work follows a coherent logic even if one cannot reduce that logic to a single solution.

found a champion in Venturi.

Venturi began by openly opposing established architectural opinion, decrying its unwillingness to confront the confusions and complications of current conditions.[98] He urged the profession to reflect on its history, "guided not by habit but by a conscious sense of the past—by precedent, thoughtfully considered."[99] What he found satisfying in the past was its lack of forced simplification;[100] this led him to conclude that "[a] valid order accommodates the circumstantial contradictions of a complex reality. It accommodates as well as imposes. It thereby admits . . . improvisation within the whole. It tolerates qualifications and compromise."[101]

Accomodation and toleration instead of suppression and absolutism; that was the radical change Venturi proposed. Architecture must accept "elements that are both good and awkward, big and little, closed and open, continuous and articulated, round and square, structural and

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Id.

98. *See* Arthur Drexler, *Foreword* to ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE 8 (2d ed. 1977).

> Like his buildings, Venturi's book opposes what many would consider Establishment, or at least established, opinions. He speaks with uncommon candor, addressing himself to actual conditions: the ambiguous and sometimes unattractive "facts" in which architects find themselves enmeshed at each moment, and whose confusing nature Venturi would seek to make the basis of architectural design.

Id.

99. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 13.

100. *See* COMPLEXITY AND CONTRADICTION, *supra* note 92, at 17 ("Forced simplicity results in oversimplification. . . . Where simplicity cannot work, simpleness results. Blatant simplification means bland architecture. Less is a bore.").

101. *Id.* at 41; *see also* STANISLAUS VON MOOS, VENTURI, RAUCH & SCOTT BROWN: BUILDINGS AND DESIGNS 32 (1987).

> [Venturis'] intention seems to be to undermine the validity of universal rules in architecture. . . . [A]rchitectural theory had been essentially normative. The main concern was the establishment and the polemical spread of a formal language and of systematic rules that were supposed to guarantee "correct" building. The Venturis, however, view stylistic "purity" with suspicion. With them it does not seem at all to be a matter of substituting new forms of architectural language for old ones but rather of introducing the aesthetic principle of complexity in order to avoid the uncritical application of allegedly universal forms and rules.

Id.

spatial."[102] And, in accepting this, architecture must accept the ambiguity and tension which it breeds.

Venturi found strength in this ambiguity and tension, preferring "richness of meaning rather than clarity of meaning," believing that "[a] valid architecture evokes many levels of meaning and combinations of focus: its space and its elements become readable and workable in several ways at once."[103] He urged architects to acknowledge the "complexity and contradiction in architecture," to accept an architecture "based on the richness and ambiguity of modern experience," to deal with that experience whose "anomalies and uncertainties give validity to architecture."[104]

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102. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 23.

> If the source of the both-and phenomenon is contradiction, its basis is hierarchy, which yields several levels of meanings among elements with varying values. It can include elements that are both good and awkward, big and little, closed and open, continuous and articulated, round and square, structural and spatial. An architecture which includes varying levels of meaning breeds ambiguity and tension.

Id.

> Designing from the outside in, as well as from the inside out, creates necessary tensions, which help make architecture. Since the inside is different from the outside, the wall—the point of change—becomes an architectural event. Architecture occurs at the meeting of interior and exterior forces of use and space. . . . Architecture as the wall between the inside and the outside becomes the spatial record of this resolution and its drama.

Id. at 86.

103. *Id.* at 16.

> Architects can no longer afford to be intimidated by the puritanically moral language of orthodox Modern architecture. I like elements which are hybrid rather than "pure," compromising rather than "clean," distorted rather than "straightforward," ambiguous rather than "articulated," perverse as well as impersonal, boring as well as "interesting," conventional rather than "designed," accommodating rather than excluding, redundant rather than simple, vestigial as well as innovating, inconsistent and equivocal rather than direct and clear. I am for messy vitality over obvious unity. I include the non sequitur and proclaim the duality.

Id.

104. *Id.* at 16, 41; *see also* Robert Venturi, *Diversity, Relevance, and Representation in Historicism, or Plus ça Change . . . plus a Plea for Pattern All Over Architecture with a Postscript on My Mother's House, in* ROBERT VENTURI & DENISE SCOTT BROWN, A VIEW FROM THE CAMPIDOGLIO: SELECTED ESSAYS 1953-1984 108 (Peter Arnell et al. eds., 1984) [hereinafter, VIEW FROM THE CAMPIDOGLIO] (where Venturi describes his call "for an architecture that promotes richness and ambiguity over unity and clarity, contradiction and redundancy over harmony and simplicity").

Venturi's architecture of complexity and contradiction is not diffracted; it seeks unity, "the difficult unity through inclusion rather than the easy unity through exclusion."[105] The unity of inclusion recognizes rather than masks the ambiguities and tensions, the anomalies and uncertainties of modern experience:

> The obligation toward the whole in an architecture of complexity and contradiction does not preclude the building which is unresolved. Poets and playwrights acknowledge dilemmas without solutions. The validity of the questions and vividness of meaning are what make their works art more than philosophy. . . . A building can also be more or less incomplete in the expression of it program and its form.[106]

Venturi's reference to literature, as well as his use of the term expression, was not inadvertent. His buildings are as much an expression of his views as were his writings. In either medium, he is always communicating to an audience.[107] He understands that building is "a form of public discourse," that it serves "as a way of informing and connecting that which is new with that which already exists."[108] This was how architecture functioned in the past; it was this function which Venturi brought forward to counter the absolutism and monasticism of modern architecture. He argued for the development of an "architectural

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105. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 88.

106. *Id.* at 102.

107. *See* Vincent Scully, *Robert Venturi's Gentle Architecture*, *in* THE ARCHITECTURE OF ROBERT VENTURI, *supra* note 97, at 8, 17.

> Venturi will never make a building without a comment, without something in it that can only be of now. It is not a sense of the *zeitgeist* which directs him—not a feeling of being limited by the present, but rather of being liberated by it to comment as he desires.

Id. at 17.

> [In the Guild House] Venturi was trying to deal with the real, and with the compassion that only irony can handle. He is wholly an artist, and his primary concern is to increase the aesthetic intensity of everyone's reaction to his building. And he did; where there might have been apathy or *pro forma* approbation, there was at least concern.

Id. at 24.

108. Neil Levine, *Robert Venturi and "The Return of Historicism,"* *in* THE ARCHITECTURE OF ROBERT VENTURI, *supra* note 97, at 45, 65. Earlier, the author said Venturi used "the signifying elements of representation that allow architecture to function as part of a larger social and urban form of discourse." *Id.* at 56; *see also* Francis Carney, *The summa popologica of Robert ('call me Vegas') Venturi*, RIBA J., May 1973, at 242.

> Venturi is . . . wholly in favour of symbolic content in building. What makes the building of the orthodox moderns "irresponsible", he says, is the fact that architects are unwilling or unable to recognise the content they put into their buildings. . . .[M]ost modern buildings are merely so many media for an outworn upper middle class message, and the message and the medium are the same thing.

Id.

rhetoric" which would "genuinely represent his client's aspirations and way of life,"[109] which would produce buildings "rich in calculated symbolism and iconography and [which] were meant to be read that way."[110]

It is that ability to be read which gives buildings, including the single-family house, an expressive content. Venturi unearthed and revitalized an architecture, including a residential architecture, which gave the viewer "deliberate symbols, not abstract forms—symbols of building types, of life styles, of American society, ..."[111] Venturi respects America's single-family house tradition and its symbols; he uses that tradition and those symbols to express something new.[112] Venturi sees the single-family house as an opportunity for the novice architect to "deal with a real user-client, . . . and therefore to deal with the irrationalities of emotional needs and values"; he sees it as an opportunity for the experienced architect "to be able to control the whole in a way that distills and clarifies and informs the bigger work at hand."[113] What Venturi delivers is a house expressing the client's needs and values in a way which is clear to the reader. This, as the next section will discuss, is architecture as expression comparable to other forms of expression recognized in First Amendment jurisprudence.

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109. Roger Jellinek, *In Praise (!) of Las Vegas*, N.Y. TIMES, Dec. 29, 1972, at L23.

110. Ada L. Huxtable, *In Love With Times Square*, N.Y. REV. BOOKS, Oct. 18, 1973, at 29, 46.

111. Paul Goldberger, *Less is More—Mies van der Rohe; Less is a Bore—Robert Venturi*, N.Y. TIMES MAG., Oct. 17, 1971, at 34, 102.

112. *See* Paul Goldberger, *Architecture: Venturi and Rauch*, ARCHITECTURAL DIG., Jan.-Feb. 1978, at 103.

> Venturi and Rauch is a firm of architects deeply concerned with architectural symbolism and with the use of cultural symbols as makers of architectural form. There is no modern purism here. Instead, there is respect for the traditional American shingled house, and an attempt to use that tradition as the beginning point for something new.

Id.

113. Robert Venturi & Denise S. Brown, *Some Houses of Ill-Repute*, *in* VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 38; *see also* Paul Goldberger, *The Masterpieces They Call Home*, N.Y. TIMES MAG., March 12, 1995, at 41, 60 ("Whoever the client and whatever the relationship, the house is the arena in which an architect can express his ideas most easily. Architects who routinely design skyscrapers and museums crave the chance to do houses if only because there is no purer testing ground for architectural issues.").

III.

Architecture, particularly as seen in the exterior of the single-family house, is an expressive art, expressive of individual and cultural values, status, and yearnings.[114] Recognizing and celebrating this expressive content is a hallmark of Robert Venturi's architectural theory and production. He is an artist who has opened our eyes, who has described and produced an expressive architecture.[115] He successfully undertook

> a search for meaning and symbolism, a way to reestablish architecture's ties with human experience, a way to find and express a value system, a concern for architecture in the context of society. . . . [A]rchitecture is much more than real estate, shelter, or good intentions; it is the recognition of that extraordinary mixture of the pragmatic and the spiritual that is the tangible vehicle of man's aspirations and beliefs, the lasting indicator of his civilized achievements.[116]

Architects, like painters or poets or even law review writers, must have something to say; otherwise, why undertake the project?[117] Every

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114. *See* Bruce A. Rubin, *Architecture, Aesthetic Zoning, and the First Amendment*, 28 STAN. L. REV. 179, 182 (1975); Aoki, *supra* note 91, at 773, 779, 784-85, 794. For the views of non-law review writers, see the special *Houses As Art* issue of N.Y. TIMES MAG., Mar. 12, 1995. *See also* WITOLD RYBCZYNSKI, LOOKING AROUND: A JOURNEY THROUGH ARCHITECTURE 187-88 (1992) [hereinafter LOOKING AROUND] ("[A]rchitecture, like painting, is an art, and hence can be appreciated on its own merits. In the sense that 'art' refers to any skill applied to a creative activity, architecture certainly qualifies.").

115. *See* Vincent Skully, *Introduction to* ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE 11 (2d ed. 1977).

116. Ada L. Huxtable, *The Troubled State of Modern Architecture*, N.Y. REV. BOOKS, May 1980, at 22, 29; *see also* Robert Hughes, *Doing Their Own Thing*, TIME, Jan. 8, 1979, at 52.

> or architecture is the social art: one looks at a painting or sculpture, but people live and work in buildings. It is the most expensive art of all and therefore the slowest to change; for once clients are used to a particular look, a standard method of construction and an conventional system of status-conferring clues, it is hard to wean any but the most adventurous away from them. Architecture is also the most visible of all arts. Buildings shape the environment; painting and sculpture only adorn it.

Id.

117. *See* Charles Jencks, *Venturi et al. are Almost all Right*, 47 ARCHITECTURAL DESIGN no. 7-8 (1977) at 469 ("If architects have nothing important to say, if society has no credible ideology to communicate through its buildings, then building language is going to deteriorate even further."); *see also* Sigrid H. Fowler, *Architecture and the Civic Body*, 1 J. POPULAR CULTURE 426 (1973).

> Buildings-as-the-communicating-body-of-a-culture is not a new idea. . . . Architecture is, after all, an art form as well as a convenience and as such involves communication between artist and perceiver. It is easy to see how words like "vocabulary" and "vernacular" might be current in architectural trade jargon. . . .

building, even the most standard of tract houses, says something; the house, in particular, says something about the inhabitants, something which can be read by them, by their neighbors, by passersby.[118] Venturi has enriched the content of this expression and has made it explicit; he has revitalized the architect's vocabulary and recalled from exile "the traditional power of building to express ideas and values as well as spatial relationships."[119] Borrowing from literary theory and expression, he resurrected architecture's "symbolic properties," reminding us that architecture conveys meaning "because people experience buildings not only as volume and forms to be seen . . . but also intellectually, in the mind's eye."[120] Architecture is part of our

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Id.; John F. Pile, *Book Review*, INTERIORS, July 1967, at 24 (reviewing ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE (Museum of Modern Art, 1967)) ("Insofar as architecture is an art (as distinguished from a building technology) it is concerned with expression—expression of its physical reality in structure and function, and of its time and place through their effects on the attitudes of the architect."); LOOKING AROUND, *supra* note 114, at 266 ("The communication of meaning, more than beauty, distinguishes architecture from engineering.").

118. *See* Fowler, *supra* note 117, at 429 ("Architects [according to Venturi and his co-authors] must contribute not just to the public's aesthetic awareness, but also to its needs. They must communicate with instead of lecturing our society, or at least speak to it but also listen."). See also Lance Wright, *Robert Venturi and Anti-Architecture*, ARCHITECTURAL REV., Apr. 1973, at 262, 264, describing architecture as,

> a *social* art; it is not, and never has been, the exclusive province of a race of people called "architects." Certainly architects have a special function within this province: to put new ideas into circulation; in some manner to "control" and make meaningful the places where people go; and above all to convert visual ideas into the architectural medium, giving them the degree of abstraction and of boldness needed to make them "read" in the wide setting of architectural space.

119. Franz Schulze, *Chaos as Architecture*, ART IN AM., July-Aug. 1970, at 89, 93. As Venturi explained, architects

> have traditionally used symbolism in architecture to enrich its content and to include other dimensions, some almost literary, which make architecture a not purely spatial medium. Symbolism expands the scope of architecture to include meaning as well as expression, and to promote explicit communication, denotative as well as connotative.

VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 109.

120. WITOLD RYBCZYNSKI, THE MOST BEAUTIFUL HOUSE IN THE WORLD 161 (1989). The author then developed this point:

> Umberto Eco has described the different symbolic properties of architectural objects as fulfilling either a primary or a secondary sign-function. The first is denotative and related directly to the utilitarian function of the object; the second catagory is connotative and carries a more complex set of meanings. . . . [N]either catagory is fixed, and over time one or the other can change or even disappear.

language, a rich and expressive part.

However, unlike a painter or a poet who can create solely for his or her own pleasure, without regard to a buying or even an observing public, the non-hermetic architect creates designs to be built, to be used, to fulfill a function, to transmit meaning for the inhabitants and to others.[121] Architecture reflects values; it "is always a mirror in which, if we look carefully, we can catch glimpses of our own aspirations and beliefs."[122] This mirror is both large and small; we can see ourselves in the largest of public buildings or in the most modest of houses.

Architecture's "most difficult task" is to create "places that can speak meaningfully to their users."[123] This is what Venturi's architecture has done; it has opened the way to "the organization of a unique whole through conventional parts and the judicious introduction of new parts when the old won't do," creating "meaningful contexts" which create "new meanings."[124] His architecture expresses much about who we are and who we want to be in a world filled with complexity and contradiction.[125] Venturi's architecture is expression as surely as oral

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Id. at 162.

121. *See id.* at 4 ("All buildings have a function [and] are undertaken not to gratify the designer but to fulfill a social purpose."); *see also* COMPLEXITY AND CONTRADICTION, *supra* note 92, at 11 ("There is no way to separate form from meaning; one cannot exist without the other. There can only be different critical assessments of the major ways through which form transmits meaning to the viewer.").

122. LOOKING AROUND, *supra* note 114, at xviii. The author believes that "[t]he importance of buildings . . . was not what they said about the vision of individual architects, but how they reflected the values of the society of which they were a part." *Id.* He later developed this point:

> Classical architecture managed to convey meaning in a fashion that was not only rich enough to be used in a variety of public buildings but also widely understood and cherished. Its potency and its longevity were enhanced by its widespread application in the modest architecture of homes and places of work.

Id. at 267.

123. Martin Filler, *Seeing the Forest for the Trees*, PROGRESSIVE ARCHITECTURE 56, 58 (Oct. 1977). See also Goldberger, *supra* note 113, at 56-57, quoting the architect Robert A.M. Stern:

> I think a really good architect has a sense of how spaces unfold visually, how you get people to move through space, how people really live," Stern says. "The house is one kind of building that is experienced day in and day out by the same people, not like a museum you go to just a handful of times. It is a series of extraordinarily complex specifics that an architect has to put together and end up with something general enough to be understood by a lot of people.

124. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 43.

125. Venturi, who believes that in finding what "we like . . . we can learn much of what we really are," says he "frankly write[s] about what I like in architecture: complexity and contradiction." *Id.* at 13. He has emphasized "image—image over process or form in asserting that architecture depends in its perception and creation on past experience and emotional association and that these symbolic and representational

or written speech is; "he thinks visually with forms as much as he thinks verbally with words."[126] His buildings are meant to be seen, to be read with intelligence; form not only follows thought, form is thought.

Venturi's career began with housing, both single-family and group. He is sensitive not only to housing's shelter qualities but also to its expressive content. He knows that "Americans' self-expression in and around their homes is an important clue to their attitudes, the more so because this form of self-expression is practiced by almost all social groups, by young and old, rich and poor, renters and owners, urbanites and suburbanites."[127] He knows that our houses embody sentiments and values, expressing them to our neighbors and passersby.

Although this conclusion seems inescapable—that the exterior design of a single-family house has an expressive content—it is a conclusion which must be accepted if the further argument is to be made: that the

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elements may often be contradictory to the form, structure and program with which they combine in the same building." ROBERT VENTURI, ET AL., LEARNING FROM LAS VEGAS: THE FORGOTTEN SYMBOLISM OF ARCHITECTURAL FORM 87 (Rev. ed. 1977). That emphasis is seen in this review of a Venturi building:

> Wu Hall is an inclusive essay in architectural convention. . . . What Wu Hall does do . . . is—like Eliot's poems—force us to compare inconsistent, even irreconcilable, conventions that have been improbably drawn together within the same constructive system. . . . All architectural construction and form . . . assumes a self-conscious sense of convention in this rhetorical world, with the improbable comparisons heightening our sense of both the past and present and proposing a world within which both co-exist in an uneasy but meaningful juxtaposition.

Stephen Kieran, *The Image in the Empty Frame: Wu Hall and the Art of Representation*, THE ARCHITECTURE OF ROBERT VENTURI, *supra* note 97, at 87.

126. Mead, *supra* note 97, at 6.

> The act of seeing, of looking with intelligence, is emphasized because it seems that architects and historians alike have tended to substitute passing familiarity with Venturi's architectural theory for perceptive comprehension of his buildings. The notoriety [of Venturi's books] has obscured the simple fact that Venturi is, first of all, an architect . . . that he thinks visually with forms as much as he thinks verbally with words. The interpretive bias for a philological understanding of Venturi must be balanced by a return to the expression of his ideas in architectural forms.

Id.

127. Robert Venturi *et al.*, *The Home*, *in* VENTURI, SCOTT BROWN & ASSOCIATES ON HOUSES AND HOUSING 59 (1992) [hereinafter *The Home*]; *see also* WITOLD RYBCZYNSKI, HOME: A SHORT HISTORY OF AN IDEA 75 (1986) ("To speak of domesticity is to describe a set of felt emotions, not a single attribute. Domesticity has to do with family, intimacy, and a devotion to the home, as well as with a sense of the house as embodying—not only harboring—these sentiments.").

expressive content is entitled to First Amendment protection. Finding the expression is always the starting point.

That was the starting point in *Schad v. Borough of Mount Ephraim* where operators of adult bookstores challenged an ordinance which prohibited all live entertainment including the non-obscene nude dancing which the bookstores offered their customers.[128] The operators argued that the prohibition violated First Amendment free expression rights. The Supreme Court agreed.

The Court started by finding that the ordinance's prohibition barred:

> a wide range of expression that has long been held to be within the protections of the First and Fourteenth Amendments. Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall with the First Amendment guarantee. . . . Furthermore, . . . nude dancing is not without its First Amendment protections from official regulation.[129]

Although the municipality could zone to achieve "a satisfactory quality of life," its zoning power was "not infinite and unchallengeable; it 'must be exercised within constitutional limits.'"[130]

Those limits make every exercise of zoning power "subject to judicial review" under a standard "determined by the nature of the right assertedly threatened or violated rather than by the power being exercised or the specific limitations imposed."[131] Although zoning of property interests generally receives a rational relationship review, "when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest."[132] Because the ordinance at issue in *Schad* "significantly" limited "communicative activity," the Court scrutinized both "the interests advanced . . . to justify this limitation on protected expression and the means chosen to further those interests."[133]

The Court concluded that the municipality had "not adequately justified its substantial restriction of protected activity."[134] Nor was

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128. Schad v. Borough of Mount Ephraim, 452 U.S. 61, 62-65 (1981).

129. *Id.* at 65-66. Nude dancing continues to receive First Amendment protection, although it is grudgingly given by some members of the Court. *See* Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991).

130. *Schad*, 452 U.S. at 68.

131. *Id.*

132. *Id.*

133. *Id.* at 71.

134. *Id.* at 72. See also Florida Bar v. Went For It, Inc., 115 S. Ct. 2371, 2377 (1995), where, in a case involving government regulation of commercial speech (lawyers' targeted direct mail solicitations), the Court said,

the ordinance "narrowly drawn to respond to what might be distinctive problems arising from certain types of live entertainment."[135] The municipality failed to establish "that its interests could not be met by restrictions that are less intrusive on protected forms of expression."[136]

Justice Blackmun, although joining the Court's opinion, wrote to "emphasize that the presumption of validity that traditionally attends a local government's exercise of its zoning powers carries little, if any, weight where the zoning regulation trenches on rights of expression protected under the First Amendment."[137] He concluded "that in attempting to accommodate a locality's concern to protect the character of its community life, the Court must remain attentive . . . in particular to the protection [First Amendment guarantees] afford to minorities against the 'standardization of ideas . . . by . . . dominate political or community groups.'"[138]

Justice Stevens concurred in the judgment, troubled because the record left "so many relevant questions unanswered."[139] He said the Court was "left to speculate" why the municipality acted against the bookstores and why the ordinance drew a line between forms of entertainment.[140]

> the State must demonstrate that the challenged regulation "advances the Government's interest 'in a direct and material way.'" . . . That burden, we have explained, "'is not satisfied by mere speculation and conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.'"

135. *Schad*, 452 U.S. at 74.

136. *Id.* Compare Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991), where Indiana used a public indecency statute to require otherwise nude dancers in a private adult entertainment establishment to wear pasties and G-strings. However, less narrowly applied public indecency statutes may violate the First Amendment. *See* Triplett Grille, Inc. v. Akron, 40 F.3d 129 (6th Cir. 1994).

137. *Schad*, 452 U.S. at 77. For a reviewing court to perform its function, he said, "the zoning authority must be prepared to articulate, and support, a reasoned and significant basis for its decision." *Id.* Justices Powell and Stewart, in their concurrence, noted that the municipality had "failed altogether to justify its broad restriction of protected expression." *Id.* at 79.

138. *Id.* at 79 (Blackmun, J., concurring) (quoting Terminiello v. Chicago, 337 U.S. 1, 4-5 (1949)).

139. *Id.* (Stevens, J., concurring).

140. *Id.* at 83-84. Justice Stevens explained his discomfort with the state of the record:

> While a municipality need not persuade a federal court that its zoning decisions are correct as a matter of policy, when First Amendment interests are implicated it must at least be able to demonstrate that a uniform policy in fact

He concurred in the Court's judgment because "neither the text of the zoning ordinance nor the evidence in the record" demonstrated that the municipality "applied narrowly drawn content-neutral standards" to the bookstores' activity.[141]

The Court accepted that activity—non-obscene live nude dancing—as a form of individual expression entitled to First Amendment protection. The Court did not question whether the dancing was intended to communicate a specific message. What the following section will argue is that residential architecture, the exterior design of a single-family house, does send a particularized message to neighbors and passersby, a message that can be read much as poetry or prose can. As such, it, more so than non-obscene live nude dancing, is entitled to protection under the First Amendment.

IV.

Although the Supreme Court has not yet said that architecture is speech, many students of the subject believe that conclusion is inevitable.[142] John Costonis has reached that conclusion, adding that "[f]or many, architecture and other environmental features communicate ideas

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> exists and is applied in a content-neutral fashion. Presumably, municipalities may regulate expressive activity—even protected activity—pursuant to narrowly drawn content-neutral standards; however, they may not regulate protected activity when the only standard provided is the unbridled discretion of a municipal official.

Id. at 84.

141. *Id.* at 84.

142. *See* Stephen F. Williams, *Subjectivity, Expression, and Privacy: Problems of Aesthetic Regulation*, 62 MINN. L. REV. 1, 22 (1977); Rubin, *supra* note 114, at 181, 187-88; Kenneth Regan, Note, *You Can't Build That Here: The Constitutionality of Aesthetic Zoning and Architectural Review*, 58 FORDHAM L. REV. 1013, 1024 (1990). However, not all students agree. *See* Shawn G. Rice, Comment, *Zoning Law: Architectural Appearance Ordinances and the First Amendment*, 76 MARQ. L. REV. 439 (1993); Lori E. Fields, Note, *Aesthetic Regulation and the First Amendment*, 3 VA. J. NAT. RESOURCES L. 237 (1984).

Most recently, in a case involving state regulation of a parade, a unanimous Court made the following characterization:

> The protected expression that inheres in a parade is not limited to its banners and songs, however, for the Constitution looks beyond written or spoken words as mediums of expression. . . . As some of these examples show, a narrow, succinctly articulable message is not a condition of constitutional protection, which if confined to expressions conveying a "particularized message," . . . would never reach the unquestionably shielded painting of Jackson Pollack, music of Arnold Schonberg, or Jabberwocky verse of Lewis Carroll.

Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston, 115 S. Ct. 2338, 2345 (1995).

more effectively than does language."[143] For example, architecture serves as a vehicle for those who work in literature; in turn, literature serves as a vehicle for those who work in architecture.[144] Even the often mundane architecture of the single-family house is an expression more akin to direct oral or written speech than to indirect conduct[145]:

> The making of a house is, in a true sense, the laying bare of character. We all reveal our needs and our wants in the process; it is not for nothing that architects who specialize in houses often joke that they feel more like psychiatrists. They not only know what their clients desire . . . they know how these people react to one another, how they make decisions, how they function under pressure, what they value most and what they are willing to sacrifice.[146]

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143. COSTONIS, *supra* note 88, at 94. See also Goldberger, *Masterpieces*, *supra* note 113, at 46, describing an architect's client who

> might well be the Platonic version of the architecture-believing patron. A longtime lover of great buildings, she set out from the beginning to produce a house that would not only shelter her family but would communicate to them and to her friends her enthusiasms and even, she hoped, in some way advance the art of architecture.

144. *See* Angeline Goreau, *The Age of Extravagance*, N.Y. TIMES BOOK REV., May 22, 1994, at 13 (book review).

> [Edith Wharton] regarded each house she lived in—and its garden—as a canvas for composition, to be approached as seriously as she did her novels.
>
> In Wharton's later, more sophisticated work, architecture serves as a language, one that accrues substantial consequence in the lives of characters whose world dictates that so much must remain unspoken.

Id.; *see also* Adam Gopnik, *The Ghost of the Glass House*, NEW YORKER, May 9, 1994, at 54, 66 (discussing the Maison de Verre (the Glass House) ("one of the few modern buildings to value function and fantasy equally, without succumbing to the lure of historical pastiche—'the one isolated poetic interpretation of the pure glass and steel aesthetic,'. . . ."). The author developed this theme: "The Glass House is like a poem, and, like any poem, it presents a universe of possible readings to the contemplative mind while remaining fixed, structured, and essentially inalterable—change a word and you've ruined the effect." *Id.* at 69.

145. *See* Rubin, *supra* note 114, at 185.

> Like other forms of expression, architecture can serve to express the individual personality. An architect—or the builder of a house working through an architect—uses brick as a painter uses canvas or a writer uses words to express his notions of beauty and comfort, as well as many of his social values. Moreover, a house compatible with one's own tastes can foster creativity, peace of mind, and other mental states important to individual happiness and well-being. Accordingly, determination of at least the aesthetic features of residential architecture warrants constitutional protection like that afforded other forms of self-expression.

Id.

146. Paul Goldberger, *Raise High the Roof Beams*, N.Y. TIMES BOOK REV., Oct. 6, 1985, at 1, 36; *see also* TRACY KIDDER, HOUSE 13 (Avon Books ed. 1986) (describing a couple who "had imagined in some detail a house that would suit them functionally.

If, as this Article argues, the exterior design of a single-family house is a statement about the inhabitants' notions of beauty and comfort and values, then actions such as the City of Ladue's rejection of the Stoyanoffs' unusual design raise significant First Amendment questions, questions similar to those raised by the City of Ladue's rejection of Ms. Gilleo's window sign. As *Gilleo* and *Schad* illustrate, a municipality's zoning actions can raise First Amendment questions; this is certainly true when the municipality uses aesthetic criteria to evaluate the exterior design of a single-family house.

In using aesthetic criteria to reject a housing design, the municipality rejects the proponents, the people who want to build and live in the house. The municipality's rejection is a rejection of the proponents' character, their needs and wants, their views of what a house should be. The municipality says such people and such views are not only unwelcome but are a threat to others. The single-family house "is an extension of one's own physical being," an expression of personal identity and social aspiration.[147] It is a way homeowners "communicate with others about themselves," about their "social status, social aspirations, personal identity, individual freedom."[148] To have the content of that communication rejected as grotesque is to suffer a significant rejection indeed.

It is both the direct and personal nature of the homeowner's expression which makes it's speech more akin to oral and written speech than to conduct-conveyed expression such as non-obscene live nude dancing. Architecture contains content which is intended to be read like prose or poetry. One of Robert Venturi's breakthroughs was the explicit application of literary critical theory to both the analysis and construction

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. . . But they were stuck on the question, among others, of what style of house theirs should be. How should it look to their new neighbors, to their friends, and to people passing by . . . ").

147. *The Home*, *supra* note 127, at 58.

148. *Id.* See also Herbert Muschamp, *Ten Little Houses and How They Grew*, N.Y. TIMES, Oct. 16, 1994, at H40, reviewing a show of residential architecture:

> Clearly, this is a highly polemical show. . . . At heart, it is a response to the conservative crusade for family values and to the "neo-traditional" housing . . . which embody that crusade in architectural form. The 10 projects add up to a protest against attempts to impose rigid social norms on a diverse society. If there's any logic to the idea that private houses can perform this political function, it goes something like this: Families live in houses. Architects design them. Their designs reflect prevailing social attitudes. As those attitudes change, the designs change. And perhaps designers can accelerate social change by representing progressive attitudes in built form.

The author said, "[t]here are sound historical reasons for proceeding with this logic." *Id.*

of architecture.[149] This is seen in his residential architecture: "At their best, [Venturi's houses] merge a kind of childlike delight with an adult's ironic sensibility, bringing to architecture an attitude not altogether different from that which Lewis Carroll brought to literature."[150] Venturi's message, in words and construction, has been "in many ways sensible enough: the ambiguities and complexities which certain critics . . . find essential to literary value, are equally valid for architecture."[151]

For Venturi, writing and building are inextricably linked; each is a medium of expression, and the content of one reinforces the content of the other: "Writing was important to us as younger architects before we had the opportunity to express ideas through building. . . . Writing, for us, is part of a cycle of development that results in both theory and building: we look, analyze, synthesize through writing, synthesize through design, then look again."[152] Or, as Venturi noted, "[w]hen my ideas about building exceed my opportunities to build, I get the ideas out in words rather than bricks and mortar."[153] Venturi believes that readers appreciate architecture for its associational quality rather than for any abstract aesthetic resonance; he thus works to make his buildings "readable and familiar again for its users as well as for a larger public."[154] He was the first to coherently and persuasively advocate "that architecture, like language, has semiological components that can be effectively utilised to send signals to those experiencing it," that

149. *See* Vincent Scully, *Preface to* ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE 13 (2d ed. 1977) ("[T.S.] Eliot discusses analysis and comparison as tools of literary criticism. These critical methods are valid for architecture too: architecture is open to analysis like any other aspect of experience, and is made more vivid by comparisons."); *see also* Hughes, *supra* note 116, at 52 ("Apart from age, the main thing [Post-modern architects] have in common is a fascination with architecture as language. When tradition . . . appears in their work, it is quoted rather than adhered to. There is no common style.").

150. Paul Goldberger, *Robert Venturi—In Love With the Art of Building*, N.Y. TIMES, Sept. 19, 1982, at H27, H28.

151. Joseph Rykwert, *Book Review*, DOMUS, Aug. 1967, at 23 (reviewing ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE (1966)).

152. Denise S. Brown, *Introduction* to A VIEW FROM THE CAMPIDOGLIO: SELECTED ESSAYS 1953-1984 9 (Peter Arnell et al. eds., 1984).

153. Robert Venturi, *The RIBA Annual Discourse*, *in* VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 104.

154. VON MOOS, *supra* note 101, at 30.

architecture "is no longer considered to be like a text, but has become the text itself."[155]

Venturi's critical literary interests led him, as an architect, to reject any absolutist approach to architectural problem solving.[156] Quite the contrary. Venturi concluded that architecture needed to recognize and, occasionally, celebrate the problems; he argued for the acceptance of designs which recognized architecture's complexities and contradictions. Designs which excluded these complexities and contradictions risked "separating architecture from the experience of life and the needs of society."[157] The architect need not hide from insoluble problems but can openly express them; "in an inclusive rather than an exclusive kind of architecture there is room for the fragment, for contradiction, for improvisation, and for the tensions these produce."[158]

Yet, an acceptance of architectural complexity and contradiction does not mean that the resulting building must be discordant or even difficult to decipher. Venturi's architecture speaks in an easily understandable way.[159] He knows that the single-family house serves as a "means of self-expression" for the residents;[160] his housing designs can be read easily, coherently, logically and yet can be regarded, eventually, as masterworks.[161] Venturi can build as well as write, can express in a

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155. James Steele, *Living the Legend in Philadelphia, in* VENTURI, SCOTT BROWN & ASSOCIATES ON HOUSES AND HOUSING 9 (1992).

156. *See* VON MOOS, *supra* note 101, at 11 ("From the literary aesthetics of complexity and contradiction that interested Venturi, new priorities did indeed emerge. The question was not so much how to 'solve' . . . complicated problems . . . with the simplest means possible. . . . Rather, the question was how to design while allowing for the existence of such problems.").

157. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 17.

158. *Id.*

159. *See* Fowler, *supra* note 117, at 429 ("Apparently, the message [Venturi] would like to see in architectural forms is a statement not about the physical forces acting on the structure or the constructional problems heroically surmounted, but something easily understandable about the function the building has in the local milieu."); *see also* Filler, *supra* note 123, at 57.

> Venturi and Rauch have carried off bravura effects in the past with an apparent ease that eludes even the best of their would-be imitators. . . . These architects have an undeniable gift for choosing images whose associations summon up resonant responses, and Venturi & Rauch's success in doing so has been tied directly to their very informed selection of those images.

Id.

160. *The Home*, *supra* note 127, at 58.

161. See Frederic Schwartz, *Foreword*, MOTHER'S HOUSE: THE EVOLUTION OF VANNA VENTURI'S HOUSE IN CHESTNUT HILL 11 (Frederic Schwartz ed. 1992), discussing the house Venturi built for his mother: "The [house is] . . . a small domestic masterpiece that challenged the definition of modern architecture and redefined the conception of what a house should look like. Its historical references, use of symbolism, color, and ornament were profound and provocative during a period of almost universal acceptance of orthodox modern design." See also Thomas Beeby, *Association and*

house meanings as clear as if written on the walls.[162] His houses as text, are "a clear and cogent translation of the Venturi principles into actual building."[163] And it is a text, an expression, for the inhabitants who, after all, must commission or accept the architect's work; this is seen in the following reading of a weekend house designed by Venturi:

> As a weekend house for a New York couple, this little building is—like all of Venturi & Rauch's houses—an act of art patronage, however modest and workable it may be. It embodies a statement, by the owners as well as the architects, about the traditions of home in America. It says all that need be said about the desire for convenience with a bit of grandiloquence, about bucolic ideas vs. urbanity, about formal organization with vernacular liberties. It puts all our domestic memories into one little box.[164]

Dissociation: The Trubeck and Wislocki Houses, *in* THE ARCHITECTURE OF ROBERT VENTURI 68, 81 (Christopher Mead ed., 1989), discussing another Venturi designed house: "The exterior hierarchy of window and door types allows one to read the Wislocki House simply, without clues other than size and position. The entire building can be interpreted as a coherent organization of pragmatic concerns and the logical expression of elements."

162. *See Complexities and Contradictions*, PROGRESSIVE ARCHITECTURE, May 1965, at 168.

> Architects often explain verbally what they wish their work to transmit on an intuitive level. In many cases, they claim a meaning for their architecture that is not present in the finished building; in other cases, their words are as dull as their buildings. But in [Venturi's mother's] house, without the architect's words and on the level simply of experience, one can feel the polarities and tensions of the architecture.

Id. See also COMPLEXITY AND CONTRADICTION, *supra* note 92, at 118, where Venturi discusses the same house:

> [The house] recognizes complexities and contradictions: it is both complex and simple, open and closed, big and little; some of its elements are good on one level and bad on another; its order accomodates the generic elements of the house in general, and the circumstantial elements of a house in particular. It achieves the difficult unity of a medium number of diverse parts rather than the easy unity of few or many motival parts.

163. Paul Goldberger, *Tract House, Celebrated*, N.Y. TIMES MAG. Sept. 14, 1975, at 68; *see also* Hughes, *supra* note 116, at 58 ("Nothing in this [Venturi designed vacation house] could be called revivalist; everything is quotation and proposition, exaggerated detail held in parantheses. Venturi seems to be expressing the same sort of relationship to the past that theorizing mannerist architects . . . had with Michaelangelo's more heroic prototypes.").

164. John M. Dixon, *Country Manners*, PROGRESSIVE ARCHITECTURE Oct. 1977, at 64, 66.

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To accept the exterior design of a single-family house as a text entitled to First Amendment protection runs smack into a wall; certainly the Stoyanoffs ran into it in Ladue, Missouri when they sought to build an unusual looking single-family residence. A municipality such as Ladue may not only enact zoning laws, but may enforce them based on its aesthetic evaluation of the exterior design of a proposed building.

It was not always so. Until 1954, aesthetic criteria were, at most, accepted only as ancillary considerations in zoning decisions. The prevailing view was that government should not regulate aesthetics because it could neither adequately define aesthetic standards nor ensure evenhanded application of them.[165] Even when a municipality apparently did regulate for aesthetic reasons, the courts would perform analytical contortions to apply the seemingly less troublesome standards of health, safety, morals, or general welfare.

An example is *Gorieb v. Fox*.[166] The landowner wanted to build a store on the street line in a residential area where the zoning ordinance required a set-back from the street line. The landowner challenged the set-back ordinance on constitutional grounds.

The year before, the Court had decided *Village of Euclid v. Ambler Realty Co.* where a landowner had challenged the constitutionality of a municipality's comprehensive zoning ordinance.[167] The *Euclid* Court noted that urban life was no longer simple, that "with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities."[168] The question in *Euclid* involved "the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded."[169]

The Court concluded that such exclusions were factually well-founded, noting that

> reports, which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business, and industrial buildings will

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165. COSTONIS, *supra* note 88, at 20.
166. Gorieb v. Fox, 274 U.S. 603 (1927).
167. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 386 (1926).
168. *Id.* at 386-87.
169. *Id.* at 390.

> make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; decrease noise and other conditions which produce or intensify nervous disorders; preserve a more favorable environment in which to rear children, etc.[170]

Such reasons were "sufficiently cogent" to preclude the Court from saying "as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."[171]

The *Gorieb* Court characterized *Euclid* as validating "comprehensive zoning laws and ordinances, prescribing, among other things, the height of buildings . . . and the extent of the area to be left open for light and air and in aid of fire protection, etc."[172] Echoing *Euclid*, *Gorieb* — concerned with "the vast changes in the extent and complexity of the problems of modern city life" — said the municipality was better qualified to deal with these conditions and could do so undisturbed "by the courts unless [its conclusions are] clearly arbitrary and unreasonable."[173] The conclusions reached by the municipality in *Gorieb* were not arbitrary and unreasonable; the members of the city council concluded "that front yards afford room for lawns and trees, keep the dwellings farther from the dust, noise and fumes of the street, add to the attractiveness and comfort of a residential district, create a better home environment, and . . . reduce the fire hazard."[174] These conclusions were sufficient to satisfy the *Euclid* standard that the ordinance have a rational relation to the public safety, health, moral, or general welfare.

Although *Euclid* spoke in terms of preserving a favorable environment, and *Gorieb* spoke in terms of preserving an area's attractiveness and comfort, those words did not cause a flood of aesthetic-based zoning ordinances; as noted, until 1954, aesthetics were an ancillary—not a primary—basis for zoning regulation. And, when the floodgates were opened, it seemed almost by accident. The opening came in *Berman v.*

170. *Id.* at 394.
171. *Id.* at 395.
172. *Gorieb*, 274 U.S. at 608 (citation omitted).
173. *Id.*
174. *Id.* at 609.

Parker where landowners raised a Fifth Amendment challenge to congressional urban renewal legislation for the District of Columbia.[175]

A unanimous Court, speaking through Justice Douglas, rejected the challenge. In doing so, the Court clearly signaled its unwillingness to be drawn into a review of aesthetic-based police power actions, actions which are "the product of legislative determinations addressed to the purposes of government."[176] Those legislative determinations are "well-nigh conclusive"; the judiciary's scope of review "is an extremely narrow one"[177]:

> We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. . . . If those who govern . . . decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.[178]

The Court would not "oversee" such decisions; they rested "in the discretion of the legislative branch."[179]

Although it spoke in terms similar to *Euclid* and *Gorieb*, *Berman* was interpreted as marking "a startling break with the past;"[180] the decision initiated a flood of legislative and judicial activity "embracing the *Berman* attitude that legislating soley for beauty or aesthetics is fully within the purview of the police power."[181] For the courts especially, *Berman* became talismanic; they "have used the discretion that *Berman*

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175. Berman v. Parker, 348 U.S. 26 (1954).
176. *Id.* at 32.
177. *Id.*
178. *Id.* at 33 (citation omitted).
179. *Id.* at 35-36.
180. Scott Schrader, Book Note, 89 MICH. L. REV. 1789, 1790 (1991) (reviewing JOHN J. COSTONIS, ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE).
181. James C. Smith, *Review Essay: Law, Beauty, and Human Stability: A Rose is a Rose is a Rose*, 78 CAL. L. REV. 787, 790 (1990); *see also* Schrader, *supra* note 180, at 1790.

> [*Berman*] was widely understood to signal the Court's willingness to allow government efforts to beautify communities; for the law of aesthetics, it marked a startling break with the past. . . . Lower courts completely reversed their attitudes toward aesthetic initiatives, and legislatures responded with an outpouring of statutes and statutorily created administrative agencies. . . . The judiciary, taking *Berman* as a high court harbinger of a new direction for this area of the law, seemed amenable to almost any such program, and began to function as little more than a rubber-stamp reviewer of these efforts.

Id.

affords . . . as a basis for upholding almost any aesthetic regulation."[182]

The Supreme Court had an opportunity to stem this flood in *Village of Belle Terre v. Boraas* but declined to do so.[183] Unlike *Berman*, which involved a Fifth Amendment challenge to congressional legislation, *Belle Terre* involved, in part, a First Amendment challenge to municipal legislation. A municipal ordinance "restricted land use to one-family dwellings" and defined family to include "[a] number of persons not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage. . . ."[184] Six students living together in a leased house challenged the ordinance as violating their associational and other constitutional rights.

As he did in *Berman*, Justice Douglas wrote for the Court. He summarily rejected the students' substantive constitutional claims, finding that the ordinance "involves no 'fundamental right' guaranteed by the Constitution" such as the rights of association and privacy.[185] He then explicitly extended *Berman* to validate the municipality's ordinance:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman* . . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.[186]

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182. Williams, *supra* note 142, at 2; *see also* Smith, *supra* note 181, at 790.

> In the decades since *Berman*, the modern view validating aesthetic regulation has become firmly entrenched. . . . The new rule has served as the catalyst and prime legal prop for a wide variety of programs, ranging from historic preservation and the protection of scenic vistas to public architectural and landscaping controls. Most courts have extended their full blessing to aesthetic regulation, according it coequal status with the more traditional police power objectives. A few modern courts have sought a middle ground, characterizing aesthetics as a proper, but less weighty, legislative end than health and safety concerns, and therefore meriting less judicial deference.

Id.

183. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

184. *Id.* at 2.

185. *Id.* at 7.

186. *Id.* at 9. Earlier, he wrote that in *Berman*, the Court "refused to limit the concept of public welfare that may be enhanced by zoning regulations." *Id.* at 5.

As the Stoyanoffs discovered, decisions such as *Berman* and *Belle Terre* have encouraged the enactment of ordinances and the establishment of review boards which aesthetically regulate the exterior design of new and existing structures, including the single-family house.[187] And, as the Stoyanoffs also discovered, decisions such as *Berman* and *Belle Terre* have validated a judicial *laissez-faire* attitude toward such ordinances, perhaps much to the judiciary's relief.[188]

But this abdication has a price, a steep and unacceptable one if the exterior design of the single-family house is accepted as expressing, as clearly as words, who and what the occupants are or wish to be, both individually and as members of a community.[189] The law, through its judges and its judgments, affects this expression and should protect it, absent a sufficiently substantial showing by the government under narrow, clearly defined standards.[190]

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187. *See* Regan, *supra* note 142, at 1015-16. The extent of the flood can be seen in James P. Karp, *The Evolving Meaning of Aesthetics in Land-Use Regulation*, 15 COLUM. J. ENVTL. L. 307, 313-14 n.35 (1990).

188. *See* COSTONIS, *supra* note 88, at 20. And that judicial relief may be, in part, relief at being insulated from having to wrestle with the slippery problem of aesthetic definition; *see also* Williams, *supra* note 142, at 18-19.

> The problem of articulating aesthetic standards represents perhaps the extreme case of polycentricity. The number of potential designs is infinite; the choice as to any single factor, say materials, has an impact on all other factors; and one cannot identify any non-aesthetic features that will even begin to consistently justify the application of any aesthetic concept. At least in other instances of polycentricity one can usually say that certain characteristics will invariably be assets. In attempting to articulate aesthetic standards, however, one cannot say even that much, for the use of stone, or rectilinearity, or inclusion of windows, or any other nonaesthetic feature, is not invariably a "plus."

Id.

189. As Witold Rybczynski has noted, architecture, unlike other arts, "exists not solely as a vehicle for the skill or expression of the architect but as an object with a function." RYBCZYNSKI, *supra* note 114, at 188. The architect is occupied with "the fulfillment of mundane uses . . . to an extent unknown to sculptors or painters." *Id.*

> In the sense that design and construction involve many people, architecture is a collective pursuit. But buildings are also the product of society as a whole—of legislation, of wealth, of technology, of custom, and, above all, of cultural traditions. That is why buildings are so precious: they tell us who and what we are—or wish to be—not only as individuals but as a community.

Id. at 191.

190. *See* Fitzgerald, *supra* note 90, at 2051-52.

> To acknowledge the creative quality of law is to recognize its kinship to other endeavors traditionally called "art." Inasmuch as it creates visual realities within the confines of the canvas, art, too, is a builder of worlds. Yet, while both art and law exhibit a capacity for creativity, they do so in dramatically different ways. A work of art is, at one level, an overt expression of the artist's will to create: A central purpose of the artistic endeavor is to bring into being an object that has not existed in concrete form before the

What has happened in single-family housing is what we would never permit to happen in other First Amendment activities. There has been a homogenization of expression, a "predisposition toward accepted design standards," and "a built-in prejudice that insulates against a confrontation with more profound and disturbing questions."[191] Cities and villages, townships and boroughs, have acquired an almost unreviewable authority to impose aesthetic standards on single-family housing—standards which avoid "the distractions of sensory or perceptual stimulation" and which create "a condition of conformity that makes it impossible to differentiate one locale from another."[192]

What the Stoyanoffs experienced was a municipality's application of an idea that, architecturally, "there is one dominant and correct canon of taste in our culture and that any [design] where this canon has not been followed is deviant and inferior."[193] Architecture is the only art where this idea is legislatively enacted and judicially accepted; "in most fields and media other than those of architecture, the hetereogenous quality and ethnic diversity of American culture is accepted and is considered one of the strengths of our culture."[194] The result is a distrust of architectural "variety and richness," a preference for "bureaucracy and standardization."[195] But municipalities cannot standardize the sense of comfort and well-being that individuals find for themselves in their houses and which they express to their neighbors.[196] Whatever the reason for the

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> creative act. Law's creative quality is far less conspicuous. . . . Nevertheless, judicial allocation of rights and responsibilities undeniably shapes legal relationships among parties, patterning not only their own worlds, but also the larger worlds that they inhabit.

Id.

191. James Wines, *The Case for the Big Duck*, ARCHITECTURAL FORUM Apr. 1972, at 60.

192. *Id.*

193. Robert Venturi, *A Definition of Architecture as Shelter with Decoration on It, and Another Plea for a Symbolism of the Ordinary in Architecture*, *in* VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 66.

194. *Id.*

195. Safdie, *supra* note 97, at 64.

196. *See The Home*, *supra* note 127, at 231-32.

> Most people . . . recognize comfort when they experience it. This recognition involves a combination of sensations . . . and not only physical, but also emotional as well as intellectual, which makes comfort difficult to explain and impossible to measure. But that does not make it any less real. . . .Domestic well-being . . . is, as it always has been, the business of the family and the individual. We must rediscover for ourselves the mystery of comfort, for

design they selected, the Stoyanoffs certainly did not do so to be discomforted; that house was, after all, where they wanted to live.

The Missouri court's rejection of the Stoyanoffs' design—because it was considered unsuitable to the neighborhood's character and adverse to the general welfare—was based on decisions from Wisconsin and Ohio. Like the Stoyanoffs, the landowner in the Wisconsin case, *State ex rel. Saveland Park Holding Corp. v. Wieland*, complied with all residential zoning requirements except for obtaining a building board's approval of the exterior design.[197] Although the opinion does not describe the proposed design or the design of surrounding houses, the court characterized the municipality as "a highly desirable residential village, almost entirely built up of single family residences."[198] Apparently the Building Board found that the exterior design of the proposed residence was "so at variance with . . . the exterior architectural appeal and functional plan of the structures . . . in the immediate neighborhood . . . 'as to cause a substantial depreciation in the property values of said neighborhood.'"[199]

The trial court had invalidated the ordinance, in part because it was "grounded largely upon aesthetic considerations."[200] In reversing, the Wisconsin Supreme Court noted that where previous cases had established a general rule that "the zoning power may not be exercised for purely aesthetic considerations," *Berman* had rendered "it extremely doubtful that such prior rule is any longer the law."[201] Acknowledging that *Berman* was a Fifth Amendment case, not a Fourteenth Amendment case, the court considered "such distinction to be immaterial in considering the scope of the police power and its exercise to promote the general welfare."[202] The court concluded that the ordinance "constitutes a valid exercise of the police power . . . and its provisions are not so indefinite or ambiguous as to subject applicants for building permits to the uncontrolled arbitrary discretion or caprice of the Building Board."[203]

The Ohio case relied on in *Stoyanoff* was *Reid v. Architectural Board of Review of Cleveland Heights*.[204] Ms. Reid submitted plans to build

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without it, our dwellings will indeed be machines instead of homes.

Id.

197. 69 N.W.2d 217, 219 (Wis. 1955), *cert. denied*, 350 U.S. 841 (1955).
198. *Id.* at 219.
199. *Id.*
200. *Id.* at 222.
201. *Id.*
202. *Id.* at 223.
203. *Id.* at 224.
204. 192 N.E.2d 74 (Ohio Ct. App. 1963).

a house on North Park Boulevard in Cleveland Heights, a suburb "organized to provide suitable and comfortable home surroundings for residents employed in Cleveland"; Cleveland Heights "is a well-regulated and carefully groomed community, primarily residential in character."[205] The buildings on North Park Boulevard "are, in the main, dignified, stately and conventional structures, two and one-half stories high."[206]

Ms. Reid's proposed house was none of that. It was "a flat-roofed complex of twenty modules, each of which is ten feet high, twelve feet square . . . arranged in a loosely formed 'U'."[207] The house walls were mostly glass, opening onto a garden; the rest were cement panels. The house, the garage, and "their associated garden walls, trellises and courts, form a series of interior and exterior spaces, all under a canopy of trees and baffled from the street by a garden wall."[208] That wall blocked a view of the house from the street.[209]

Ms. Reid submitted this design to the review board which disapproved "this project for the reason that it does not maintain the high character of community development in that it does not conform to the character of the houses in the area."[210] The board conceded "that this structure would be a very interesting home placed in a different environment."[211] But, "placed on North Park Boulevard, it would not only be out of keeping with and a radical departure from the structures now standing but would be most detrimental to the further development of the area . . . ."[212] In addition, the design was "of such a radical concept that any design not conforming to the general character of the neighborhood would have to be thereafter approved . . . ."[213]

Wieland, *Reid*, and *Stoyanoff* are representative of post-*Berman* aesthetic-based cases and are representative of their dangers. Such cases assume that there is an aesthetic certainty or, at least, an aesthetic

205. *Id.* at 76.
206. *Id.* at 77.
207. *Id.*
208. *Id.*
209. As the court described it, "it is just a high wall with no indication of what is behind it. Not only does the house fail to conform in any manner with the other buildings but presents no identification that it is a structure for people to live in." *Id.*
210. *Id.* at 75 (quoting the order of the Architectual Board).
211. *Id.* at 77.
212. *Id.*
213. *Id.*

consensus when it comes to the exterior design of single-family houses. Such cases allow municipalities to express that certainty and enforce that consensus without fear of judicial oversight or override. Such cases do not allow for an individuality of expression such as that offered by Ms. Reid or the Stoyanoffs.[214] Such cases deny the value of multiplicity, the stimulus of the different, the existence of architectural complexity and contradiction which Robert Venturi has described and celebrated.[215]

Venturi's work calls "for an environment worthy of the inherent eccentricities, and all the disparity of facts and values which constitute a democratic society"; architecture, particularly in the single-family home, should "be the expression of the pluralistic value systems of a democratically inspired vision of life with its respect for the uniqueness of each individual."[216] This diversity is fertile; sameness is sterile.[217] An architecture which accepts complexity and contradiction "accomodates the intimations of local context over the dogma of universality," "provides pragmatic solutions to real problems rather than easy obedience to ideal forms," "solves problems, but expresses them too."[218]

There are courts which, while not embracing Venturi's philosophy, have refused to passively accept municipal efforts at aesthetic homogenization. An early example is *Hankins v. Borough of Rockleigh*.[219] The Hankins wanted to build a one-family "modern two-story dwelling with

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214. *See* Denise S. Brown, *Learning the Wrong Lessons From the Beaux-Arts*, *in* A VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 68.

> [W]here aesthetic certainty exists in the profession, for example on design review boards, it supports a deadening architectural mediocrity. . . . If we are looking for aesthetic unity, perhaps we should try to discover our own shared aesthetic values; but there is probably no possibility of a broad-based aesthetic consensus for us today. Perhaps we should not seek it, but rather try to enjoy our diversity.

Id.

215. However, at least at the outset, very few joined Venturi in that celebration. *See* VINCENT SCULLY, AMERICAN ARCHITECTURE AND URBANISM 229 (1969) ("The principles of compromise and multiplicity suggested [in COMPLEXITY AND CONTRADICTION] have never been popular in America, despite the pluralism of the American condition. It is undoubtedly because of that very heterogeneity that Americans have so often preferred 'unifying' homogenized solutions.").

216. Naomi Miller, Book Review, JOURNAL OF THE SOCIETY OF ARCHITECTURAL HISTORIANS 319, 319 (Dec. 1967) (reviewing ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE (1966)).

217. See Nancy Love, *The Deflatable Fair*, PHILADELPHIA MAGAZINE 140 (Apr. 1969) describing Venturi's belief "that the simplifying and excluding principles of the modern movement in architecture have produce sterility and that this approach to order hasn't worked."

218. Venturi, *supra* note 104, at 108.

219. 150 A.2d 63 (N. J. Super. Ct. App. Div. 1959).

a partial flat roof."[220] They were denied a building permit because the municipality said their design did not conform to the existing houses. The New Jersey court found this denial "clearly and palpably unreasonable in the light of the actual physical development of the municipality" which had spawned a variety of housing styles.[221] The municipality's denial of the Hankins' permit was "an arbitrary denial . . . of a legitimate use of their property without any colorable vestige of social justification in terms of the general welfare or any other facet of the police power."[222]

Twenty years later, in *Morristown Road Associates v. Borough of Bernardsville*, the New Jersey court had occasion to consider, for the first time, whether the standards in a design review ordinance were "so broad and vague as to be incapable of being objectively applied, thereby permitting arbitrary action[s]."[223] The ordinance—which sought to enhance the municipality's desirability, preserve property values, and promote general welfare—required designs which were "harmonious with the character of existing development," which avoided a "displeasing monotony of design," and which were not inconsistent "with established architectural character in any neighborhood."[224]

As a starting point, the court said any zoning ordinance "must be clear and capable of being understood and complied with by the property owner."[225] This was "particularly applicable" to architectural design ordinances "[b]ecause of the subjective elements which can be involved" and because of the enforcement process: "As design controls are enforced by administrative agencies, the prerequisite of definitiveness will only be met when the standards sufficiently confine the process of

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220. *Id.* at 64.
221. As the court described it,
> [t]his is an extremely small community in area. Half the old-style houses are already partly out of their original architectural design because of the addition of flat-roofed extensions. There are in existence almost as many structures (of all kinds) fully out of character with the architectural restrictions for dwellings set forth in the ordinance as those which comply with them. Whatever new homes have been erected in the municipality in recent years have been of modern style. These considerations are particularly cogent in the relatively immediate vicinity of [the Hankins'] property.

Id. at 66.
222. *Id.*
223. 394 A.2d 157, 158 (N.J. Super. Ct. Law Div. 1978).
224. *Id.* at 162-63.
225. *Id.* at 161.

administrative decision and provide a court with an understandable criterion for review."[226] After reviewing cases—including *Wieland*, *Reid*, and *Stoyanoff*—which had considered whether "look-alike standards have been considered adequate to support design review ordinances," the court concluded that the ordinance under review did not contain narrowly and clearly defined standards.[227] The ordinance thus offered "no workable guidelines to one seeking approval of plans" and no workable guidelines by which a reviewing court could determine "when a decision has been arbitrary or capricious."[228]

Although the aesthetic guidelines were not workable, the municipality in *Bernardsville* at least attempted to establish some; the municipality in *De Sena v. Village of Hempstead* [229] did not even do that. The landowner in *De Sena* wanted to build a twenty- foot wide house on his property, a design which the municipality's board of zoning appeals described as "an aesthetic abomination," a design which was neither "desirable" nor "functional," a design "with a bowling alley appearance" which would depress property values and adversely affect the area's aesthetic character.[230]

The New York Court of Appeals, while acknowledging that some land-use regulation could be based on aesthetic considerations, cautioned that in such cases "the public interest in regulation is not necessarily as strong as in those cases involving threats to the public safety, and care must be taken lest the State 'trespass through aesthetics on the human personality.'"[231] In *De Sena*, the zoning board acted without "specific authorization which provides sufficient guidance to prevent complete arbitrariness."[232] Without that authorization, the board could not prevent the landowner from building his bowling alley house.

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226. *Id.*
227. *See id.* at 162-63.
> The basic criterion for design review under the ordinance is *harmony* with existing structures and terrain. This standard does not adequately circumscribe the process of administrative decision nor does it provide an understandable criterion for judicial review. It vests the design review committee . . . with too broad a discretion, and permits determinations based upon whim, caprice or subjective considerations. Harmony of design and appearance is conceptual. A proposal which is considered harmonious and appropriate by one person may be deemed displeasing by another. A standard which permits such evaluations does not meet the test of certainty and definiteness required of zoning regulations.

Id.
228. *Id.* at 163.
229. 379 N.E.2d 1144 (N.Y. 1978).
230. *Id.* at 1146.
231. *Id.* (Citation omitted).
232. *Id.*

The Illinois Court of Appeals has also dealt with architectural design ordinances which, like that in *Bernardsville*, tried, but failed, to give the reviewing authority sufficient guidance to prevent arbitrary actions. In *Pacesetter Homes, Inc. v. Village of Olympia Fields*, the landowner applied to build a single-family house in a subdivision.[233] The landowner was denied a building permit "because the proposed construction was 'architecturally similar' to other buildings in the area."[234] The ordinance recited "that 'excessive similarity, dissimilarity or inappropriateness in exterior design and appearance of property' adversely affects the desirability, stability, economic and taxable value, and the like, of nearby property."[235] The court concluded that the ordinance "fails to prescribe adequate standards to control the actions of the Architectural Advisory Committee in determining whether or not an application shall be approved or disapproved, and confers too broad a discretion on the Committee in this regard."[236]

The same result was reached in *R.S.T. Builders, Inc. v. Village of Bolingbrook*.[237] This time, the proposed single-family house was rejected as being architecturally dissimilar to its neighbors; the design review committee "wanted shutters put on the windows, lights on the outside, aluminum siding, a brick veneer front, and a two-car garage."[238] The court found that the ordinance which authorized the committee to make such demands was, like the ordinance in *Pacesetter*, "unconstitutionally vague and indefinite."[239] It "completely fails to prescribe adequate standards to control the actions of the Committee."[240] Like *Pacesetter*, the ordinance conferred "too broad a discretion on the Committee."[241]

Were there a template for making aesthetic judgments, these cases would not arise. But architecture is an art; is creative, not formulaic; it is individual and temporal. As Robert Venturi noted in a twenty-fifth anniversary discussion of the house he built for his mother, "[w]hat

233. 244 N.E.2d 369 (Ill. App. Ct. 1968).
234. *Id.* at 370.
235. *Id.*
236. *Id.* at 373.
237. 489 N.E.2d 1151 (Ill. App. Ct. 1986), *appeal denied*, (1986).
238. *Id.* at 1152.
239. *Id.* at 1154.
240. *Id.*
241. *Id.*

seemed extraordinary then seems ordinary now—or vice versa. This kind of misreckoning occurs especially in matters of taste where we see yesterday in the context of today and through the eyes of today."[242] Perspectives and tastes change. What seemed startling or grotesque or appalling may now seem solid and beautiful and even totemic; what then seemed admirable and comfortable now seems weak and flimsy.[243]

Robert Venturi understands that in architecture, even in that devoted to the single-family house, "nothing is final and perfect and that human beings must give and take a little all the time."[244] It is that give and take, the ambiguity and tension, the complexity and contradiction, those "oscillating relationships," which give expressive vitality to architecture,[245] even that represented by Venturi's mother's house:

> Venturi's education suggested that this house should not be designed to be too original, though it is, or to make a point, though it does, but to solve real problems in ways that communicate both questions and answers. It is only now, with the passage of three decades, that certain things become clear. Its design is both straightforward and idiosyncratic, ideological and witty, and visionary and practical. . . . The simplicity of its front elevation masks its intellectual complexity.[246]

Venturi's exaltation of pluralism over purism is not irresponsible; it does not encourage esoteric or intolerant or dogmatic architecture.[247] He did not argue against one canon of taste merely to replace it with

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242. Robert Venturi, *Mother's House: 25 Years Later*, *in* MOTHER'S HOUSE: THE EVOLUTION OF VANNA VENTURI'S HOUSE IN CHESTNUT HILL 34 (Frederic Schwartz ed., 1992). See also Robert Venturi, *Alvar Aalto*, *in* A VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 60, where Venturi discusses the work of another architect: "Like all work that lives beyond its time, Aalto's can be interpreted in many ways. Each interpretation is more or less true for its moment because work of such quality has many dimensions and layers of meaning."

243. *See* RYBCZYNSKI, *supra* note 114, at 155. "Buildings, like people, should not be judged at the moment of birth. They need time to establish themselves in their surroundings, time for their inhabitants to occupy them and for the newness to wear off. Unlike books, completed buildings should be a little dog-eared before they are reviewed." *Id.* Earlier, the author noted that, "it can no longer be taken for granted that buildings will last. What appears to be an admirable and provocative architectural statement today may be shown with the passage of time to have been a misguided and flimsy attempt at novelty." *Id.* at xvi-xvii.

244. SCULLY, *supra* note 215, at 229.

245. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 20.

246. Schwartz, *supra* note 161, at 14.

247. *See* COMPLEXITY AND CONTRADICTION, *supra* note 92, at 17 ("The recognition of complexity in architecture does not negate what Louis Kahn has called 'the desire for somplicity.' But aesthetic simplicity which is a satisfaction to the mind derives, when valid and profound, from inner complexity."); *see also* Venturi, *supra* note 153, at 105 ("The aesthetic pluralism of our society encourages an expansive scope for architecture at the same time that it discourages approaches that are esoteric, intolerant, and dogmatic. It encourages realism as well as idealism; it projects the architect as follower as well as leader.").

another. There can not be, nor should there be, a universal touchstone for art; that would give us sterility, not vitality.[248]

Venturi is the proponent of inclusion, not exclusion; of individual design rather than total control. He views architecture as a language with a grammar and syntax, with images and concepts, with the capacity to recall shared images and project new ideas. He is "a polyglot who is not settled to any particular linguistic tradition and who might very well carry on his correspondence in a number of languages, picking the best words from each source."[249] Venturi finds meaning in what is built; he expresses meaning in what he builds.[250] And, as John Costonis recently pointed out, "[w]here there's meaning, there are usually a host of First Amendment issues lurking nearby."[251] Costonis concluded, as does this Article, that "it is . . . clear that legal aesthetics is a more complicated and risky business than was understood . . . in *Berman*"; the task now "is to introduce into legal aesthetics the mid-course corrections

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248. *See* VIEW FROM THE CAMPIDOGLIO, *supra* note 193, at 66-67.

> [I]deas . . . promoted by Modern architects . . . concern aesthetic unity: simple forms and pure order are the only good, and the architect . . . will lead the community toward these goals. . . . [W]e are ending up with total control—total control through design review boards which promote high design, exclude popular architecture and in the process discourage quality in any architecture and stultify the diversity and hierarchy which have always been part of a balanced and vital community architecture.

Id.; *see also* VENTURI, *supra* note 125, at 165 ("Beauty escapes in the pursuit of safety, which promotes a simplistic sameness over a varied vitality. It withers under the edicts of today's aging architectural revolutionaries who man the review boards and who have achieved aesthetic certainty.").

249. Malcolm Quantrill, *Venturi: Pragmatism and/or Empiricism*, BUILDING, July 21, 1972, at 87.

250. *See* COMPLEXITY AND CONTRADICTION, *supra* note 92, at 104.

> [I]n some of these compositions there is an inherent sense of unity not far from the surface. It is not the obvious or easy unity derived from the dominant binder or the motival order of simpler, less contradictory compositions, but that derived from a complex and illusive order of the difficult whole. It is the taut composition which contains contrapuntal relationships, equal combinations, inflected fragments, and acknowledged dualities. . . . In the validly complex building or cityscape, the eye does not want to be too easily or too quickly satisfied in its search for unity within a whole.

Id.; *see also* View from the Campidoglio, *supra* note 104, at 116 ([Venturi's mother's house], "though Classical, is not pure. Within the Classical aesthetic it conforms to a Mannerist tradition which admits contradiction within the ideal order and thereby enhances the ideal quality of that order through contrast with it. To perceive the ideal you must acknowledge the real.").

251. COSTONIS, *supra* note 88, at 92.

indicated by post-*Berman* experience."[252] The next section will propose a correction which calls for nothing more than the application of precedent to give the exterior design of a single-family house the same First Amendment protection given non-obscene live nude dancing.

VI.

As even the brief review conducted above demonstrates, cases involving municipal aesthetic regulation of single-family houses look like a quagmire, at least from the bench. Pre-*Berman*, most courts flatly said aesthetics were not acceptable as the sole basis for municipal action; post-*Berman*, most courts have flatly said that aesthetic determinations were for the municipalities to make. Pre- and post-, the courts have elected not to act.[253]

The quagmire is that "in the realm of aesthetic regulation," courts "have no choice but to weigh competing interests; yet there is no unit of measurement common to the interests being weighed."[254] It is, as one early analyst pointed out, "a pity that aesthetic disagreements cannot be resolved by reference to absolute standards, for we should all feel so much more secure in our judgments."[255] However, as a later analyst concluded:

> A legislature will rarely be able to articulate standards, directed toward a purely aesthetic goal, that will effectively channel the board's decisionmaking; the agency, by a sequence of adjudications, will rarely be able to construct meaningful "common law" standards against which subsequent decisions may be measured for consistency; and procedural devices . . . will rarely play any meaningful role in legitimizing the agency's decision. As a result, there is a high risk that the agency's judgments will be either beyond the legislative intent or arbitrary or both.[256]

The quagmire becomes even stickier if the exterior design of a single-family house is accepted as having First Amendment content.[257]

Does the statement that there are no absolute standards mean that there are no standards at all? Not according to Robert Venturi. He is a responsible revolutionary, carefully aware that architecture has the power

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252. *Id.* at xvii.

253. *See* Williams, *supra* note 142, at 4-5; J. F. Ghent, Annotation, *Aesthetic Objectives or Considerations as Affecting Validity of Zoning Ordinance*, 21 A.L.R.3D 1222 (1968); Jeffrey F. Ghent, Annotation, *Validity and Construction of Zoning Ordinance Regulating Architectural Style or Design of Structure*, 41 A.L.R.3D 1397 (1972).

254. Williams, *supra* note 142, at 34.

255. J. J. Dukeminier Jr., *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROBS. 218, 229 (1955).

256. Williams, *supra* note 142, at 19.

257. *See* Smith, *supra* note 181, at 801 n.42.

to "enhance or impair" our surroundings, that "the introduction of any new building will change the character of all the other elements in a scene."[258] Or, as another architect put it, "[i]t is not enough to share a language; there must be propriety in the conversation."[259] And, if anything, Venturi is an architect of propriety, who knows that "[i]f order without expediency breeds formalism, expediency without order . . . means chaos," who cautions that no architect "can belittle the role of order as a way of seeing a whole relevant to its own characteristics and context."[260]

Venturi is a revolutionary of revival rather than an iconoclast; he prefers to

> work through analogy, symbol, and image . . . and . . . derive insights, analogies, and stimulation from unexpected images. There is perversity in the learning process: We look backwards at history and tradition to go forward; we can also look downward to go upward. And withholding judgment may be used as a tool to make later judgment more sensitive. This is a way of learning from everything.[261]

And, in learning from the past, Venturi says architects can develop a new "[r]hetoric for our landscape" which, "when it is appropriate, will come from a less formal and more symbolic medium than pure architecture."[262] Venturi's inclusive architecture "rejects that heroic stance which orthodox modern architecture assumed to itself as the source of cultural values in favor of a more modest and flexible position

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258. Robert Venturi, *The Campidoglio: A Case Study*, *in* VIEW FROM THE CAMPIDOGLIO, *supra* note 104, at 12.

259. RYBCZYNSKI, *supra* note 120, at 90. The author believes that, "builders must learn the local language—if not, they will be outsiders, architectural tourists. . . . It is not too fanciful to extend this metaphor and imagine that buildings in groups, sharing such a language, converse." *Id.*

260. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 41.

261. VENTURI ET AL., *supra* note 125, at 3; *see also* RYBCZYNSKI, *supra* note 114, at 249.

> An investigation of classical architecture around the world demonstrates that universal solutions and local needs can be compatible. . . . [C]lassicism offers architects a canon, but it is a liberal and tolerant one. It has provided its practitioners with an architectural language that is rooted in the past but adaptable to the present. It is amenable to modification and crossbreeding, and in talented hands can respond successfully to new building programs. . . . [I]t lacks the absolutism and rigidity that characterize the modernist approach to building.

Id.

262. Venturi, *supra* note 193, at 67.

in which architecture embodies the values which society, not just other architects, values and supports."[263]

Where is the threat in this? For, undeniably, Venturi's words and works have been considered a threat. A threat to what? To an established sense of what was expected in architecture; Venturi transgressed the exclusionist dogma of modern architectural theory by denying its absolutes.[264] Although he respected order, he argued that "[m]eaning can be enhanced by breaking the order; the exception points up the rule. A building with no 'imperfect' part can have no perfect part, because contrast supports meaning. An artful discord gives vitality to architecture."[265] Venturi broke with theories which idealize and generalize; he created rather than conformed;[266] he brought forward architecture's "complexities and contradictions of content and meaning";[267] he made the viewer a reader of multiple rather than simplistic levels of meaning. He reacted against conforming rules and regulations, discarded the confining uniformity, and, in the process, gave his homeowners liberation and freedom of expression.

What Venturi has done is what the Stoyanoffs and Ms. Reid wanted to do. He has put what appear to be aliens in the midst of what review boards consider to be icons.[268] Those terms are John Costonis'. He

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263. ROBERT A. M. STERN, NEW DIRECTIONS IN AMERICAN ARCHITECTURE 8 (1969); *see also* RYBCZYNSKI, *supra* note 114, at xvi (noting that, "the task of evaluating the success or failure of a building is not an easy one. A building succeeds—or fails—on many different levels: as a practical object as well as a beautiful one, as a work of art, but also as a setting for life.").

264. *See* Levine, *supra* note 108, at 56; *see also* VENTURI ET AL., *supra* note 125, at 53.

> These [images] show the vitality that may be achieved by an architecture of inclusion or, by contrast, the deadness that results from too great a preoccupation with tastefulness and total design. . . .Allusion and comment, on the past or present or on our great commonplaces or old cliches, and the inclusion of the everyday in the environment, sacred and profane—these are what are lacking in present-day Modern architecture. We can learn about them from Las Vegas as have other artists from their own profane and stylistic sources.

Id.

265. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 41; *see also* James Steele, *The House as Microcosm and Macrocosm*, *in* VENTURI, SCOTT BROWN & ASSOCIATES ON HOUSES AND HOUSING 15 (1992) (noting Venturi's "tendency to 'impair the perfection' of Modernist norms" in his housing designs).

266. *See* VENTURI ET AL., *supra* note 125, at 129.

267. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 25.

268. *See* COSTONIS, *supra* note 88, at 53-54.

> Architects, urban designers, and others who double as publicists for their creations comprise another group of tastemakers. . . . Robert Venturi [is] among these two-hatters. As designers they shape images that debut as aliens and, with time, struggle, and luck, may end up as icons. . . . As publicists they find themselves caught in the squeeze between the instinct for creativity native to their craft and the anxious conservatism of groups fearful of

defines icons as "features invested with values that confirm our sense of order and identity."[269] Aliens "threaten the icons and hence our investment in the icons' values."[270] For Costonis, aesthetic laws are justified by "our individual and social needs for stability and reassurance in the face of environmental changes that we perceive as threats to these values."[271] Such laws are justified if assigned a "role as a regulator of change in the symbolic environment."[272] However, to be consonant with the First Amendment values, such regulation "will be shaped by an evaluation of the community's claims that icon and alien actually are dissonant and that this dissonance truly threatens (poses a 'clear and present danger' to) the stability of the community's land use patterns."[273]

Architecture is entitled to First Amendment protection; in the case of a single-family house, it is entitled to the same protection as Ms. Gilleo was given in posting her sign. The exterior design of the house is speech; it can be read by its viewers. The landowner's choice of an exterior design cannot be suppressed simply because a municipality finds it grotesque or appalling or unsightly. If that is the objection, then the viewers must simply turn their heads.

That is what the Supreme Court said about those who might have been offended by Harold Spence's peace symbol flag which he hung from the window of his apartment in Seattle. That is also what the Court said about those who were offended by the films being shown at Richard

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environmental change.

Id.

269. *Id.* at xv-xvi.

270. *Id.*

271. *Id.* at xv.

272. *Id.* at 19.

> Icons always precede the legal regime that shelters them. Law [does not create] . . . the powerful bonds between these icons and their constituencies. Law entered the picture only when summoned by these constituencies. . . .[A] profile of the icon's character affords a framework for identifying aliens even in advance of their appearance because the aesthetics regime's focus is the dissonance between the two.

Id. at 58.

273. *Id.* at 99. "First Amendment values are not put at risk by the menace that aliens pose for icons. On the contrary, these values are threatened by the government's effort to forestall that menace by censoring 'offensive' aliens, some of which do merit constitutional status as speech." *Id.* at 94.

Erznoznik's drive-in theater in Jacksonville, Florida.[274] A municipal ordinance prohibited "exhibiting a motion picture, visible from public streets, in which 'female buttocks and bare breasts were shown.'"[275] When challenged, the municipality argued "that it may protect its citizens against unwilling exposure to materials that may be offensive."[276]

In response, the Court said that "when the government, acting as censor, undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others, the First Amendment strictly limits its power."[277] A municipality may shield citizens from speech only upon a showing that "substantial privacy interests are being invaded in an essentially intolerable manner."[278] However, "[t]he plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, 'we are inescapably captive audiences for many purposes'"[279]:

> Much that we encounter offends our esthetic, if not our political and moral, sensibilities. Nevertheless, the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather . . . the burden normally falls upon the viewer to "avoid further bombardment of [his] sensibilities simply by averting [his] eyes."[280]

Jacksonville's ordinance did not "satisfy the rigorous contitutional standards that apply when government attempts to regulate expression."[281] The ordinance lacked the essential "precision of drafting and clarity of purpose" to pass First Amendment scrutiny.[282]

When a municipality seeks, in the guise of aesthetic regulation, to regulate the First Amendment speech represented by the exterior design of a single-family house, it should be required to do two things: first, provide narrow, clearly defined aesthetic standards by which architects, landowners, reviewing agencies, and courts can evaluate a proposed design; and, second, when called to account for rejecting a proposed design, provide reasons for its action, reasons which relate directly to furthering a sufficiently substantial municipal interest. It is not enough

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274. Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975).
275. *Id.* at 206.
276. *Id.* at 208.
277. *Id.* at 209.
278. *Id.* at 210 (quoting Cohen v. Cal., 403 U.S. 15, 21 (1971)).
279. *Id.* at 210 (quoting Rowan v. Post Office Dept., 397 U. S. 728, 736 (1970)).
280. *Id.* at 210-11 (quoting Cohen v. Cal., 403 U. S. at 21) (alteration in original).
281. *Id.* at 217.
282. *Id.* at 217-18.

for a municipality to say that it does not like what the structure says; it must show that the message measurably affects a sufficiently substantial municipal interest.[283] This is no more than what *Schad* required the municipality to do when it tried to ban non-obscene live nude dancing.

There is no constitutional place for a municipality's aesthetic inquisition conducted because it believes the exterior design of a single-family house located on private property reflects an architectural heresy.[284] The "urge to enforce similarity" must "be supplanted by an

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283. Compare Sheldon E. Steinbach, *Aesthetic Zoning: Property Values and the Judicial Decision Process*, 35 MO. L. REV. 176, 177 (1970):

> The reluctance of courts, as well as certain segments of the public, to accept aesthetics as the sole basis for zoning stems from a reverence for the historic rights of private property. Put in the least favorable light, aesthetic zoning may be considered as the exercise of the police power to restrain an individual in the use of his private property so that the community may have the luxury of gazing upon pleasant surroundings. Many feel that the property owner should not be compelled to bear the financial burden of making the community beautiful but instead that the community itself should pay for preserving the beauty of the community. In addition, judges and laymen alike look with disfavor upon the uncertainty caused by the use of aesthetic standards in drafting legislation. Certainly it is not an idle fear that the lack of precise standards may lead to discriminatory enforcement.

(citations omitted) with Dukeminier, Jr., *supra* note 255, at 236:

> If we want our children to grow up in pleasant purlieus, we must give up something of the freedom of the individual to use his land as he chooses. This is inherent in the concept of land planning by community officials. Nevertheless, I do not wish to leave the impression that I think it either necessary or desirable that community officials be arbiters in all questions of aesthetic preference which crop up from the use of land. According to our basic social hypothesis, they should interfere only when individual use seriously hampers the achievement of community goals. If community officials instigate an artistic inquisition, it is certainly the court's duty to oppose it, but the cases do not suggest that community officials have acted rashly in attempting to improve appearances.

284. *See* Steinbach, *supra* note 283, at 186.

> Certainly beauty can be established without cheese box uniformity for an entire community. Yet, aesthetic concepts incorporated in construction and zoning ordinances impinge on individual freedom to utilize property in a manner contrary to the will of the community. Perhaps today's non-conformity, which may be termed architectural heresy, may be tomorrow's orthodoxy. As such, it should have its place within today's plan for the implementation of aesthetic considerations in zoning.

Id.; *see also* Bret Rappaport, *As Natural Landscaping Takes Root We Must Weed Out Bad Laws—How Natural Landscaping and Leopold's Land Ethic Collide With Unenlightened Weed Laws and What Must Be Done About It*, 26 J. MARSHALL L. REV. 865 (1993).

anti-assimilation principle."[285] There must be "a shift from the goal of uniformity to an ideal of equivalence," an ideal which "captures the essence of a relationship in which two things maintain their essential differentness while asserting a compelling claim to equal significance and respect."[286]

A demand that municipalities provide narrowly and clearly defined aesthetic standards is not a demand for castles in the air. It can be done. It must be done to avoid unreviewable exercises of municipal discretion. This is illustrated by *Anderson v. City of Issaquah*.[287] The landowner sought a permit for a commercial building on Gilman Boulevard in Issaquah, Washington. Although the building conformed to all other zoning regulations, the landowner, despite repeated efforts over nine months and the expenditure of $250,000, was unable to satisfy the review board that his proposal was "sensitive to the unique character" of Gilman Boulevard, a street which the review board described as Issaquah's "Signature Street."[288]

The board acted under an ordinance designed "to protect, preserve and enhance the social, cultural, economic, environmental, and aesthetic values that have established the desirable quality and unique character of Issaquah."[289] The remainder of the ordinance was no more specif-

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> Ultimately, the aesthetic argument against natural landscaping is illogical. One man's weed is another man's rose. To some, pink plastic flamingoes, polka-dotted bloomered cardboard ladies, twirling plastic sunflowers, astro-turf-covered front stoops, and perfectly sculpted evergreens look simply ridiculous; but to others, such landscaping is beautiful. People have a right to astro-turf-covered stoops, closely cropped evergreens, and spinning plastic sunflowers in their yards. That is the American way. But individuals also have the right to a natural stone walkway, free-flowing native shrubs and forbs, and real sunflowers reaching to the sky in a blaze of gold.

(Citation omitted). *Id.* at 927.

285. Fitzgerald, *supra* note 90, at 2065-66.

286. *Id.* at 2066; see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston, 115 S. Ct. 2338, 2350 (1995), reversing a state order requiring parade organizers to include a group imparting a message with which the organizers disagreed:

> The very idea that a noncommercial speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression. The Speech Clause has no more certain antithesis. While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.

(Citations omitted). Earlier, the Court had noted that "this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message." *Id.* at 2348.

287. 851 P.2d 744 (Wash. Ct. App. 1993).

288. *Id.* at 748.

289. *Id.* at 748-49 n.3.

ic.[290] The court found that "these code sections 'do not give effective or meaningful guidance'to applicants, to design professionals, or to the public officials . . . who are responsible for enforcing the code."[291] Those charged with enforcement "were left with only their own individual, subjective 'feelings' about the 'image of Issaquah' and as to whether this project was 'compatible' or 'interesting.'"[292]

The court concluded that the sections under consideration were unconstitutional on their face. They were also unconstitutional as applied to the landowner.[293] The court insisted that "[a] design review ordinance must contain workable guidelines," guidelines which the amicus curiae brief—submitted by three architectural societies—demonstrated could be established in a municipal ordinance.[294] Although acknowledging that "aesthetic standards are an appropriate component of land use governance," the court said such standards

> can and must be drafted to give clear guidance to all parties concerned. Applicants must have an understandable statement of what is expected from new construction. Design professionals need to know in advance what standards will be acceptable in a given community. It is unreasonable to expect applicants to pay for repetitive revisions of plans in an effort to comply with the

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290. As the court noted:
> an ordinary citizen reading these sections would learn only that a given building project should bear a good realtionship with the Issaquah Valley and surrounding mountains; its windows, doors, eaves, and parapets should be of "appropriate proportions", its colors should be "harmonious" and seldom "bright" or "brilliant"; its mechanical equipment should be screened from public view; its exterior lighting should be "harmonious" with the building design and "monotony should be avoided." The project should also be "interesting." . . . "Harmony in texture, lines, and masses [is] encouraged."

Id. at 751 (citation omitted) (quoting I.M.C. 16.16.060).

291. *Id.* (quoting Brief of Amicus Curiae).

292. *Id.* at 752.

293. The court found that the:
> commissioners enforced not a building design code but their own arbitrary concept of the provisions of an unwritten "statement" to be made on Gilman Boulevard. The commissioners' individual concepts were as vague and undefined as those written in the code. This is the very epitome of discretionary, arbitrary enforcement of the law.

Id.

294. *Id.* at 754. The court said the amicus brief "well illustrated" that "aesthetic considerations are not impossible to define in a code or ordinance." *Id.* at 753. The appendices to the brief included portions of municipal ordinances which: "contain extensive written criteria illustrated by schematic drawings and photographs. The illustrations clarify a number of concepts which otherwise might be difficult to describe with the requisite degree of clarity." *Id.* n.14.

> unarticulated, unpublished "statements" a given community may wish to make on or off its "signature street". It is equally unreasonable, and a deprivation of due process, to expect or allow a design review board . . . to create standards on an *ad hoc* basis, during the design review process.[295]

This Article has argued that the First Amendment content of the exterior design of a single-family house requires a municipality to narrowly and clearly articulate the aesthetic standards to be used in evaluating the proposed design; the First Amendment also requires that the municipality carry the burden of demonstrating that the denial or conditioning of a building permit is necessary to "further a sufficiently substantial government interest."[296] When First Amendment interests are implicated, the courts cannot apply the usual deferential analysis which places the burden on the party challenging the regulation to prove that it constitutes an arbitrary regulation of property rights.[297] When a municipality applies aesthetic standards to deny or restrict a private landowner's construction or alteration of a single-family house, the burden properly rests on the municipality to justify its interference by adequate evidence of a substantial governmental interest being advanced by the application of narrow, clearly defined standards.

VII.

Robert Venturi believes that to be vital as well as valid, architecture must embrace "contradiction as well as complexity."[298] He has demonstrated in his writing and his buildings that variety is preferable to conformity, that "there is room for, and need for," a "catholicity of . . . taste" in our landscape.[299] Our landscape should "embrace

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295. *Id.* at 755.

296. *See* Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981).

297. *See id.*

298. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 16; *see also* Scully, *supra* note 115, at 10.

> Many species of high quality can inhabit the same world. Such multiplicity is indeed the highest promise of the modern age to mankind, far more intrinsic to its nature than the superficial conformity or equally arbitrary packaging which its first stages suggest and which are so eagerly embraced by superficial designers.

Id.

299. Venturi, *supra* note 193, at 66.

> A connoisseur of music will pride himself on the catholicity of his taste. . . . Why will this person accept in his own living room . . . what he will not accept in the landscape? . . . Why will he condemn pop architecture and accept pop music? . . . [T]here is room for, and need for, a hierarchy of musical forms in our lives. Why not the same thing for architectural forms in our landscapes?

Id.

continuity *and* discontinuity . . . clarity *and* ambiguity, cooperation *and* competition, the community *and* rugged individualism."[300]

Although arguing that architecture has "no fixed laws," Venturi acknowledges that "not everything will work in a building or a city"; the architect "must determine what must be made to work and what it is possible to compromise with, what will give in, and where and how."[301] His argument favoring architectural complexity and contradiction has extended architecture's vocabulary. The resulting "freedom from consistency and the opportunity for diversity . . . are important: inherent in them is sensibility to place, time, and culture, and recognition of the multiplicity and relativity of tastes."[302] Venturi's "return to a more traditional language in architecture" has given architects "a great deal more freedom to make richly expressive buildings with individual character" and "has produced evocative and eloquent public buildings."[303]

Language and architecture are related, inextricably. Venturi, in recognizing that, saw that it was "time to stop groping for a universal language, admit the confusion and start working to make a 'rich mix' of the polyglot . . . ."[304] He gave "architectural thinking the most angular shove it had received in half a century: away from beautiful, unitary, abstract form, toward linguistic variety and an ironic, mildly dandified awareness of history and how to quote it."[305] His shove did not create a domino effect leading to architectural anarchy: "Unity is not meant to be easy, . . . nor is diversity synonomous with disintegration. Difference is as great a civic virtue as justice, faith or grandeur."[306]

Venturi is a responsible revolutionary, reviving lessons from the past rather than simply razing a current ideology. His "architecture of complexity and contradiction has a special obligation toward the whole," embodying "the difficult unity of inclusion rather than the easy unity of

300. VENTURI ET AL., *supra* note 125, at 20.
301. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 41.
302. VIEW FROM THE CAMPODOGLIO, *supra* note 104, at 108.
303. RYBCZYNSKI, *supra* note 114, at 265.
304. Fowler, *supra* note 117, at 433.
305. Hughes, *supra* note 116, at 57, *see also* Christian Norberg-Schulz, *Less or More*, ARCHITECTURAL REV., Apr. 1968, at 257 (noting Venturi's "substantial contribution to the development of an architectural grammar").
306. Herbert Muschamp, *Democratic Decorations at Bard College*, N.Y. TIMES, Oct. 31, 1993, at H42.

exclusion."[307] Venturi's buildings have an "authenticity of . . . linkage to their respective environments, combined with which they constitute a 'perceptual whole.'"[308]

For many, including me, Venturi's position is most clearly expressed in his single-family houses. It is in this work that Venturi most clearly communicates his love of the art, his respect for the client, and his sensitivity toward the community.[309] His houses are meant to be inhabited and made alive by those who live within, who infuse a particular site with their presence, their activities, their possessions, their aspirations, and their dreams.[310] His houses are a delight for occupant and viewer, houses which, in not seeking to be revolutionary, have sparked a revolution.[311]

That revolution was one for tolerance and accomodation; for acceptance of variety in what is considered acceptable in the exterior design of single-family houses; for recognition of that design's capacity to speak on behalf of the inhabitants. Venturi celebrates, as did the *Gilleo* Court, our culture's "special respect for individual liberty in the home," a principle which "has special resonance when the government seeks to constrain a person's ability to *speak* there."[312] What this Article has argued is that the house's exterior design has the same ability to speak as did Ms. Gilleo's 8.5 by 11 inch sign protesting the Gulf War. That exterior design, like that sign, is "an important and distinct medium of expression" which can "both reflect and animate change in the life of a community" and which can "provide information about the

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307. COMPLEXITY AND CONTRADICTION, *supra* note 92, at 16.
308. VON MOOS, *supra* note 101, at 13.
309. *See* Goldberger, *supra* note 150, at H27.
310. *See* RYBCZYNSKI, *supra* note 120, at 171.
311. *See* RYBCZYNSKI, *supra* note 114, at 287.

> The concern that the architect shares with the artist is beauty. . . . But beauty is not reserved only for masterpieces. It is—or should be—present in all works of architecture. . . . Architectural beauty—perhaps delight *is* a better word—often has an everyday quality that is undramatic but precious.

Id.; *see also* Denise S. Brown, *On Houses and Housing*, *in* VENTURI SCOTT BROWN & ASSOCIATES ON HOUSES AND HOUSING 10, 13 (1992).

> Looking back on [Venturi's mother's] house in the context of the heroic and original late Modernism of the 60s . . . we realise its most significant characteristic might be that it looks like a house. It is not original, not heroic, but rather, conventional and ordinary, in it specific, not implicit, references. In not being revolutionary it is astonishingly revolutionary.

ID.

312. City of Ladue v. Gilleo, 114 S. Ct. 2038, 2047 (1994).

identity of the 'speaker'" to "an audience that could not be reached nearly as well by other means."[313]

When a municipality seeks to restrict that speech, it should be held to the standard applied in *Schad* where the zoning ordinance sought to ban non-obscene live nude dancing; "when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest."[314] And, as in *Schad*, the burdens of production and persuasion should be placed on the municipality.[315]

We must remember that a house is more than a shelter.[316] It is a statement for the people who live there, an expression for themselves and to others of who they are and how they choose to live. It is an expression made as clearly as if written or spoken and just as clearly entitled to First Amendment protection.

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313. *Id.* at 2045-46; *see also* Paul Goldberger, *Moore's House Divided*, N.Y. TIMES, Oct. 20, 1994, at C1 ("To build a house, the architect Charles Moore once wrote, 'you bind the goods and trappings of your life together with your dreams to make a place that is uniquely your own.'")

314. Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981). A municipality may act to control the secondary effects generated by otherwise protected First Amendment activity if the "ordinance is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 50 (1986).

315. *See Schad*, 452 U.S. at 71.

> [W]hen the government intrudes on one of the liberties protected by the Due Process Clause of the Fourteenth Amendment, "this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation." Because the ordinance challenged . . . significantly limits communicative activity within the [municipality], we must scrutinize both the interests advanced by the [municipality] to justify this limitation on protected expression and the means chosen to further those interests.

Id. (quoting Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977)).

316. See RYBCZYNSKI, *supra* note 120, at 66-67, describing

> the unique nature of the art of building, an art of compromise which unites the beautiful with the practical, the ideal with the possible, the ephemeral with the concrete. . . . Unlike [other creative endeavors] which produce objects in space, buildings *contain* space. Moreover, it is space that is intended not only to be experienced and admired but also to be inhabited. Making space is a social art; and although architecture consists of individual works, these are always parts of a larger context—of a landscape, of other buildings, of a street, and, finally, of our everyday lives.