

TO: RICK NERO

fax: 727 6072

2011 JAN 23 PM 3:56

14 pages
w/o cover

FROM: CHRIS OTTEN

phone 202 704 8391

RE: BZA APPEAL #18152

+ Attached amended appeal

+ Park Marconi affidavit

~ to come hard copy of
exhibits hand delivered

& trouble w/ email
today!

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18152

EXHIBIT NO. 30

2011 JAN 28 PM 3:56

**Yasmin Romero, 3149 Mount Pleasant
Street Tenants' Association**

DCPL met with citizens and commissioners when they had planned to or were directed to do so. DCPL never proactively sought to work with concerned individuals to seek solutions. DCPL

might well have been able to resolve issues with Commissioners, neighbors, and library patrons had it sought to approach them in a genuinely collaborative manner.

Citizens and ANC Commissioners are all volunteers. It is not easy or quick to request or obtain documents from government agencies even when they are legally mandated to be kept available. In practice, it is far from clear and simple what actions need to be taken and deadlines adhered to. Concerned citizens, library advocates, and their Advisory Neighborhood Commissioners went to extraordinary lengths to demonstrate their concerns to authorities and to the public and even to propose solutions, which were ignored.

Hence, we find ourselves before the BZA.

FACTURAL BACKGROUND

The Mount Pleasant Library in Washington, DC, was built in 1925 and sits on lot 830 in Square 2595 and is zoned R-5-D.

The library was built on land donated by Mary Foote Henderson, with funds provided by library philanthropist Andrew Carnegie, under the accomplished eye of architect Edward L. Tilton of New York.

The library building was configured to sit on a unique pentagonal-shaped lot that "fronts" on both 16th and Lamont Streets. There is a grand staircase that serves as the historic entrance to the library greeting visitors at the apex of the two streets.

Lot 830 and the library exist as a gateway leading from 16th Street to an historic business and residential corridor which sits behind the library lining up along Mt. Pleasant and 16th Streets. It is currently the only library serving all of Ward One.

The residential and business corridor behind and adjacent to the library has been threatened by three serious fires in the past thirty-six months. One building burned to the ground, one has been condemned, two people have died, a family was badly burned, millions of dollars in property has been destroyed and many neighbors have been displaced.

In June, 2008, DCPL held a second community design meeting, presenting the first opportunity for patrons to view actual proposed design drawings. Attendees were surprised to see an expansion when the plans were unveiled as the public had never advocated for or anticipated an expansion plan.

In July 2008, the Mount Pleasant ANC was officially notified by DCPL of their plans to expand the library from approximately 17,000 square feet to more than 20,000 square feet.

On March 26, 2009, DCRA Zoning Administrator Matt LeGrant sent a letter of determination to DCPL's legal counsel allowing DCPL's architects to expand the library into the original rear yard, all the way to the property line. (See Exhibit).

The ZA's letter of determination was not shared with the public at the time, including ANC-1D, and hence there was no opportunity for the public to review, and if necessary, object to this determination.

On June 3, 2009, DCPL hosted their last public design meeting showing their "final" design (See Exhibit).

In June 2009, ANC-1D passed a resolution proclaiming the primacy of fire safety with regard to the library designs. This was not responded to by DCPL (See Exhibit).

In August 2009, the DC Fire Department declares the historic area around the Mount Pleasant Library as a "trouble spot" due to it's lack of access to adequate hydrant service and the difficulty in navigation for emergency personnel.

In May 2010, ANC-1C contracted and received an independent expert review of the proposed library plans that examined compliance with DC Building Code. This report highlighted serious problems with the plans, affirming community concerns about the proposed expansion and accessibility ramp with regard to fire safety for surrounding neighbors. (See Exhibit).

Several plausible alternative designs were offered to DCPL to encourage the opportunity to increase emergency access to the residential corridor behind the library but they were dismissed without any meaningful response (Exhibit).

In August 2010, DCPL was awarded a building permit by DCRA. ANC-1C's independent expert reviewed the building plans just before issuance of the permit and again found the plans to be deficient with regards to fire safety and ADA compliance. (See Exhibit)

DCPL begins interior demolition sometime in September 2010 continuing through the fall and into the winter.

DCPL began exterior soil excavation after mid-January 2011.

* See Full Timeline Exhibit

THE AMENDED APPEAL

Testimony of Immediate Neighbor Evelyn Brewster

Evelyn Brewster lives overlooking the Mt. Pleasant Library rear yard. If BZA Board members have time to read only one letter from concerned neighbors, we recommend Mrs. Brewster's affidavit as one of the best examples of the variety and extent of concerns and problems from a citizen's point of view. (See Affidavit).

DC Municipal Regulation 11-404. REAR YARDS (R).

The determination to eliminate the rear yard of the library has precipitated a situation which heightens the concerns of surrounding residents. The residential corridor behind the library has seen two major fires occur over the past thirty-six months and most recently witnessed a fire on Christmas Day 2010. These fires have destroyed two buildings worth millions of dollars and have killed two people and injured several others, including children (Exhibit).

By largely ignoring this dangerous fire safety context from their planning, DCPL and DCRA have ignored a chance to expand this historic library responsibly. Instead of increasing access to the area behind the library, the proposed plans eliminate the original rear yard, replacing it with a structure that expands out from the back of the original library building all the way to the property line (Exhibit).

According to the statement by DCRA's counsel to the Board of Zoning filed on January 7, 2010, DCRA is claiming that the library lot is a corner lot. Assuming this is indeed a corner lot, something which could be debated, it means the property owner can determine the front boundary line of the lot. DCPL through DCRA has chosen Lamont Street as the street frontage to the lot.

One may imagine that a shift in the lot frontage could shift where the rear yard may be located, but common sense should prevail in this matter. In that regardless of whether the street frontage is on Lamont Street or 16th Street, the rear yard will remain the same -- it is the area that sits directly behind the original building (Exhibit).

The Zoning Administrator's determination letter arbitrarily eliminates the original rear yard.

The original library property, Lot 830, on which sits the original library building, has two side yards, one on the north-west side of the building and one on the north-east side of the building and a rear yard on the south side of the building.

The proposed library design plans eliminate the side yard on the north-west side of the library, filling it with the proposed 100+ foot long, 7 foot high, accessibility ramp, and eliminates the rear yard by filling it with the proposed addition.

Pursuant to DCMR 11-404, since the Mount Pleasant Library does not abut or adjoin any lot lines along a public open space, recreation area, or reservation, the rear yard requirements may not be reduced or omitted.

R-5-D -- Minimum Depth of Rear YARD -- 4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet.

The height of the library building is 45' 6", hence the minimum rear yard setback should be 15' 2" (See attached DCRA Zoning Data Summary for building measurements, page 2 of the attachment).

The natural and original rear yard has at maximum a 48' setback, and at minimum a 20' setback thus an average of a 34' rear yard setback (See Exhibit).

Going from a 34' original and natural rear yard setback down to the proposed 15' set back in the proposed new rear yard on the south-east side of the building is more than a 50% reduction.

The DCRA Zoning Administrator (ZA) has the limited authority to reduce the linear requirements of the rear yard setback (See DCMR Ch.11, 11-407.1).

In March 2009, the ZA penned a letter of determination that allowed switch in the rear yard location resulting in a major change to the lot orientation, ultimately eliminating the original and natural rear yard (See attached ZA's letter of determination, 3/26/2009, page 3 of the attachment).

However, the ZA's authority shall not exceed a 10% linear reduction. In this case, his authority does not hold weight because the resulting reduction in the rear yard setback is greater than 10%.

Further, the ZA's letter has various statements which seem inconsistent with the results of the determination.

In the letter of March 26, 2009 from Zoning Administrator Matthew LeGrant to attorney Kinley Bray (representing DCPL), regarding rear yard determination, the Zoning Administrator states:

- "3. The designation of Lamont as the "front" does not constitute a change in the location of the entrance, merely a minor change in designation."

Why is a minor change in designation able to be used as justification for radically changing the location of the rear yard? Changing the rear yard is not "merely a minor change in designation."

The Zoning Administrator also states:

- "6. The proposed rear lot line is opposite the Lamont Street frontage."

Appellants have contacted the ZA on several occasions to understand how he came to this conclusion. He has not responded to these inquiries as of yet.

Looking at DCPL's architectural documents, you can see a line drawn directly down the center of the library building. This line starts at apex of the intersection of 16th and Lamont Streets and projects through the grand front staircase and continues through the rear line of the building working all the way to the rear lot property line (Exhibit).

By drawing symmetrical lines from both the Lamont Street and 16th Street sides of the lot, one can see that no matter which street is determined to abut the front lot line, the rear yard naturally remains the same area behind the library building (Exhibit).

Further, DCPL architects acknowledge the natural rear yard of the library by declaring it on their public architectural documents (Exhibit).

The Zoning Administrator also states:

- “8. The proposed rear yard will ensure that adequate light and air are provided to the adjacent apartment house at 3150 16th Street (Lot 822 & 829, Square 2595), which has windows facing the proposed rear yard.”

The ZA fails to state that three other lots will be adversely affected by his determination of the front lot line and proposed rear yard. Lots 200, 802, and 634 all within Square 2595 will all be blockaded by the wall of the proposed addition which is 45 feet high and runs almost the length of the entire natural rear lot line. Lots 200 and 634 will have windows facing this wall which will sit less than twenty feet from their buildings. This adversely affects air and light and reduces protection of their property by eliminating emergency access from Lamont Street.

The Zoning Administrator also states:

- “9. Consistent with Section 101.3 of the Zoning Regulations, the proposed rear yard will result in larger yard and a greater percentage of unoccupied land area than any other alternative.”

Appellants have also inquired with the ZA on a couple of occasions to understand the calculations used to make this statement.

The original rear yard is between 3,100 to 3,500 square feet in area. This original side yard, or proposed new rear yard, on the north-east side, with a measurement from the front of the library building to the rear lot line, is about 1,900 square feet in area.

This would mean the Zoning Administrator not only wants to arbitrarily move the original rear yard to the north-east side of the building but also wants to arbitrarily shrink the original rear yard by about 45% in size despite the concerns about emergency access to the rear of library and surrounding properties (Exhibit).

There are other plausible alternatives which will achieve an expansion without risking people's property and lives.

Fire Safety Concerns Raised by Reduction of the Rear Yard

One of the meetings requested by citizens and convened by the Ward One Councilmember featured DC Fire Chief Dennis Rubin. The Chief explained multiple times that more distance between buildings is desirable to prevent fires “jumping” or “lapping” across spaces between proximate buildings. Inhabitants of the buildings around the planned new library addition, which will extend to the full lot line on one side wonder how further reducing the distance between the library addition and their buildings helps protect them. Further, they wonder how a reduction in access space for emergency equipment could be seen as anything other than a reduction in the safety of their lives and property.

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DC Municipal Regulation 11-406. COURTS (R).

R-5-D All other structures -- Minimum Width of Open Court -- 3 in. per foot of height of court, but not less than 10 ft.

There is a brand new open court being developed as a result of DC Public Library's decision to run a long and tall accessibility ramp on the north-west side of the library building.

The height of the library building is 45' 6", hence the minimum open court width should be 11' 4".

According to DCPL architectural plans (See attached DC office of Surveyor Document dated 12/8/2009, page 6 of the attachment), parts of the court along the north-west side of the building is 6' 7", far less than the required court width of 11' 4".

DC Municipal Regulation 11-3202. BUILDING PERMITS

Pursuant to 3202.2(a)(3) each application for a building permit shall be accompanied by parking and loading plans and the basis for computation of those plans.

Appellants visited DCRA offices to review the application file for Permit #B1001861 on Friday, January 28, 2011 at approximately 11:30pm. Review took place with Deputy Director of Permitting, Rabbiah Sabbakhan where it was discovered there were no plans for either parking or loading in the application file.

Pursuant to DCMR Ch.11, 3202.1, a building permit shall not be issued for the proposed construction of any structure unless that structure complies with the provisions of this title.

This is especially important as the loading area has shifted in these designs. There was a clear and wide loading area for library materials on the northwest side of the building.

This is being replaced with the highly controversial accessibility ramp. A loading ramp is proposed to be placed on the northeast side of the building approximately 10 feet from the adjacent apartment building. This will risk a nuisance for the many residents whose windows face this new loading ramp, which extends for almost the entire length of the side of the library building.

Now, surrounding neighbors will have library patron and employee traffic on both sides of the library. The accessibility ramp, as close as a foot to lot 837, the Mount Pleasant Condo building. And the loading ramp, which is proposed to be close as 10 feet to lot 829, the Park Marconi building.

Conclusion

The applicant, DCPL, has the right to expand library services in Ward One. Many residents appreciate this desire to better serve our community.

The applicant may even have the right decide to invest all potential Ward One library capital funds into expanding the only library serving the entire Ward, the Mount Pleasant Library, instead of choosing to conduct a comprehensive library service analysis of the entire Ward and dividing the investment between renovating the Mount Pleasant Library and building out another library in an underserved part of the Ward.

But, the applicant does NOT have the right to design a library plan which will result in a substantial detriment to the public good or impairs the intent, purpose, and integrity of the zone plan as embodied in the aforementioned Zoning Regulations pursuant to DCMR Chapter 11, Section 3103.2.

By the testimony and appeal exhibits, the Board can see that throughout the course of the proposed library design process many members of the public humbly and respectfully petitioned the library to change their plans. Signed petitions, emails, letters, phone calls, expert review, affidavits, testimony, and plain common sense all show that the size of the rear expansion and side ramp would adversely affect air and light for surrounding neighbors, further stifles an overcrowded area behind and adjacent to the library, and results in less access for emergency personnel into this known "trouble spot."

Further, if the appellants received a copy of the Zoning Administrator's letter of determination in a timely manner, the appellants would have expressed opposition to this important decision that gave DCPL the cover to eliminate the rear yard and fill it with their proposed expansion.

Although the library is a commendable public service use, flexible judgment would still not allow the library's unvarying "building program" to endanger people's property and lives. Appellants would expect that even if the applicant requested a variance in this case they could not show an institutional necessity for the design. *Draude v. DC Board of Zoning Adjustment*, 527 A.2d 1242, 1256 (DC 1987).

There have been too many inconsistencies with the choice to expand this library without more comprehensive planning, especially in the context of the surrounding neighbors.

For example, DCPL did not force a 20,000 square foot building program onto two other Carnegie libraries which have also been renovated since Ginnie Cooper came on board as Chief Librarian. In recent times, the historic Takoma Branch library and the historic Southeast Branch library both were renovated within their original walls -- like how the plan had been for Mount Pleasant library up until the second design meeting in June 2008, when the expansion plan was revealed for the first time.

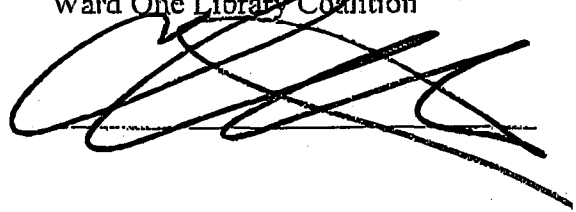
The appellants believe the applicant, while at heart is attempting to help our community, has designed plans which will put our neighbors at risk of serious danger. We believe the ZA stepped beyond his authority and in fact erred in his determination allowing the applicant to build

an expansion all the way to the original rear property line. The result is a proposed library plan which reduces air and light to surrounding neighbors, will affect land values, overcrowds the land behind the library, and diminishes the protection of property and lives of library neighbors who have witnessed a steady nightmare of fires which cannot be easily dealt with by emergency personnel due to already limited emergency access.

The appellants ask the Board to revoke building permits until the applicant actively engages with the community and City Council to develop a compromise plan that seeks more safety for library users and library neighbors. There are already plenty of plausible design alternatives that have been offered, so a delay need not be long.

Respectfully submitted.

CHRIS OTTEN
ANC Commissioner (2009-2010)
Community Organizer,
Ward One Library Coalition

A handwritten signature in black ink, appearing to be 'Chris Otten', written over a horizontal line.

January 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Pre-hearing statement was served by electronic transmittal on this 28th day of January 2011 to the following:

Jay A. Surrahian, Counsel DCRA
jay.surabian@dc.gov

Ginnie Cooper, Director DCPL
ginnic.cooper@dc.gov

Affidavit of Evelyn Brewster, President of the 3150 – 16th Street Residents' Association, Park Marconi

My name is Evelyn Brewster. I am of legal age, and currently reside at

3150-16th St NW, APT 20010 Park Marconi

Affidavit Deed

- DC Public Library have proposed plans to renovate and expand the Mount Pleasant Library, located at 3160 Lamont Street, NW, Washington, DC.
- The proposed plans call for a three-story expansion off the back of the original library building, extending out all the way to the rear property lot line.
- The proposed expansion will block emergency access from Lamont Street to the rear of the library and adjacent Mount Pleasant apartment buildings and businesses.
- The proposed expansion will also block light and air and will reduce the quality of life for surrounding residents living in the apartments.
- There has been no meaningful analysis of how the proposed library expansion will affect the ability of emergency personnel in any emergency situation to rescue people and property of those in the surrounding area.
- There have been at least two major fires in the past two years along this residential corridor destroying two buildings and damaging a third, plus there was loss of life.
- This corridor is known to the DC Fire Department as a "trouble spot" in terms of the inability of emergency personnel to navigate easily and the lack of adequate hydrant service.
- Residents of the Park Marconi believe the proposed library expansion plans heighten the problem of emergency access and fear for their property and lives.

See attached exhibit for narrative of the concerns.

Washington, DC:

Evelyn Brewster, being first duly sworn on oath according to law, deposes and says that she has read the foregoing AFFIDAVIT OF The 3150 – 16th Street Residents' Association, Park Marconi, by her subscribed, that the matters stated herein are true to the best of her information, knowledge and belief.

Evelyn Brewster
[deponent's signature]

Evelyn Brewster
[deponent's name]

SUBSCRIBED AND SWORN to before me this 7th day of January, 2011.

[Signature]
[signature of the person authorized to take affidavits]

Customer Service Rep / Notary
[title of the person authorized to take affidavits]

My commission expires 1/14/15



THE 3150 - 16TH STREET RESIDENTS' ASSOCIATION PARK MARCONI

The Park Marconi has stood in the heart of Mount Pleasant for 75 years and was designed by none other than the architect, Robert O. Scholz, who was known for his Art Deco buildings. Located at 3150 16th Street in Northwest Washington, DC the Park Marconi boasts a residency that has lived in the building for as long as 48 years to more recent residents, and neighbors who are multicultural, intergenerational and multi-lingual.

Standing between what was once the historic Meridian Hill Baptist Church and the Carnegie-designed Mount Pleasant Library, this apartment building is home to me and my neighbors.

This affidavit serves as notice of concern to be conveyed to DC commissions, boards, panels, and courts that the Park Marconi is being placed in unnecessary jeopardy. Conveyance of this concern is evidenced by the many letters we, the residents, have sent over the past two years and the number of meetings we attended.

This affidavit also serves as notice that Chris Otten, an ANC Commissioner and local organizer with the Ward One Library Coalition, has been a partner with the residents of the Park Marconi in expressing these concerns to DC leadership and we appreciate his help as our civic partner.

We are deeply concerned because we live within five feet on the South of the now burned out and condemned Meridian Hill Baptist Church and within 10 feet on the West of the burned-out Deauville apartment building on Mount Pleasant Street. The Deauville was totally destroyed in a five alarm fire in March 2008, displacing more than 80 families. Leaping flames from this tragic fire also destroyed the Church. Only the burned shell remains - supported by an iron framing structure.

In November of 2010, a neighbor fell to his death, a mother died from serious burns, an entire family seriously burned with life-threatening injuries, and numerous residents injured in a fire in Sarbin Towers...just three doors away from our homes.

On Christmas Day 2010, a fire occurred on the top floor (5th) in our building, the Park Marconi. To our dismay, horror and deep concern, as we have forecast, the ladder truck was unable to make the turn to enter the curved access road in front of the building. Only the smaller truck was able to gain entrance. Adding to the Fire fighters dilemma and our fear was the

fact that none of the fire hydrants near the building or library were operational. Fire fighters were forced to close 16th Street between Park Road and Irving Street and run a hose from the smaller truck in front of our building across the national park and across 16th Street to a hydrant near the Department of Parks and Recreation building some 175 feet away.

We are thankful that no loss of life or property occurred at the Park Marconi. But, understandably with the number of fires, deaths, injuries, loss of homes and property along this fragile residential corridor, we continually express our concerns that that our area, aptly named by the DC Fire Department a "trouble spot" is a tragedy in-waiting. It is extremely difficult to navigate by emergency personnel. This is quite disconcerting to not only the residents of Park Marconi, but also to our more than 1,000 nearby neighbors.

We believe that these concerns are totally justifiable and meritorious. These life-threatening events make it necessary for us to continue to resist the plans to renovate and expand the Mount Pleasant Library under its current design. Library expansion is needed and welcomed, and we commend the District of Columbia Library Board for its vision. However, we strongly believe and have continuously urged that the renovation and expansion be done responsibly. Unfortunately, our presence at meetings, letters and pleadings have fallen on deaf ears. The plans, in fact, further endanger those of us living near the library and along this dangerous corridor.

The plans call for an addition to the original library that will expand the building all the way to the rear property lot line. This will put the library less than 20 feet from residents living in two adjacent apartment buildings. The expansion further raises the building to a total of three stories, not including rooftop HVAC units. This will block light and air and ruin our quality of life.

Further, a long and high accessibility ramp on the Northwest side of the building will prevent emergency personal and equipment from being able to access the rear of the library and adjacent buildings. Reducing emergency access for this corridor simply is not prudent given the history of disaster on this corridor and endangers the lives of those living at the Park Marconi and surrounding apartments.

Residents in the Park Marconi and the two adjacent buildings on Mount Pleasant, as well as concerned neighbors have asked Fire Chief, Dennis Rubin, to help the community evaluate how best DCFD will navigate emergencies given the library plans. We heard from him twice. First in Spring 2009 when the plans were still in development stage and he said in a

public and recorded meeting, "the greater the distance between the buildings the safer things are for his fire personnel and to limit fires jumping across the building gaps." Chief Rubin was referring to the library's anticipation of bringing the addition less than 20 feet from surrounding buildings.

Then in Summer 2010 and with no changes to the size of the expansion, Chief Rubin said he gave an "eyeball" evaluation of the property and approved the proposed library plans. We felt betrayed and insulted that he provided no meaningful report with calculated data or figures as to what project components were actually evaluated and no analysis of how under the proposed plans, he and his staff would respond to fire and EM emergencies of the more than 1,000 affected residents. We believe the proposed plans will reduce emergency response time to this troubled area.

The proposed addition includes a massive wall attached to the rear of the current structure that will expand to less than 20 feet from our buildings and the buildings behind the library on Mount Pleasant Street. Not only does it encroach upon us, this proposed structure will block precious light and air and limit the quality of our lives. It further heightens any already frightening fire and emergency situation.

In summary, the proposed addition will indeed block an emergency access point from Lamont Street and forever forestall a chance to make this "trouble spot" a safer place to live. Given the last two years and three buildings that have witnessed devastating fires with loss of life and property we fear that the Park Marconi may be next to face these serious consequences.

We are seeking help to rectify these plans, bring the plans into compliance with safety protocol, and prevent any additional senseless deaths, injuries, loss of homes and property from occurring because of the failure to act responsibly and now.

Plausible alternative plans have been offered to DCPL and their project managers have met with community leaders to discuss these alternative plans. But, again, DCPL moved ahead with its original plan - ignoring the residents, Fire Chief and EM Chief. Our Councilmember, Jim Graham held meetings to discuss alternatives solutions. But now insists that we move on from this issue. With all due respect to Mr. Graham, he does not live in this corridor and has not had to clothe, feed, and house neighbors who have been displaced. Nor, has he had to attend the funerals and visit the injured. Nor does he have the "founded" fears that we have when we hear the wail of a nearby fire truck or ambulance. And so, this issue of safety still and

continues to be an important matter to us because it directly affects our lives and homes.

The Park Marconi asks that City leadership seek a more reasonable expansion of the Mount Pleasant Library -- one which puts the safety of we, the residents as a priority.

Thank you.

Evelyn Brewster

Evelyn Brewster, President
The 3150 16th Street Residents' Association

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 7 day of January, 2011

Morlan K. Dunlap

Morlan K. Dunlap, Notary Public, D.C.

My commission expires January 14, 2015.

