

Arent Fox

July 5, 2011

BY HAND

Meridith Moldenhauer, Chair
Board of Zoning Adjustment
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Washington DC 20001

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Reference Number
030919.00005

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Re: Application of District of Columbia Public Library
BZA Case No. 18240
Pre-Hearing Statement of the Applicant

Dear Chairperson Moldenhauer and Members of the Board:

Enclosed for filing are an unbound original and twenty (20) copies of the Applicant's Pre-Hearing Statement in the above-referenced matter.

On behalf of the District of Columbia Public Library, we look forward to presenting the case to the Board on July 19, 2011.

Sincerely,



Kinley R. Bray

Cc: Ginnie Cooper, DCPL (via electronic mail)
Jeff Bonvechio, DCPL (via U.S. Mail and electronic mail)
Chris Wright, DCPL (via electronic mail)
Matthew Jesick, DC Office of Planning (via U.S. Mail and electronic mail)
Advisory Neighborhood Commission 1D (via U.S. Mail)
Dale Stewart (via U.S. Mail and electronic mail)
Ellen McCarthy

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18240

EXHIBIT NO.

27

GENBUS/812592.1

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of:
District of Columbia Public Library

BZA Application No. 18240
Hearing Date: July 19, 2011

PRE-HEARING STATEMENT OF THE APPLICANT

I. INTRODUCTION

This is a self-certified application, pursuant to 11 DCMR § 3103.2, for a variance from the requirements for a rear yard setback found in § 404.1 of the Zoning Regulations. The applicant, the District of Columbia Public Library (“DCPL” or “Applicant”) is currently renovating the Mt. Pleasant Neighborhood Library, which is located in the R-5-D Zone District at 3150 16th Street, N.W. (Square 2595, Lot 830) (the “Property”). The Applicant submits that, for the following reasons, the instant application meets the criteria for granting the requested relief.

II. JURISDICTION

The Board of Zoning Adjustment has jurisdiction to grant the relief requested pursuant to 11 DCMR § 3103.2.

III. BACKGROUND INFORMATION

A. The Property and Surrounding Neighborhood.

1. The Property.

The Property is an irregularly-shaped, five-sided lot, located at the corner of Lamont and 16th Streets, N.W. The Property contains 16,576 square feet of land area, and is, pursuant to 11 DCMR § 199.1, a “corner lot.”² The lot is located within the Mt. Pleasant Historic District and

¹ Title 11, District of Columbia Municipal Regulations.

² A Corner Lot is “a lot fronting on two (2) or more streets at their junction, with the streets forming with each other an angle of forty-five degrees (45°) up to and including one hundred thirty-five degrees (135°).” Id.

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improved with a two story neighborhood library building (the “Building”), constructed in 1925. The Building is a contributing building within the Historic District.

The Building was constructed with the assistance of the Carnegie Foundation, which, between 1883 and 1929, provided funding to create over 1,600 free public libraries in the United States, including the Central Library (at Mount Vernon Square), the Takoma Park branch, and Southeastern branch libraries in the District of Columbia. The National Register Nomination for the Mt. Pleasant Historic District states “Mount Pleasant’s most significant institution and formal architectural structure is the Mount Pleasant Branch Library...the library was intended to provide adequate facilities for the growing Mount Pleasant and Columbia Heights citizenry as well as to be in keeping with the handsome churches of the area. Its broad façade, dominated by a large archway at the center, seems to respond to both Sixteenth Street and the Mount Pleasant Neighborhoods.” *National Register of Historic Places Registration Form, Mount Pleasant Historic District*, July 27, 1987.

Indeed, the Building addresses both Sixteenth Street and Lamont Street with an entrance located at the apex of intersection of the two streets. The irregularly-shaped lot is thus improved with an irregularly-shaped, but highly symmetrical building consisting of two wings extending from the main entrance stair at the intersection of Lamont and Sixteenth Street frontages, creating a large open space on the southwest corner of the lot, with significant setbacks to the northwest and south.

The other historically-defining characteristic of the Building is a separate stair on the northwest side, which provides a special entrance to the children’s room, a prominent feature of the original library boasting reading niches and a carved relief of the legend of Paul Bunyan added as part of a Works Progress Administration project in 1934.

2. The Surrounding Neighborhood.

The square in which the Property is located is characterized by a mixture of building types and heights; predominantly mid-rise apartment buildings are found along 16th Street. A mixture of low- to mid-rise commercial buildings and apartment buildings are located along Mt. Pleasant Street, and a small group of row houses is located across the street from the Building on Lamont Street, N.W. One building, the Mt. Pleasant, located at 3155 Mt. Pleasant Street, N.W., encroaches on the Property. The remainder of the buildings adjacent to the Property along Mt. Pleasant Street are set back from their own rear lot lines, and thus the Property boundary, by approximately 20-22 feet. The Maroni Park Apartments, located at 3150 16th Street, is built along the southern boundary of the Property and has north-facing, at-risk windows overlooking the Property. *See Relative Distances from Neighboring Buildings, Exhibit A, p. 1.*

3. Zoning.

The Property is classified within the R-5-D Zone District. The R-5 Districts are General Residence Districts which permit flexibility of design by all types of urban residential development if they conform to the height, density, and area requirements established for these districts under the Zoning Regulations. The R-5 Districts also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. 11 DCMR § 350.1.

Matter-of-right uses in the R-5-D District include high-rise apartment buildings (maximum height 90 feet) and other uses permitted as a matter of right in the more restrictive R Zones, such as churches, public schools, libraries, row dwellings, and mid-rise multi-family buildings. 11 DCMR §§ 300.2, 201.1.

IV. THE PROPOSED DEVELOPMENT

A. Proposed Use

As part of its 21st Century Capital Construction Project³, DCPL has developed certain minimum standards for physical facilities and programs in its 21st Century Capital Construction Project, which are detailed in Exhibit B, attached. These standards (the “Program Standards”) are based on best practices for library facilities throughout the country, as well as the specific needs of the District of Columbia Public Library system. The Program Standards include: (1) a building which is “a destination, an anchor, a place for learning and meeting that is welcoming and comfortable for the whole community;” (2) facilities providing a minimum of 20,000 to 22,000 square feet of gross floor area, designed in a flexible manner to accommodate future change; and (3) a requirement to include principles of sustainable design. The Program Standards require all library facilities to be ADA-accessible on both the interior and exterior, providing appropriate ramps and elevators to allow access to all public portions of the library for all patrons. On the interior, the facility must provide public areas for browsing, book checkout & return, 200 or more reader seats, a collection of at least 80,000 volumes, and conference/meeting spaces as follows:

- (1) At least one (1) meeting room able to accommodate a minimum of 100 people, open to the public after hours, with adjacent pre-function space;
- (2) At least two (2) conference/quiet study rooms able to accommodate 12 to 16 people; and

³ The Applicant is undergoing a system-wide capital projects upgrade. Because many of the District’s libraries were constructed prior to the modern Zoning Regulations, and many are located on federal reservations, each project has presented unique, and sometimes significant challenges relating to zoning and historic preservation. The Board may recall that DCPL has brought several applications relating to the 21st Century Capital Projects program. See BZA Orders 17239 (Watha T. Daniel/Shaw Library), 17840 (Benning Library), 17973 (Washington Highlands Library), 17993 (Tenley/Friendship Library), and Zoning Commission Order No. 09-17.

- (3) At least six (6) study rooms for occupancy by 1-2 people.

In addition to the uniform standards that apply system-wide, the Applicant also identified certain program requirements that are specific to this particular location that are included in the Program Standards:

- Update the infrastructure and code compliance;
- Improve vertical circulation;
- Improve efficiency and flexibility of space;
- Improve the lower level;
- Enhance Children's Room and services.

In order to meet the Program Standards, the Applicant's proposed renovation includes a comprehensive interior retrofit and a new, approximately 6,000 square foot addition (the "Addition") (the renovation and Addition are hereinafter collectively referred to as the "Project"). The Addition is necessary to address the program requirement calling for a large community meeting room, which cannot be accommodated within the existing footprint of the Building without sacrificing other important program elements.

B. Procedural History

1. Community Input and Planning.

The Applicant began the planning processes for the Mt. Pleasant Library renovation in early 2008 with a community meeting to discuss the need for the library renovation, the system-wide Program Standards, and the specific needs for the Mt. Pleasant neighborhood library. The Applicant continued to hold community planning meetings in 2008 and 2009. DCPL engaged renowned architects CORE Architecture/Design to design the comprehensive interior renovation

and Addition. Over the course of two years, DCPL conducted five (5) community-wide meetings to discuss the design and program for the Project. See Exhibit C for meeting minutes.

2. Consultations with Government Agencies.

The irregular shape of the Property presented a unique design challenge for accommodating the Addition required to meet the Program Standards. The Applicant presented its preliminary designs to the U.S. Commission of Fine Arts, as required by the Shipstead-Luce Act,⁴ who summarily rejected any plan to place an addition on the end of the existing wings. The Commissioners, along with the local Advisory Neighborhood Commission (“ANC”) and Historic Mt. Pleasant (a neighborhood preservation organization), protested the location of an addition on the northwest side of the Building, claiming that an addition in that location would interrupt the highly symmetrical design of the historic Beaux Arts Building. All stakeholders supported the location of an addition behind the center of the building, in the triangular yard formed by the southwest and southeast property boundaries.

Because the Building has five sides and two fronts, the Property does not have a conventional rear yard. In order to confirm that the Addition conformed to the applicable rear yard requirements of the Zoning Regulations, the Applicant consulted with the Zoning Administrator for the District of Columbia. On March 26, 2009, the Zoning Administrator confirmed that the proposed Addition, as depicted on the plans attached to the instant application (incorporated herein by reference) and as further detailed on the plans attached hereto as Exhibit A, met all applicable requirements of the Zoning Regulations. See Zoning Administrator’s Rear Yard Determination, attached hereto at Exhibit D. Based on that confirmation, DCPL applied for a building permit, which was approved after an exhaustive, eight-month review by the

⁴ 40 U.S.C. 121, 46 Stat. 366.

Department of Consumer and Regulatory Affairs (“DCRA”). Construction commenced immediately upon issuance of the building permit.

ANC 1D appealed the issuance of the building permit, alleging, *inter alia*, that the Zoning Administrator erred in determining that the proposed Addition complied with the requirements for a rear yard. The BZA held hearings on that appeal (BZA Appeal No. 18152) on January 11, 2011, February 1, 2011, and March 1, 2011. On June 21, 2011, after two deadlocked votes, the Board granted ANC 1D’s appeal and reversed the determination of the Zoning Administrator, necessitating variance relief from the rear yard requirement.

Although the Board has not yet issued a final order in Case No. 18152, it has effectively determined that yard between the existing Building and the Maroni Park Apartments at 3150 16th Street, N.W. is not the rear yard. The Applicant therefore requests relief from the rear yard requirements of 11 DCMR § 404.1.

C. Relief Requested

The Applicant seeks a variance from the requirement to provide a rear yard equal to 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 roof, but not less than 15 feet. 11 DCMR § 404.1.

V. VARIANCE CRITERIA

The Board is empowered to grant an area variance where it finds three conditions:

- (1) The property is unique because, *inter alia*, of its size, shape, or other extraordinary or exceptional situation or condition relating to the property;
- (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

Roumel v. District of Columbia Bd. of Zoning, 417 A.2d 405, 408 (D.C. 1980); *see also Association For The Preservation Of 1700 Block Of N Street, N.W. v. Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978) (the applicant must demonstrate that compliance with the area restriction is unduly burdensome and the practical difficulties are unique to the property). The library is a public service use, and as such, is subject to somewhat reduced scrutiny in analyzing the requirements for variance. *BZA Case No. 17973*, citing *National Black Child Development Inst., Inc. v. D.C. Bd. Of Zoning Adjustment*, 483 A2d 687, 690 (D.C. 1984). Characterization of a use a public service may also be significant in determining whether the requisite “exceptional situation or condition” exists. *Monaco v. DC Bd. of Zoning Adjustment*, 407 A2d 1092, 1099 (D.C. 1979). A public service entity requesting an area variance must demonstrate that its design constitutes an institutional necessity, and how its features result in the need for the variance sought. *Draude v. D.C. Bd. Of Zoning Adjustment*, 527 A2d 1242, 1256 (D.C. 1987).

A. Uniqueness.

The practical difficulties in complying with the Zoning Regulations arise from a confluence of factors uniquely affecting this Property; most notably, the odd shape of the lot, the historic designation of the Building; the orientation of the Building entrance at the apex of an obtuse intersection; and the encroachment of an adjacent building.

1. Lot shape.

The lot is roughly a pentagon, with three corners at right angles, and the other two corners at obtuse angles. The Building is constructed along the street line at Lamont and Sixteenth, and the entrance is oriented directly at the apex of the intersection of these two streets. Because of the four additional corners on the Property and the strange angles created by these

corners, the Property lacks a regularly-shaped rear yard that can easily meet the requirements for minimum rear yard depth under the Zoning Regulations.

Because the Property fronts on two streets, for purposes of the Zoning Regulations, an applicant for a building permit may choose which side of the building is the front. Because there are effectively two building “fronts,” along Lamont and 16th Streets, the building has an unusual rear yard, which, as discussed below, may be defined in several different ways.

2. Historic character and applicable restrictions due to same.

The main structure, a superb Beaux Arts design, is a contributing building in the Mt. Pleasant Historic District, which also contributes to the uniqueness of the site and limits the types of structural alterations and additions that may be made to the Property. In addition, because the Building is owned and operated by the District of Columbia, all alterations are subject to review by the U.S. Commission of Fine Arts. Both federal and local preservation guidelines must be applied when considering any exterior alteration to the Building. The Library’s Program Standards require a meeting room for 100 people, which cannot be accommodated within the existing footprint of the Building. The Addition, proposed to accommodate the meeting room and other required program elements under the Program Standards, was initially proposed along the northwest side of the building facing Lamont Street and the Mt. Pleasant Apartment Building, but that location was rejected by the U.S. Commission of Fine Arts and others as inconsistent with the character of the historic Building and the guidelines for the Mt. Pleasant Historic District and the Shipstead-Luce Act.

3. Limited area for expansion.

Due to the encroachment of the Mt. Pleasant Apartment Building on the northwest side of the Property, as well as the numerous at-risk windows in the Maroni Park Apartment Building

that overlook the Property, the Applicant has limited area available for the required Addition. The only suitable location is in the southernmost portion of the Property, in the unusually shaped area bounded by the southwest property line, the southeast property line, and the three-sided rear of the existing Building.

This confluence of various factors, including the ambiguity over which part of the lot is to be considered the “rear yard” for purposes of meeting the applicable Zoning Regulations, constitute unique or extraordinary conditions inherent in the Property, meeting the first prong of the three-part test for an area variance. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

B. Practical Difficulty.

The aforementioned confluence of factors creates serious practical difficulties in complying strictly with the rear yard requirements under the Zoning Regulations. The proposed location and configuration of the Addition emerged is the only feasible option. First, due to the narrow width of the open spaces on either end of the existing Building, it was impossible to accommodate the Library’s institutional program requirement of a space for 100 people within the existing fabric of the Building. Even in the initial location along the north side of the Building, which is substantially wider than the location of the proposed Addition, creating sufficient space for the meeting room would have required substantial demolition of historic building fabric unacceptable to the Commission of Fine Arts, the District of Columbia Historic Preservation Office, Historic Mt. Pleasant, and other stakeholders.

Additionally, the Beaux Arts design of the historic building is highly symmetrical. In order to accommodate the addition in a location other than the area determined by the Zoning Administrator to be the required rear yard (depicted in Figure 1 below), the addition would have

had to be on one side or the other, destroying the symmetry. An addition to either wing of the Building along the street line was rejected by the ANC, Historic Mt. Pleasant and the Commission of Fine Arts.

11 DCMR § 404.1 requires a minimum rear yard depth of 15 feet. In order to understand fully how this requirement impacts an irregularly-shaped lot such as the Property, it is helpful to review the definitions of “rear yard,” “rear yard depth,” and “corner lot.” A “rear yard” is defined as “yard between the rear line of a building or other structures and the rear lot line.” 11 DCMR § 199.1. “Yard, rear, depth of” is further defined as “the mean horizontal distance between the rear line of a building and the rear lot line.” *Id.* The term “rear” is not specifically defined in the Zoning Regulations, however, *Webster’s Unabridged Dictionary* defines “rear” as “the back part of something...as the part of something located *opposite its front* (the rear of a house)” (emphasis added). In the case of a five-sided lot, with the Building oriented toward a corner, the rear yard is thus the side opposite the front side.

The Property, however, fronts on more than one street. In fact, the entrance to the building is located at the apex an obtuse angle formed by the intersection of Lamont and 16th Streets. As the Property fronts on two or more streets which form at an angle between 45° and 135°, the Property is considered a “corner lot.” 11 DCMR § 199.1. The definition of “corner lot” clearly states that “when a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.” *Id.* If the corner of 16th and Lamont fell at exactly a 90-degree angle, it would be very clear as to which part of the Property constitutes the rear yard, since the Library, as the owner, would have the option of choosing Lamont Street (the northern border and longer street frontage) as the front, thereby confirming the southern/southeastern border of the Property as the rear lot line.

The Board, however, concluded on the record at the June 21st decision meeting in Case No. 18152, that the Applicant's and Zoning Administrator's proposal to maintain a 15 foot separation between the Building and the southeastern boundary of the Property as depicted in Figure 1 below does not satisfy the requirements of 11 DCMR § 404.1.



Figure 1

While the Board has concluded that the area highlighted in green in Figure 1 is not the rear yard, it is unclear what area is to be considered the rear yard and how to measure the depth of that area, given the irregularly-shaped area created by the three-sided rear façade of the Building and the intersection of the two southern property boundaries. There are three distinct methods of calculating the rear yard, shown in Figures 2-4 below, but as shown in the drawings, the Addition located in the only area suitable for expansion under the applicable historic

[illegible]

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Figure 3

Finally, due to the substantial nature of the renovation, the Building Code requires the construction of a ramp to allow handicap accessible access to the Building. The length of the ramp is dictated by the height of the first floor of the Building and the Americans with Disabilities Act restrictions on the severity of the slope of any such ramp. Given the irregular shape of the lot and the limited area available for any addition, it is not possible to integrate the design for the accessible ramp into the same space intended to provide the meeting room. Once the CFA and the community organizations disapproved of the location of the ramp on one or the other side of the front steps (the primary Building façade), there was only one possibility: the north side of the building, which is wider than the southern open space. This placement further restricted the potential area for expansion of the Building to the area where it is now shown.

These design constraints are institutional requirements and necessitate the need for variance. *Draude, supra.*

C. No Adverse Impact.

The requested relief can be granted without harming the public good or impairing the intent, purpose, and integrity of the zone plan. The purpose of the rear yard regulation is to provide light, air, and privacy to the residents of the proposed structure and the neighboring property, and along with the lot occupancy restrictions, to provide opportunities for recreation. As is evident from the site plan and the *Relative Distances from Neighboring Properties*, Exhibit A, p. 1, there is quite a bit of open space in the immediate vicinity of the Property, with a sizeable reservation on the 16th Street side.

The Project is modest in scale, only 2.5 stories, with the bulk of neighboring buildings at 3.5 to 5 stories. The proposed Addition will have no impact on the availability of light and air to neighboring properties. The Building, including the Addition, will be set back at least 20 feet from all adjacent buildings and will not threaten any at-risk windows. The Addition has minimal glazing in an effort to minimize the impact on the privacy of adjoining neighbors. For example, on the east side of the building, the only glass along the façade is in the offices on the third floor, so the public will not be able to view out from the rear of the library into the neighboring apartment buildings. *See* building renderings included as part of Exhibit A.

The appellants in Case No. 18152 objected to what they regarded as a fire safety issue related to the proposed configuration of the Building and its Addition. It is important to note that due to the comprehensive nature of the proposed renovations to the Building, a sprinkler system is required to be installed to meet the requirements of the Existing Building Code. Likewise, any such renovation of adjacent properties will, under today's Existing Building Code, require

installation of full sprinkler systems, enhancing the life safety features of all buildings in the square over time. The exterior material on the Addition is terracotta paneling, a clay material that provides the same protection as a cementitious panel. The exterior walls are 1-hour fire rated.

Although ANC 1D and the Ward One Library project have continually called for any renovation of the Property to include a fire access lane so that DC Fire/EMS may access the rear of adjacent apartment buildings in case of emergency, there is no requirement contained within the Construction Codes for the District of Columbia that fire lanes be included on private properties. There has never been a fire access lane on the Property. This Board has on numerous occasions reviewed reports or heard testimony from DC Fire/EMS stating unequivocally that the fire department does not rely on alley systems or rear access to structures in order to fight fires. All firefighting activities are conducted from the street and hoses are carried manually around buildings where necessary to provide access at the rear. There is thus no need for a fire lane separating the Building from the offending encroaching building at 3150 Mt. Pleasant Street or any other building in the square.

The Applicant submits that a variance from the rear yard requirements will, likewise, not cause any detriment to the public good or impair the intent, purpose, or integrity of the zone plan. The properties along Mt. Pleasant Street, which are closest to the Property, are zoned C-2-A, which permits 100% lot occupancy. The library itself constitutes a public good. Given the constraints of its site and the historic character of the Building, the requested relief from the rear yard requirements will have no adverse impact on the public good or the zone plan.

VI. WITNESSES

Jeff Bonvechio, Director of Capital Projects, will testify on behalf of DCPL as to the condition of the existing facility and the standards for developing new library facilities under the 21st Century Capital Projects Program.

Dale Stewart, AIA, Managing Principal of CORE Architecture/Design will testify as an expert in architecture regarding the design of the proposed facility, how the design implements the Program Standards, and the extraordinary practical difficulties that would be created by strictly complying with the requirements of the Zoning Regulations. Mr. Stewart's résumé is attached hereto as Exhibit E.

Ellen McCarthy, Director of Planning and Land Use for Arent Fox LLP, will testify as an expert in planning and zoning and will address how the application meets the tests for variance relief under 11 DCMR § 3103.2. Ms. McCarthy's résumé is attached hereto as Exhibit F.

The Applicant reserves the right to call additional witnesses and to present additional evidence as necessary at the hearing. We estimate that our presentation will require approximately 30 to 45 minutes of the Board's time.

VII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that, upon receipt of all of the Applicant's proof and all other support of record for the variance requested, such relief may be granted.

Respectfully submitted,

ARENT FOX LLP

By: 
Kinley R. Bray

LIST OF EXHIBITS

Exhibit A	Plans & Drawings
Exhibit B	Program Standards (Library Building Program Fact Sheet)
Exhibit C	Community Meeting Minutes
Exhibit D	Zoning Administrator's Determination Letter (3/26/09)
Exhibit E	Résumé of Dale Stewart, AIA
Exhibit F	Résumé of Ellen McCarthy

LIST OF WITNESSES

Jeff Bonvechio, Director of Capital Projects, DCPL

Dale Stewart, AIA, Managing Principal, CORE Architecture/Design*

Ellen McCarthy, Director of Planning & Land Use, Arent Fox LLP*

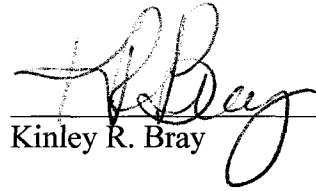
*Expert witness

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, first class, postage pre-paid, to the following persons or organization on this 5th day of July, 2011:

Advisory Neighborhood Commission 1D
1380 Monroe St NW, #117
Washington, DC 20010

District of Columbia Office of Planning
1100 4th Street SW, Suite 650
Washington DC 20004


Kinley R. Bray