

Response Re: Application of District of Columbia Public Library

BZA Case No. 18240

Applicant's Opposition to ANC ID's Request for Postponement

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Monday, July 18, 2011

Advisory Neighborhood Commission 1D (1D) on the night of 5 July 2011 passed (5-0) the following resolution at a duly noticed, public meeting with a quorum of five of the six seated commissioners present:

Resolved, ANC1D petitions the Board of Zoning Adjustment for a delay of two weeks to better prepare its report on BZA Application #18240. The prehearing statement of the DC Public Library was submitted only a few minutes before the deadline, a few hours before this meeting, and needs serious consideration by 1D's commissioners.

1D petitions the BZA to consider this resolution as notice that it intends to be a party in #18240, and if it is not already a party by right, to accept this resolution despite its being filed one day less than the 14 normally required of non-ANC parties. (The property is within 1D's area.)

If the BZA denies the petition for more time, 1D further petitions the BZA to allow 1D to submit its report a day or two later than the normal schedule of seven days in advance of the hearing.

Given further discussion with parties knowledgeable of BZA methods – and having left several unreturned phone calls with Kinley R Bray – the problems with this request must be acknowledged. This delay might push BZA action into September, with the delays exposing our neighbors to construction hazards and to further safety risks, such as seen in a recent upheaval in fires, major destruction of property, dislocation of hundreds of people, and at least two deaths.

ANCs are different, and need different pacing to fulfill their special role.

1D must also balance off its duties as a Charter agency with many constraints, for example needing a week's public notice for a special meeting, or the difficulties of achieving a quorum with most of its commissioners on the move.

Then, too, 1D must honestly earn its expertise in local conditions and impacts of proposed government actions, and earn its role as the official, democratically-elected and -informed representative of our neighbors. 1D attempts to work with its neighbors in its area, and must try for transparency and full understanding.

For example, at the same meeting and by unanimous vote, 1D required its representative

"to bring[s] to the Commission for timely, advance review and approval of any changes affecting the direction of the case."

This means that every step must be based on opportunities for full understanding and democratic process.

These factors are legally built into and restrict the behavior of ANCs. Thus, ANCs cannot fairly be expected to have the same capacities of private or executive parties.

Limited time

In this case, as cited in the resolution petitioning for delay, the case by DC Public Library (DCPL) was not explicated until just before close of business on 5 July, just two hours before 1D's meeting. A copy of DCPL's case would not be available until the next day, 6 July. Thus, discussion had to be deferred (by law) until seven days later - the earliest possible special meeting was on the 13th.

There has not been legally sufficient communication

The presentations by DCPL repeated the basics of the situation, and included what seemed to be many unsubstantiated claims that had never been discussed in depth. DCPL, contrary to law, never address the

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almost two hundred points made by 1D after a long series of public meetings. Essentially, there has been no collegial communication, but more of a PR battle.

Unequal resources

DCPL's rep is quoted in local papers as saying they spent over a million dollars in this exchange; 1D has so far spent about twenty two thousand. DCPL with 500 times greater resources has had little incentive to engage. With so much, and likely lives at stake, this case should not be decided in effect as a medieval battle of champions with the better resourced almost always likely to win. ANCs need more time.

As noted in the 1D resolution with an extract of DCPL's sworn testimony before the DC Council in Appendix S – there was never much intent to engage. At least not in the way demanded by public policy, the Home Rule Charter, and the ANC laws.

Yes, there has been many calendar days for learning about DCPL's case. However, DCPL's filing – late on the 5th – 1D received on 6 July was the first explicit formulation.

The prior BZA case is not yet good preparation.

Yes, 1D was the appellant in a case just decided by BZA. However, 1D knows only a few words – the 1D appeal was granted – and the many hundreds of points presented for Great Weight consideration. Without findings of law and fact 1D must be quite uncertain about the ground of argument. For 1D to understand the situation, we await for BZA to provide answers on which 1D can better respond.

This new case is quite different, and requires new prep.

Yes, the recent BZA case treated the same property. However, here DCPL has the burden of proof. Before they focused on whether they (and the ZA) had met code. The standards of proof for a variance are much higher, especially since rulings are treated as precedents under the equal protection clause. Without clear lines and strong proof, any BZA ruling could produce loopholes which vitiate the Zoning Regs. Therefore, this appears to be a quite different case: a case which for full understanding and fair handling requires research of DC Court of Appeals precedents on perhaps scores of points.

In sum

1D has not had the opportunity to process DCPL's case since it lacked the specific pleading until recently, and since ANCs must operate with many extra constraints.

This case for a variance is quite different than the former appeal. The many diverse and complicated issues presented by DCPL require much research because they have not provided the evidence-based arguments needed for rational discussion.

While both DCPL and 1D share a common interest in expedition, 1D reports that there appear to be serious and even life-threatening perils that bespeak taking care for a just and considered response.

Balancing out competing factors.

Thus, let me suggest a compromise:

- 1] DCPL proceed in presenting its case the afternoon of 19 July, with some cross-examination of their witnesses.
- 2] 1D be allowed to present its case on 26 July. Since 1D representative must leave on the 19th before 6PM to attend 1Ds long-scheduled monthly meeting – with many important and controversial issues, including likely appeals to BZA – this will allow matters to proceed with expedition but not without needed care.
- 3] BZA, as it sometimes does, could meet for a decision on 2 August without much delay of its August plans.