ANC 1D Resolves to Oppose the Variance Sought by DCPL from the rear yard requirements to allow an addition to the existing Mt Pleasant library on BZA case #18240.

Resolved, Advisory Neighborhood Commission 1D submits the following report on BZA case #18240 at premises 3160 16th St NW (Square 2595, Lot 830).

Pursuant to 11 DCMR Section 3115, the following points are answered:

3115(a)

The application by DCPL (the DC Public Library) is for a variance from the rear yard requirements under section 404 of 11 DCMR Section 3103.2) to allow an addition to the existing Mt Pleasant library in the R5D zoning area at premises 3160 16th St NW (Square 2595, Lot 830). This lot is within the legal boundaries of ANC 1D.

3115(b)

The application was considered at a public meeting of ANC 1D on Wednesday, July 13, 2011at a public meeting.

3115(c)

Proper notice of the meeting was given in the form of Internet notice on 1D's website, and posting of notices in all six individual member districts (SMDs).

3115(d)

ANC 1D has six SMDs. A quorum of four commissioners is therefore required for action. Five of the six sitting commissioners were present at the meeting of July 13, 2011.There were two votes, the first for the statement in 3115(e) passed by 3 to 1 vote, with one abstention. The second, to submit - as a part of and appendix to section 3115(e) the report ANC 1D had commissioned - passed 3-1, after one commissioner had left but still with a quorum of four.

3115(e)

ANC 1D strongly opposes the variance, for the following reasons, first in brief:

1. Are there peculiar and exceptional, practical difficulties, such as the property is exceptionally narrow, shallow, oddly shaped, and/or has unusual topography, soil conditions, or other special conditions:

The lot is not unique in most practical respects, except it is small, and DCPL wants to implement the same plan for all branches whether the lots are small or not. Thus, DCPL argues that the lot is not big enough for their plans. But, ANC 1D advises that these plans have not been legally produced, and that they can largely be met without the variance, with better results.

a. What makes it difficult for the owner to build on the property in compliance with the Zoning Regulations? (area variance)?

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District of Columbia
CASE NO. 18240
EXHIBIT NO. 38

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DCPL argues that the lot size (and Historical designation, and regs that demand a rear yard) preclude the only possible way for their plan to be realized. ANC1D advises that there is no difficulty for a building on the lot, only a lot not large enough for grander plans. ANC1D advises that DCPL has not met its burden of proof to show necessity, and indeed that there are better alternatives available.

2. Granting the application will not be of substantial detriment to the public good.

ANC 1D lists a series of reasons why there are substantial detriments to the public good, and observes that DCPL's arguments are really assertions without careful evidence or studies on the issues. Thus, DCPL has not met its burden of proof. Instead, they could make only moderate changes to their design (without much loss to their current "at risk" construction) that could dramatically improve public good.

A key issue is the strong recommendation of the International Fire Code that needed equipment be in position within eight minutes. As seen in the half-hour to several hour delays in recent, one deadly, fire - neighboring buildings and about a thousand people could be grievously damaged by cutting off the possibility of emergency assess, only recently discovered. For now and perhaps decades, this appears to be the only way, without "practical difficulties" to meet the Zoning Regs intent of

3. Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations.

ANC 1D, as it has in years of resolutions, not substantially addressed by DCPL contrary to law, observes that the intents -- of providing adequate light and air, preventing undue concentration ... and overcrowding (especially if this case is used as a precedent, advance health and safety – are all damaged by DCPL's proposal. Thus, they have not met their burden of proof, and really would go against those intents.

With more points:

Why:

While unique in some respects, in most ways the lot is a convex corner lot with two convex-angled rear lines.

ANC 1D in the first hearing presented this plain view, with two Board members expressing general support: Since the building is facing the middle of two obtuse-angled streets (aligned symmetrically along the center angle), the rear is obviously likewise the two obtusely-angled lot lines in back.

Like other lots in this block, laid out in 1885, there is no alley which means that building up to the property line would destroy the buffer behind the building. If this lot is found to be unique, the other developments might use the precedence to justify building up to the property line of what has been a buffer, one used until recently for rear access. Recently, a developer for the burned-out Meridian Hill Church, two doors south, has used the library construction as precedent for building to the west lot line.

Thus, ANC 1D advises BZA to rule that there is no great uniqueness about this lot, and that the current building orientation determines that there are two lot lines that define the rear.

1D advises that DCPL has not met its burden of proof for an area variance because there are no peculiar and exceptional practical difficulties: The lot is not exceptionally oddly shaped with special conditions because it is flat, broad, deep, convex.. It is certainly not exceptionally narrow or shallow, nor with unusual topography or special conditions.

For an area variance, code specifies the criterion must be "What makes it difficult for the owner to build on the property in compliance with the Zoning Regulations?". There is nothing in the code that says "expand"

DCPL argues that the Historical designation and the lot size provides little room for expansion. Neither of these speak to the requirements of code that the lot offer practical difficulties because of the property's exceptional consideration. A precedent of offering variance simply because of a desire to expand, or because of Historical designation is strongly contrary to the plain statement of law, and to public policy.

ANC 1D advises BZA that such a precedent would offer a blank check to any developer who finds a lot smaller than their wishes, and thus does not meet the plain statement of code. The lot is not a problem to build on.

DCPL argues that the proposed design, that presumes a variance, needs this expansion for two reasons: A. It is inconvenient for DCPL's hopes, and B. it is the only possible way to fulfill these hopes without the variance. ANC 1D observes that both fail to meet DCPL's burden of proof.

A. DCPL's branch expansion plan is only a wish, not carrying the force of a law superior to the Zoning Code with its origins in Federal Legislation.

This plan was launched without consultation with ANCs and neighborhoods, contrary to law. It proposed to implement a plan, largely the same for all neighborhoods without considering matters as special needs, engaging in careful needs assessments, or the actual size and conditions of the properties available. In the case of this property, it was opposed for years by three ANCs nearly bordering on the property. Certainly, in ANC 1D's case, the points raised in resolutions were not addressed, contrary to law. DCPL's Director in sworn testimony said that the many meetings held were to inform neighbors, not to make changes that would address their concerns. Under oath before the DC Council, when Libraries Committee Chair Thomas asked if the DCPL would do anything differently, she said essentially that she would have made clear that the meetings were to inform the public "what would be included in each building... to make sure people were informed about what we were going to do...". This was never to be a process where the "developer might go to the community and meet their approval..."

While there was one substantial change, the unanimous votes in subsequent large meetings held by ANC 1D and affording equal time to all sides, were ignored. Only in DCPL meetings dominated by one-sided top-down presentations and attended by large numbers of DCPL employees and contractors did they get much support.

Indeed, after many meetings and discussions with experts, ANC 1D suggested that the needs of our neighbors could likely be handled better by alternatives. These resolutions, contrary to law, were ignored.

ANC 1D advises that thus the meetings held and cited by DCPL do not demonstrate the need for the proposed expansion plan. More, they appear to be a skirting of the law here.

ANC 1D advises BZA that plain observation shows that the wishes of a developer of a property, even after a million dollars of presentations, does not count as an exceptional practical difficulty. To do so would set a precedent that would render the plain words of the code as without limits. Further, to allow plans to predominate without legally required consultation and engaged responses would make a mockery of laws.

B. The plans of the library can be met without a variance, and indeed without much change in the construction DCPL has started and continued at its own risk.

There was already a meeting room in the old building with almost a hundred seating, and much more when the large double doors were opened. This space could have been expanded to a larger number than the proposed design. There were several thousand square feet of mis-used space that could have been converted to further uses. The space of the former sun room could have been expanded out to a line between the edges of the two wings, built into the ground floor, and expanded to behind the roof line without encroaching on the rear yards. Indeed these devices could have provided almost the same extra area as the proposed design.

Attached is an architect's sketch of how the former ground floor entrance at the front of the building could be widened and provide a gentle slope down less than two feet. This is a small change in DCPL's alternative G which was presented as possible, but in an ugly and prejudiced form.

There is no need for a second-story entrance in the side-rear with a long ramp well over a hundred feet. The assertions that the DCPL design is the only one possible is not proven.

ANC 1D advises that DCPL's burden of proof has not been met. Instead, their argument is presented in a series of assertions without proof. ANCs 1C and 1D have engaged consultants that demonstrate with drawings and code citations that DCPL's arguments are not correct.

2. The proposed structure would impose substantial detriment to the public good.

1A. It would hinder the access of emergency equipment to the areas behind a large number of apartment buildings.

The need for providing such an access route has been recently demonstrated by several deaths and serious injuries, and by three substantial fires in this area during the last three years. While this access route is not present today, it could easily be provided with a modest expenditure. All of these fires have occurred within 200 feet of the library and has led to the deaths of two people, the serious injury of young children, the displacement of hundreds of people, the destruction of two historic buildings, and resulted in tens of millions of dollars in property damage.

The Deauville fire three years ago was about the largest in DC memory. It quickly spread throughout the building, with an accelerating fire mass, and quickly left over 18 feet to the next building, the Meridian Hill Baptist Church which was also gutted by the fire. For lack of an access route behind the buildings firefighters had to drag hoses through the dwelling units in other apartments. Similarly for the deaths at the Sarvin Towers where residents cornered in their units jumped to their deaths.

The International Fire Code (Appendix A) recommends that access be provided on all sides of large residential buildings, and sets a standard of eight minutes. Given how fast fires grow – often doubliing every few minutes in these older buildings, time for access is of the essence of saving lives. With over a thousand people living in buildings with similar fire dangers as the Deauville and Sarvin, there are massive threats for all.

Statements that eventually fire-fighters might drag hoses around to the backs of buildings neglects the life-crucial factor of time. It also neglects a main fact: A large population of the nearby buildings live above the level that hand-carried ladders could be set up. These buildings are unsprinkled, and mostly lack fire-stairs. Simply suggesting that they should get modernized does not deal with the strong possibility that the

buildings may not be modernized for decades, nor that there may be other problems that occur which require faster rear access. Normally. installing sprinklers and fire-stairs are very expensive and break "grandfathering", thus triggering code requirements for tens of millions of dollars of modernization. It is a logical fallacy to dismiss a detriment to the public good, or the Zoning Reg's intents of preserving health and safety (as well as light and air) by saying that others must undertake burdens that are clearly of exceptional "practical difficulty".

A fire-plan expert engaged by ANC 1D said that apparently there was no formal consideration of fire risks for this plan, contrary to decades of normal policy, especially in an area with such recent, demonstrated risks.

ANC 1D advises BZA that DCPL's burden of proof must include a careful analysis of the risks, and not just an off-hand opinion, however high in the fire department hierarchy the opiner might be. Indeed, the proven threats, and unexamined future needs for emergency or other access, are so grave, that 1D advises that this burden of proof can not be met, so that a revised DCPL Scheme G, as noted by 1D's advisors, should be a prudent compromise, and one that can be met without the variance.

1B. The ramp structure to be built on the property would not only block an access route, but impose painful access to the library. This is not needed since there are already front entrances that could be improved and made more convenient.

As demonstrated by the studies funded by ANCs 1C and 1D, 1D advises that DCPL's burden of proof has not been met. Indeed, rather than the only way to provide ADA access, the proposed structure is obviously inferior to alternatives not requiring a variance.

1C. The proposed structure envisioned in this variance encroaches on the light and air of neighbors. This has, since the adoption of the Lewis report in 1938, been a main intent of the Zoning Code. As noted above, the library construction precedent is already being used by developers to argue for demitting rear yards. Appeals Courts (eg, Schonberger &al v. DC BZA DC Court of Appeals No.â€,06-AA-1454) have long ruled that the stated intents and plain language of the Code are to be used in interpreting cases.

When the DC Council considered a change in the requirements for library rear yards, it could have decided to give favor to this case, since it was already controversial. There was no exception set up on the need for buffer space, for light and air.

ANC 1D advises BZA that DCPL has failed to produce the kind of light and air studies often required. Indeed, public policy during this very time confirmed the need for buffers. Further, this case already endangers this very block as a precedent, and perhaps much of the city where population is dense, and there is little room for "wanted" expansions.

3.This variance would be "substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map".

This argument (along with that of 1A and 1B) was documented in the previous BZA case on the same premises. That documentation and the points are hereby included in toto by reference, and with the backing of ANC 1D.

It would reduce light and air, a major motivator for the Lewis report and subsequent Code, which the Office of Zone says in its current brochure " Today, the Zoning Commission and BZA still operate pursuant to the

basic tenets ofÂ the Zoning Ordinance " – putting aside other issues, here not releevant. So, too remain the intents of "health, safety".

ANC 1D advises BZA that DCPL has failed to fulfill its burden of proof that the application is not, in many respects, inconsistent with the general intent and purpose of the Regulation.

3115.1(f)

For the reasons stated above, and in its previous documentation and arguments submitted to the BZA in the previous case, ANC 1D recommends that the variance be denied.

3115.1(g)

This resolution was approved by a majority/unanimous vote of 4-2.

3115.1(h)

Commissioner Gregg Edwards is authorized to present this report, with the assistance of Commissioner Romero-Castillo and former Commissioner Otten. In Edwards' absence, any of the other sitting 1D commissioners may also make the report.

3115.1(i)

The signature of the commission Chair is below.

Gregg Edwards