

Memorandum of Points and Authorities

2011 FEB 15 PM 4:27

This Memorandum is limited to the primary issue in this Appeal: the proposed addition sits squarely within the portion of the Property aptly defined as the "Rear Yard", as such term is defined, without ambiguity, in Section 199.1 of the D.C. Zoning Regulations. More specifically, that the proposed addition sits within the area of the required Rear Yard setback required pursuant to 404.1.

Intervenor and Appellant have asserted that the issue is extremely clear and surprisingly simple. In addition to the plain language of the Zoning Regulations, Intervenor relies principally on the ZA's own testimony. The Zoning Administrator (ZA) testified that the designation of the rear yard in this case is his "judgment call," and not an arbitrary choice.

When asked which factors the ZA relied on in designating the historical side yard as the new rear yard, the ZA could not identify one single factor (video transcript approx. 7:15:50), although he did later note that he considered DCPL's desire to "maximize the size" of the addition and his desire to accommodate that.

We have no doubt that is the case. But that is not a proper factor to consider in interpreting the Zoning Regulations, and DCPL's plans to "maximize their addition" have nothing to do with how one determines the correct rear yard. Furthermore, this consideration by the ZA contradicts his earlier statement that the designation of the rear yard is not the applicant's choice, only that the street frontage could be chosen by the applicant because it has been deemed a corner lot.

At the hearing on February 1, 2011, the ZA testified, and confirmed on cross-examination, two key points: First, that the rear lot line and the rear line of the building are designated by determining what building line and lot line is "opposite" the designated street frontage. Second, when there is an irregularly shaped lot, it is a judgment call, not an arbitrary choice, for the ZA to determine what would be the appropriate rear lot line and rear building line.

Intervenor and appellant agree with both of these points.

To say it is a judgment call means that it is not a completely discretionary proposition. Obviously the ZA can not choose the front lot line and call it the rear lot line. Similarly, he cannot pick the side lot line and call it the rear lot line. During cross-examination, a lynchpin question was asked to affirm this appeal:

Mr. Otten: What factors led you to determine that this was the rear lot line?

Mr. LeGrant: ... "In the end I looked at that whole situation and I felt that... that could... that would be deemed a rear lot line as opposite the front, the frontage, of the lot."

Intervenor and appellant note that Mr. LeGrant's response is merely a conclusion, absent any support (or factors).

In other words, when asked which factors led him to designate the historical side lot line as the new rear lot line, the ZA could not identify one. Intervenor and appellant, on the other hand, have cited several convincing factors, which, collectively or alone, lead to the same conclusion -- that DCPL is proposing to build the addition within the only legitimate rear yard:

(i) Taking perpendicular lines back from the DCPL's chosen street frontage, leads you to the historical rear yard (Intervenor's Appeal Exhibit paginated page 33).

(ii) Viewing the building as symmetrically fronting on both 16th and Lamont Streets, with a central access point at the intersection of those streets, shows clearly the actual rear building line, and consequently the rear lot line is the line parallel to that rear building line (Intervenor's Appeal Exhibit paginated page 29).

(iii) All neighboring lots match up with the configuration proposed by Intervenor, i.e., the library's historical rear and side yards abut the neighboring rear and side yards, respectively (Intervenor's Appeal Exhibit paginated page 23).

(iv) Historically, the rear line of the building is unambiguous, and requires no deep analysis. The ZA's determination, on the other hand, requires an arbitrary change to what has always been known as the side yard.

(v) Webster's defines: **Rear** – n. 1. the back of something, as distinguished from the front.

DCRA's counsel has argued that the Board should just defer to the ZA, because it is an irregularly-shaped lot. Just because a lot is irregular in shape, does not mean that the Board must, or should, suspend its judgment. While the BZA may choose to accord the ZA some deference, it is the responsibility of the BZA to interpret the Zoning Regulations, and to correct the ZA when he makes an incorrect "judgment call," as is the case here.

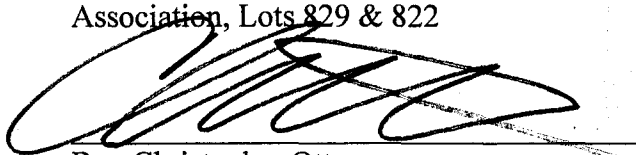
The Board can plainly see where the rear yard is located on this lot. If you asked 10 people on the street, you would have 10 people agree with the Intervenor and Appellant.

In the face of such an intuitive interpretation, the ZA should have a convincing argument why he opted for the historical side yard - other than the only argument he gave: that he was accommodating the DCPL and maximizing their proposed addition. But he has provided no other factors that argue against Intervenor's position that the rear yard remains as it has been for the past 80 years, regardless of a supposed change in the designated street frontage.

We would agree that the Board may defer in matters where it is a close call, or a choice of multiple, reasonable alternatives. In this case, the ZA's choice is not a close call, unfortunately runs against intuition and common-sense, and will affect many surrounding properties (Lots 837, 802, 200, 634, 829, and 822).

The Appellant and Intervenor have proven the ZA's error in judgment, and the ZA has, given several opportunities, failed to rebut this conclusion. The Board, as it is authorized to do, should therefore correct the ZA's plain error and grant the Appeal.

Respectfully Submitted, on behalf of
Christopher Otten and the
Park Marconi, 3150 16th Street Residents
Association, Lots 829 & 822



By: Christopher Otten

attached:
Intervenor Exhibits (paginated pages 22, 23, 33)

Washington, D.C., December 15, 2010

Scale: 1 inch = 20 feet

Recorded on Microfilm

Receipt No. 11-01233

Furnished to: ROBIN DIENER

I hereby certify that the existing improvements shown hereon, are completely dimensioned, and are correctly platted, that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted, and agree, with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

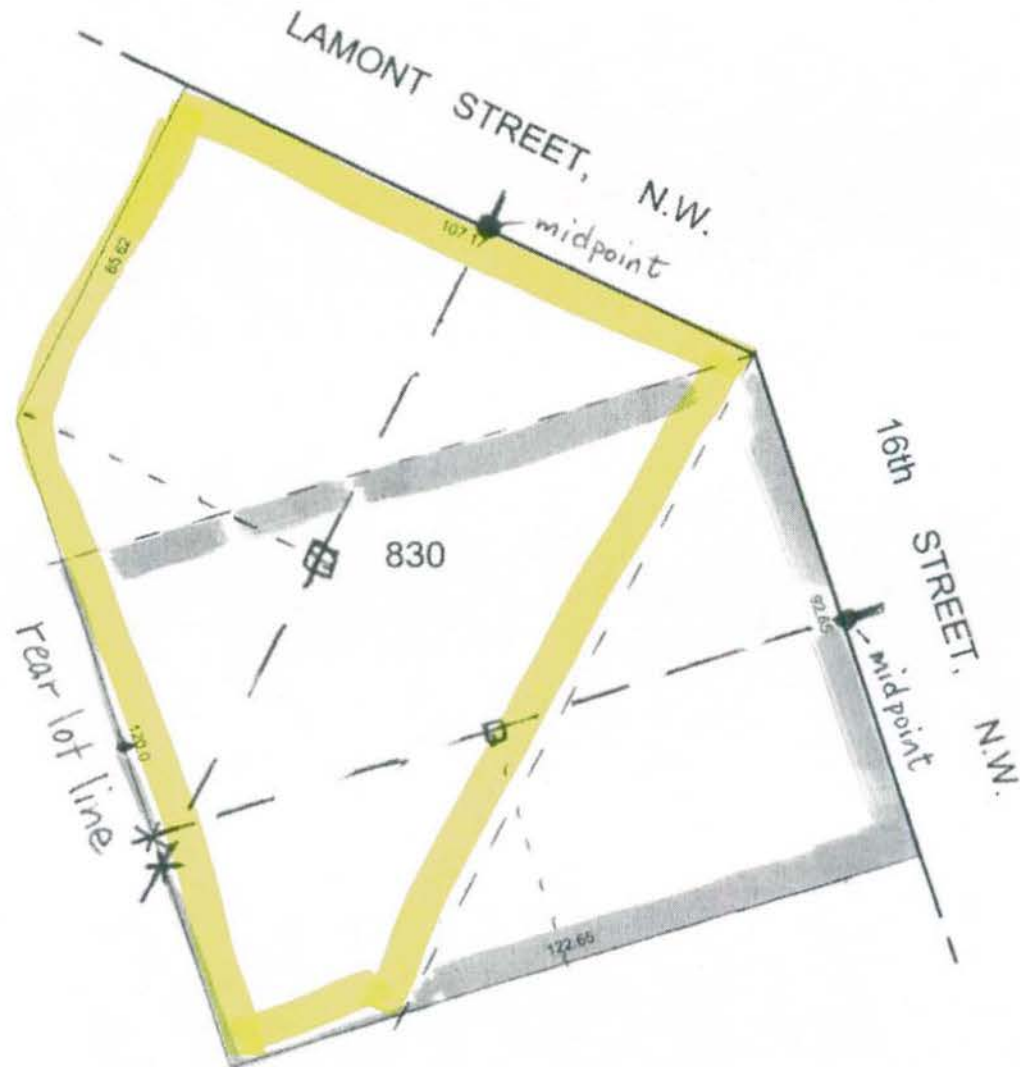
Date: _____

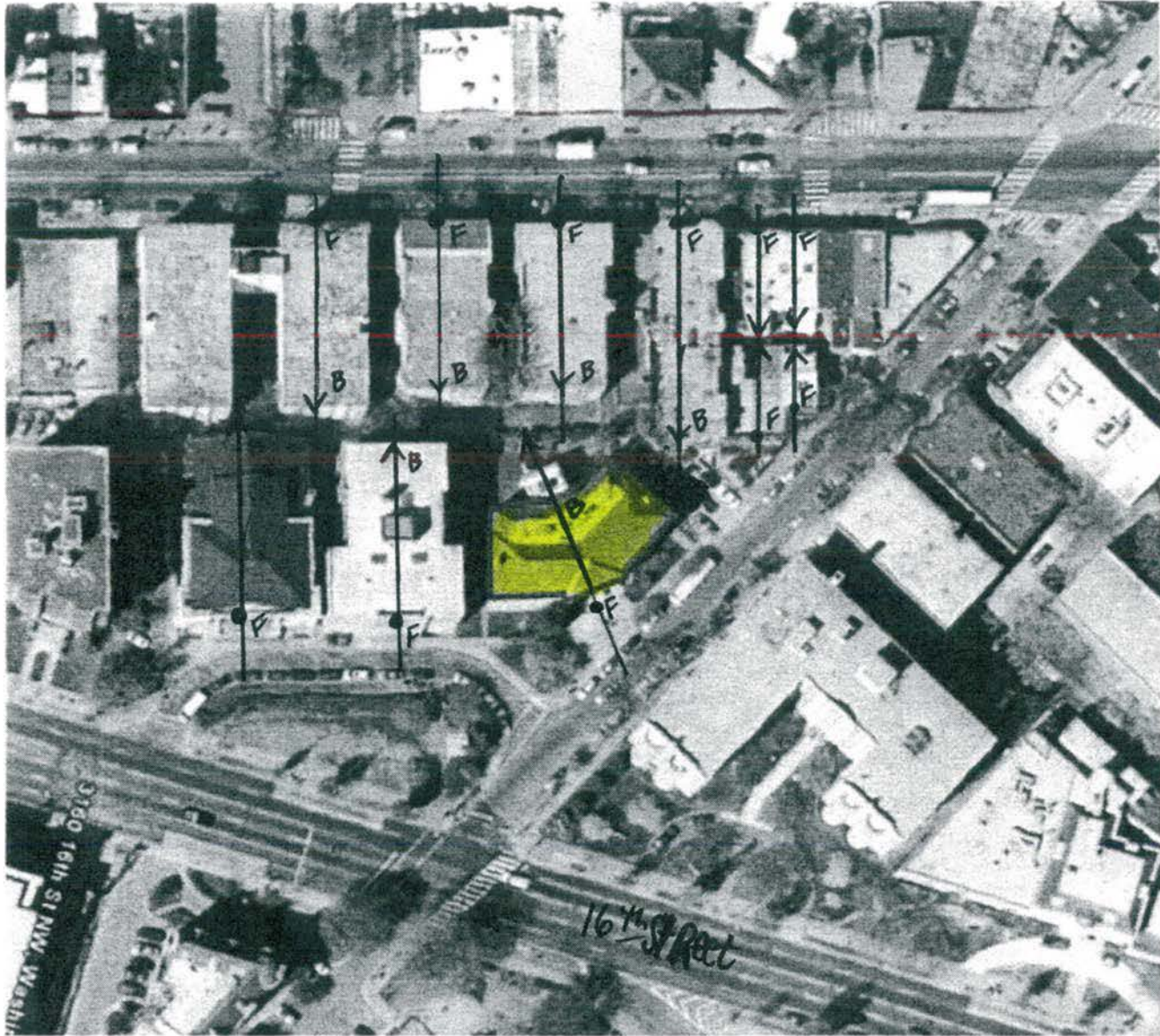
Surveyor, D.C.

By: A.S.

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Legs or Pirates are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



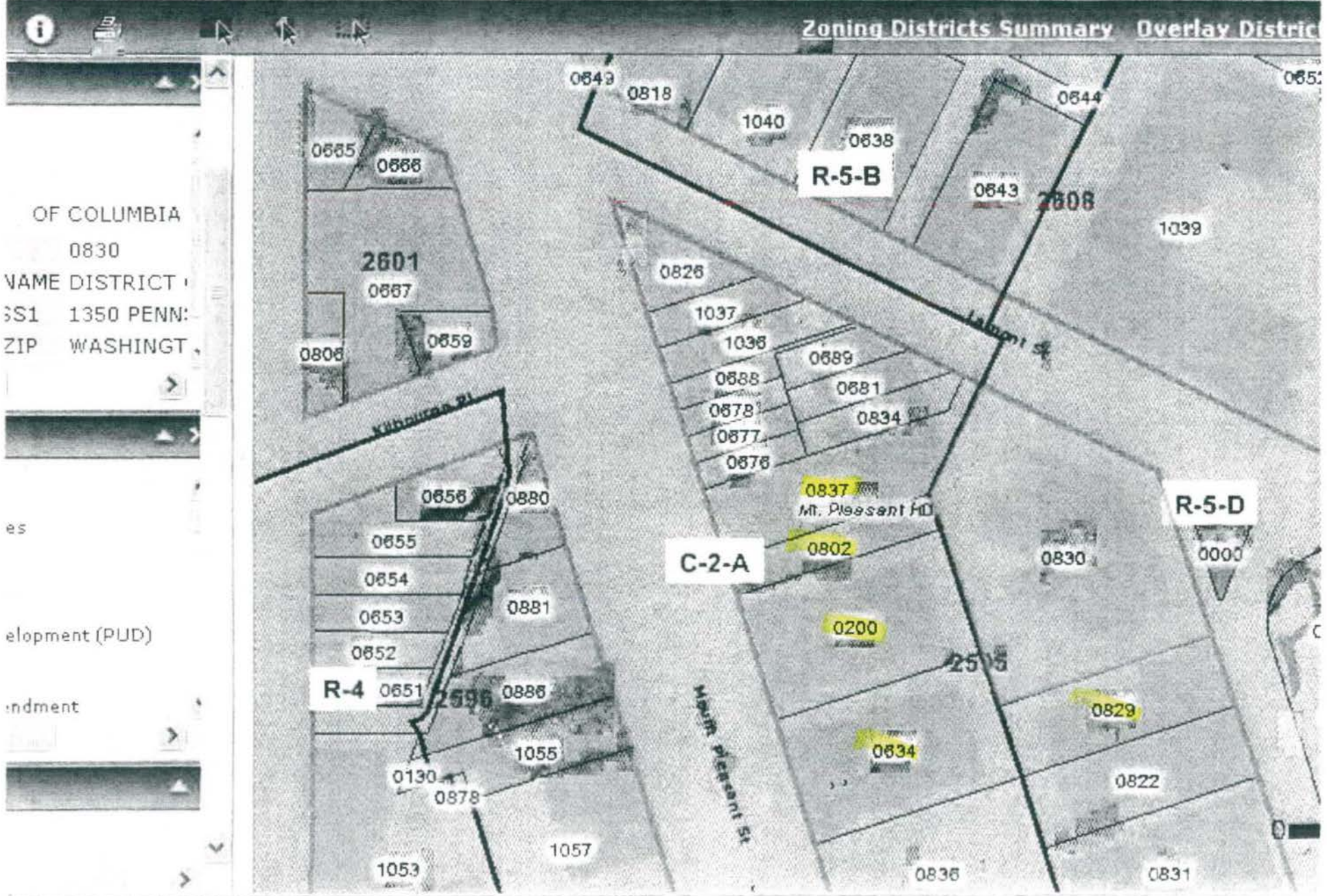


The Mount Pleasant Library, serving as the gateway to the historic Mount Pleasant neighborhood for visitors coming from the ever busy, ever famous, five-lane 16th Street NW, located south-east from the library.

F = front
B = back

City of Columbia Zoning Map

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TO: PINERO

FAX: 7276072

FROM: CHRIS OTTEN

Phone 202 387 8030

DATE: 2/15/11

TIME: 2:40 pm

RE: Appeal #18152

Memo of PTS + Authorities

U.S. OFFICE OF ZONING

2011 FEB 15 PM 2:52