



June 9, 2011

Meridith Moldenhauer, Chair
District of Columbia Board of Zoning Adjustment
441 Fourth Street NW, Suite 210S
Washington DC 20001

Re: Appeal of ANC 1D, Case No. 18152
Request for Decision at Special Public Meeting

Dear Chairperson Moldenhauer and Members of the Board:

On behalf of the District of Columbia Public Library (the "Library"), the District of Columbia agency responsible for the property which is the subject of the above-referenced appeal, and pursuant to 11 DCMR §§ 3100.5 and 3105.12, we hereby request that the Board schedule a special public meeting on or before June 21, 2011 to decide this matter. For the reasons stated below, any further delay in resolving this pending appeal will prejudice the Library, who is automatically a party (as Appellee-Intervenor) in the case pursuant to 11 DCMR § 3199.1(a)(3); will cause an unnecessary expenditure of significant administrative resources; and is contrary to the public good.

Background and Timeline

The subject appeal was filed on October 10, 2010. The building permit in question in this case was issued on August 17, 2010, and construction began promptly thereafter. By the time the case was initiated, construction of the renovation was well under way.

The initial hearing was held on January 11, 2011, but the matter was continued, at the request of the Appellants, until February 1, 2011. Upon conclusion of the hearing on February 1, 2011, the Board was unable to reach a full majority decision (as required by the Board's Rules of Procedure) to either grant or deny the pending appeal, only three members having participated in the case being present and voting 2-1 on a motion to deny the appeal. A second decision meeting was scheduled for April 5, 2011.

Due to the long-standing vacancy on the Board, only four Board members were present at the April 5, 2011 decision meeting. After further deliberation, the Board again was unable to reach a majority decision, with two members voting in the affirmative on a motion to deny the appeal, and two members opposed. Because a fifth Board member had recently been confirmed by the Council, but had not yet been sworn in, the Board scheduled a third decision meeting for June 7, 2011, a date far enough in advance to allow the new Board Member to read the record and participate in the vote.

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BOARD OF ZONING ADJUSTMENT

Board of District of Columbia
District of Columbia
CASE NO. 18152
EXHIBIT NO. 45

At the June 7, 2011 decision meeting, only one of the Board Members eligible to vote in this case were present, thus no decision action could be taken. The Board postponed decision to a fourth decision date at the next regularly-scheduled public meeting, which is to be held on July 12.

Further Delay Will Prejudice the Library

As explained on the record in this matter in the testimony of Jeff Bonvechio, Director of Capital Construction for the Library, the renovations that are now subject of this appeal were the result of a three-year planning process for the Mt. Pleasant Library . The District Department of Consumer and Regulatory Affairs, the Fire Marshal, and the Zoning Administrator carefully considered the Library's application for building permit over the course of eight months. The building permit was issued nearly a year ago. Millions of dollars have been committed to this project, which will ultimately result in a larger and more modern library to service the needs of the Mount Pleasant— community and the District of Columbia as a whole.

Further delay in resolving this matter will result in substantial costs to the District of Columbia Public Library and District taxpayers in the form of payments necessary to retain contractors on the now-delayed project, as well as additional lease payments for interim library space while the Mt. Pleasant facility is under the cloud of this appeal. There are no remaining vacancies on the Board and all members eligible to vote have had adequate time (a minimum of nine full weeks) to review the record in this case. Any additional delay in deciding the case is unwarranted and plainly against the public interest, thus we respectfully request that the Board schedule a vote for as soon as possible, rather than waiting until the next monthly decision meeting.

Further Delay Will Result in the Waste of Administrative Resources

Because the appeal in this case was filed well after commencement of construction on the Mt. Pleasant Library renovation, after two failed votes to decide the instant case, and in an abundance of caution, the Library filed an application for variance from the rear yard requirements (the only live issue in the instant appeal) to be heard in the event that the appeal was granted. The Board scheduled the hearing in that case, Application No. 18240, for the earliest available date, July 19, 2011.

Pursuant to the Board's Rules, at least fourteen days prior to the hearing in an application for variance, the Applicant must file any documents or other evidence upon which it intends to rely at the hearing. The Applicant's pre-hearing statement is thus due no later than July 5. Additionally, any reports of Advisory Neighborhood Commissions and the report and recommendation of the Office of Planning are due no later than seven days prior to the scheduled hearing, on July 12. In the event that the Board does not decide the instant appeal until July 12, a tremendous amount of administrative resources will have been expended to prepare for the variance case, which may ultimately be mooted after the relevant filing deadlines have passed. The staff of the Office of Zoning, as well as the Office of Planning, the District Department of Transportation, the Advisory Neighborhood Commission, and the Applicant will have to prepare

as if the variance will proceed for a case that ultimately may be withdrawn.. This represents an extraordinarily inefficient use of resources, which can be avoided if the Board decides the instant appeal at a special public meeting on or before June 21. Conversely, if the Board votes to grant the appeal at a special public meeting, there will be ample time for all stakeholders to prepare a full record in the variance application.

Expedited Decision is in the Public Interest

Of course the Library greatly anticipates the Board's decision in this matter, but so do all of the stakeholders involved in this project, including the Appellants. Any further delay in deciding this matter is contrary to swift administration of the Board's authority and powers. Two full hearing windows and three decision meetings have already been devoted to this case. The prompt resolution of this appeal may negate any further need for hearings related to this project, conserving the Board's limited time available for hearings and decisions in advance of the August recess.

We understand that the recent enactment by the Council of the Open Meetings Amendment Act of 2010 (District of Columbia Act 18-700) requires that the Board provide the public with the greater of 48 hours or two business days' notice of any meeting, including closed session meetings, and that as a result, the Board has enacted a policy of holding just one public (decision) meeting per month. In this case, however, further delay of a decision until the next regularly-scheduled public meeting could result in a tremendous waste of administrative resources and will cause significant harm to the Appellee-Intervenor, whose active and pending construction project is in limbo pending resolution of the appeal.

There is ample time to provide notice of a special public meeting on June 21 (including any closed-session deliberation necessary). In the event the appeal is denied, mooted the question in Case No. 18240, the Appellee-Intervenor would be able to withdraw its application for variance well in advance of the expenditure of time and resources required of the various District agencies charged with reviewing that application.

Conclusion

This case is ripe for decision and further delay serves no public purpose. For the foregoing reasons, we respectfully request that the Board re-schedule the decision in this case to a special public meeting to be held on or before June 21, 2011.

Respectfully submitted,



Ginnie Cooper
Chief Librarian

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of June, 2011, a copy of the foregoing was mailed, first class, postage pre-paid, to the following individuals:

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Jeff Bonvecchio