

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENTS**
441 4th Street, N.W.
Washington D.C. 20001

Appeal of ANC 1D *et al.*¹

Appeal No. 18152

2011 FEB 15 PM 2:37

DISTRICT OF COLUMBIA'S POST HEARING BRIEF

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits its post hearing brief as permitted by the Board at the February 1, 2011 hearing.

At the hearing, Appellant and Intervenor (collectively, the "Appellant") failed to establish that the Zoning Administrator ("ZA") erred in his approval of the August 13th Permit for the construction of an addition to the Mt. Pleasant Library at 3160 16th St., NW ("the Property"). Of the four issues before the Board, the issues concerning parking, the size of the court, and the requirement for loading space were utterly frivolous.² As to the rear yard issue, the Appellant did not offer any compelling evidence as to why the ZA erred. The Appellant offered no expert testimony and identified no regulation or case law that contradicted or rebutted the ZA's decision to identify the yard at the south of the lot as the rear yard. Without that legal basis, Appellant's case amounts to an unsubstantiated expression of dissatisfaction with the ZA's decision. Dissatisfaction alone does not constitute an error in the administration of the Zoning Regulations. Accordingly, the Appellant failed to meet its burden and the appeal must be denied. See 11 DCMR § 3119.2 ("In all appeals and applications, the burden of proof shall rest with the appellant or applicant.").

¹ Intervenor: Christopher Otten, 3145 Mount Pleasant Street Tenants' Association, and 3150 16th Street Residents' Association

² Under 11 DCMR § 2120.3, the construction of the addition did not require parking. See Transcript of February 1, 2011 ("Tr.") at p. 218-220. The "court" at the north west corner of the property complies with 11 DCMR § 406.1 as it is clearly in excess of the required 10 ft. minimum. See Tr. at p. 216. Under 11 DCMR § 2201.1, the regulations do not require loading space as the library is less than 30,000 sq. ft. in gross floor area. See Tr. at p. 217-8.

Historically, the Board defers to the ZA's interpretation and application of the Zoning Regulations so long as it is reasonable and consistent with the Zoning Regulations. This case should be no different. Here, the Zoning Regulations are largely silent as to how the ZA is to identify the rear and front lot lines. The ZA explained that, consistent with the regulations, he permitted DCPL to select Lamont Street as being the front. The Zoning Administrator then decided that the southern lot line was the rear.

While arguably, both the western lot line and the southern lot line could be seen as being opposite Lamont Street, the ZA was well within his discretion to label the southern lot line as the rear. Since the lot containing the library is irregularly shaped (like an irregular pentagon), the Zoning Administrator must use his discretion to identify the sides and rear of the lot. Had the Zoning Administrator chosen the western lot line as the rear yard, the southern lot line and 16th Street facing lot line would be side yards. That would be a rather odd lot configuration since the side yards would be perpendicular rather than opposite one another (as they would be in a rectangular lot). Instead, the Zoning Administrator chose to orient the lot in a more traditional way with the front opposite the rear and the sides opposing one another. At the hearing, the ZA also explained that using the western line and 16th Street line as the sides of the lot makes more sense when calculating the width of the lot. See Tr. at p. 250-1.

It is also clear that the addition to the library does not have a negative impact on fire safety in the area. Due to the existing wall on the north west property line, the construction of the addition does not have any impact on access by the fire department to neighboring apartment buildings. See Tr. at p. 152-5. Appellant's objection to the proximity of the southern wall of the library to neighboring buildings is also misplaced as that wall is a fully compliant 15' from the property line. In addition, the August 13th Permit was approved only after a thorough review for compliance with the *District of Columbia Construction Codes*, including the *Fire Prevention Code*. Appellant chose to ignore these facts and instead make repeated, false accusations that the library is a "dire" fire safety risk. See e.g. Tr. at p. 62, 109, 117, 226, and 262. As former and present ANC commissioners, it is unfortunate that Dr. Edwards and Mr. Otten would deal with an issue as serious as fire safety in such a careless and irresponsible manner.

For the reasons set forth above, the appeal should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by email, this 15th day of February 2011, to the following:

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