

Arent Fox

July 14, 2011

VIA ELECTRONIC MAIL ONLY
TO BZASUBMISSIONS@DC.GOV

Meridith Moldenhauer, Chair
Board of Zoning Adjustment
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Re: Application of District of Columbia Public Library
BZA Case No. 18240
Applicant's Opposition to ANC 1D's Request for Postponement

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18240
EXHIBIT NO. 34

Dear Chairperson Moldenhauer and Members of the Board:

We have obtained from the BZA's file a copy of a letter from Advisory Neighborhood Commission 1D (the "ANC") requesting the BZA grant a two-week postponement of the hearing in the above-referenced matter. This letter (the "Request for Postponement") is marked as Exhibit 29 in the record, but was not served on the Applicant as required by the Board's Rules of Procedure (*See* 11 DCMR 3111.1) and as we understand the ANC was specifically instructed to do by the Staff of the Office of Zoning. The Applicant objects to the request for postponement, and in support of its position, offers the following:

I. The ANC had adequate notice and has had ample time to prepare for hearing.

The instant application for variance (the "Application") was filed on April 22, 2011 (although the Board's Exhibit Log shows that the application was not processed for filing and marked received until April 25, 2011). As shown on Exhibit 1, the Applicant provided a courtesy copy of the Application to Advisory Neighborhood Commission 1D on the same day. The Applicant provided an additional copy, via electronic mail, to the ANC during the week of April 25, 2011. The Office of Zoning sent a Notice of Filing to the ANC and the Single Member District Commissioner for ANC 1D06, Gregg Edwards, on April 27, 2011. The public hearing notices were mailed to the Applicant and ANC 1D on May 2, 2011, giving each party 78 days to prepare for the scheduled hearing on July 19, 2011.

Between the date on which the Office of Zoning mailed notice of the scheduled hearing and the date on which the ANC filed its Request for Postponement, the ANC has held no less than three duly-advertised public meetings at which it could have discussed this matter and taken official action: on May 17, June 21, July 5. *See* ANC 1D Meeting Minutes and Resolutions,

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<http://www.anc1d.org/?q=node/16> (last visited July 14, 2011), a hard copy of which (without linked documents) is attached hereto as **Exhibit 1**.

Although the ANC provided public notice of its intent to consider the matter at its June 21, 2011 meeting and representatives of the Applicant were in attendance at that public meeting, the Applicant declined to take action, purportedly because Commissioner Gregg Edwards had not had adequate time to prepare for the discussion. See “ANC 1D just won its appeal of the library case to the BZA”, a posting made by Commissioner Edwards on ANC’s website on June 21, attached hereto as **Exhibit 2**, stating:

Now, DCPL has filed a new application to the BZA¹ for a zoning change so construction can continue. The hearing will take place next month. If [ANC 1D] wishes to contest it, the paperwork needs presenting at least two weeks earlier, way before the July business meeting.

I will not be able to prepare the case – which must be approved by the ANC in a regular meeting – before tonight. I hope that this can be considered at the next interim meeting, now scheduled for the 5th of July.

Although the Applicant was allowed to present its case for variance at the June 21 ANC meeting, the ANC declined to take any action and postponed the matter until July 5. At the July 5 meeting, at which the Applicant was again present, the ANC again declined to take action other than to request postponement.

The ANC has had ample opportunity to discuss these matters on the record at multiple public meetings. As will be discussed below, any claim that the ANC did not have the information required to take action at these meetings is baseless, given the ANC’s intimate involvement in all matters relating to the renovation of the Mt. Pleasant Library, including the ANC’s own appeal of the building permit in BZA Case No. 18152.

Furthermore, the ANC held a special public meeting on July 13, 2011 at which it took action on the instant Application, via plurality vote. The Applicant will waive any objection to the resolution being filed after the time period prescribed by 11 DCMR § 3115.1 (the ANC’s report having been due on July 12, 2011), although we do reserve the right to object to the content of such resolution if it does not comport with what transpired at the ANC’s special public meeting. Now that the ANC has finally taken action on this matter, and clearly intends to

¹ We note that the application was not new as of June 21. Commissioner Edwards posting contains other patently false information, including a claim that DCPL’s Director, Ginnie Cooper, testified under oath at the BZA. Chief Librarian Cooper has not ever testified before this Board on any matter related to the Mt. Pleasant Library.
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participate in this case, there is no basis for any delay of the Board's consideration in this matter and the Request for Postponement should be denied.

II. The ANC is intimately familiar with the details of this case and should be prepared to proceed.

As stated above, and as detailed fully in the record of BZA Case No. 18152, the ANC has been intimately involved in this case. Although filed by Christopher Otten, the appeal in Case 18152 was captioned "Appeal of ANC 1D" and filed in October 2010. The ANC was represented and participated fully in that case. In addition, ANC 1D has directly participated in numerous community meetings and direct meetings with the Applicant, dating back to 2008, at which the details of the proposed development were discussed. The basis for the variance was outlined thoroughly in the Application filed in April, and although the Applicant supplemented its filing as permitted under the Board's rules with a pre-hearing statement timely filed on July 5, 2011, that pre-hearing statement did not contain any information that is new to the ANC or to any person requesting party status in the instant case.

We remind the Board the ANC also requested postponement (which was granted) in Case No. 18152, and that this matter has been pending before the Board in one procedural posture or another since October 2010—approximately nine months. That appeal was filed nearly two months after the permit in question was issued and after construction was well under way. Given the Board's impending August recess and full September docket, any postponement would require that the hearing be scheduled in October 2011, more than a year after the ANC first initiated action (in Case 18152) to challenge the building permit issued for the proposed development. The Applicant filed the instant case for variance in April so that in the event the Board reversed the decision of the Zoning Administrator in that case, any uncertainty over the right to continue with construction could be decided by this Board immediately thereafter.

The Applicant's project is now more than nine months behind schedule. As a result, the Library continues to operate an interim location from a leased storefront with limited space available to deliver its services. Any further delay will result in significant costs to the taxpayers of the District of Columbia; not only in lease expenses required to continue operation of an interim library, but also in construction delays until this matter is resolved.

The record in this case is full and the matter is ripe for hearing. Any further delay is unwarranted and should be denied. We urge you to reject the ANC's motion and to proceed with the hearing as scheduled on Tuesday, July 19, 2011.

Arent Fox

Sincerely,



Kinley R. Bray

Cc: Advisory Neighborhood Commission 1D (via e-mail and U.S. Mail)
Commissioner Gregg Edwards, ANC 1D06 (via e-mail and U.S. Mail)
Jeff Bonvechio, DCPL (via electronic mail)
Archie Williams, DCPL (via electronic mail)
Chris Wright, DCPL (via electronic mail)
Matt Jesick, Office of Planning (via electronic mail and U.S. Mail)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via electronic mail and mailed, first class, postage pre-paid, to the following persons or organization on this 14th day of July, 2011:

Advisory Neighborhood Commission 1D
1380 Monroe St NW, #117
Washington, DC 20010
Jack McKay, Secretary at jack.mckay@verizon.net
Gregg Edwards, Chair, SMD 1D06 at g@gel.org

District of Columbia Office of Planning
1100 4th Street SW, Suite 650
Washington DC 20004
Matthew.jesick@dc.gov


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