

**District of Columbia Board of Zoning Adjustment
Application No. 18240 of the District of Columbia Public Library
Statement of Ann Hughes Hargrove
July 19, 2011**

Board of Zoning Adjustment Chairperson Moldenhauer and Board Members:

My name is Ann Hughes Hargrove. I am here as a resident of Adams Morgan in Ward 1, a neighborhood served by the Mount Pleasant Library. I have been dealing with zoning and planning issues for many years.

In the brief time available I'd like only to make a few basic points that have to do with determining whether this application meets the first two "prongs" of the area variance criteria under § 3103.2.

"Exceptional situation"

First, as to requirement number one: that the property exhibit a unique "exceptional situation". Taking the OP report and DCPL's Prehearing Statement together, the following four factors are principally relied upon in an effort to show that this requirement is met:

1. A claimed ambiguity as to where the rear yard is located, because of the shape of the lot and the fact that the lot fronts on two streets and meets the definition of "corner lot".¹

DCPL argues this at some length, and talks about three options for determining the location of the rear yard. I submit that there is no such ambiguity, because under the definition of rear yard in §199.1, it is the location of the rear of the *building*, not the lot's street frontage, that determines the location of the rear yard. In §199.1 and elsewhere the Regulations, the concept of "street frontage", and the choice that the definition of "street frontage" gives to an owner of a lot fronting on more than one street – whether a corner lot or a through lot – relate to the determination of allowable height under the definition of building height in §199.2,, and have nothing to do with the location of the rear yard.² Whichever Zoning Administrator first invoked "street frontage" in connection with the location of the rear yard considerably obfuscated the matter and did all concerned a disservice. As DCPL's own statement makes clear at p. 11, once you go to the dictionary (as required by § 199.2(g)) and determine that "rear" means "opposite the front" (no surprise there), it is obvious that the rear yard of the library building is the area where DCPL wants to put its addition, opposite the front of the building, and enclosed by the southwest and southeast boundaries. There are no three options, and the situation is unambiguous: DCPL want to expand out the rear, and does not have room

¹ DCPL p. 10-13.

² There are parallel provisions in the Height Act. The Board should note that it is the definition of "street frontage" that provides the owner a choice, not the definition of "corner lot" as asserted by DCPL at p. 11.

enough to do so and still meet the rear yard requirement under §404. But this is simply because the area at the rear is too small, not because of the five-sided shape or the street frontage of the lot -- which accordingly are irrelevant to the question of "exceptional situation".

2. The size of the lot.³ True, if the lot were bigger, no variance would be required to accommodate the addition. But the fact that an owner needs more space for his or her project is more nearly the norm in area variance cases than an exception. Otherwise a high proportion of owners seeking area variances would need do nothing more to meet the first "prong" of the variance test than show that their lot is too small to accommodate their desired project and thereby automatically pass the first test. Something more than a mere desire for more space must be shown to establish "exceptional situation".

3. That being the case, both DCPL and OP point to the fact that DCPL has standard requirements for its facilities that it wants this project to meet, e.g. a 100-seat meeting room. This seems to me to confuse the first "prong" of the variance test with the second. Any owner seeking an area variance has project requirements that he or she asserts cannot be met without the variance: those requirements may be properly considered in determining whether there are "practical difficulties" *caused* by an exceptional situation -- the second prong of the variance test -- but they don't *constitute* the exceptional situation.

4. The building's status as a contributing building in a historic district.⁴ The problem here is that the Court of Appeals has held that "a property's location in an historic district is not sufficient to justify a finding of uniqueness; otherwise every property so classified would be entitled to a variance." *Myrick v. District of Columbia Board of Zoning Adjustment*, 577 A.2d 757 (D.C. 1990), citing *Capitol Hill Restoration Society, Inc., v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987).

I can only conclude that the Applicant has not met its burden of proof to establish a unique exceptional situation for the property, and that for that reason alone the application should be denied,

"Practical difficulty"

The sole argument advanced to show a "practical difficulty" resulting from the claimed "exceptional situation" is **that DCPL has standard requirements for its facilities, including notably a 100-seat meeting room that it cannot meet without taking up most of the rear yard.**⁵ OP says DCPL "mandates" these requirements for each full service library. But it is essential for the Board to bear in mind that these are DCPL's "mandates", and that on their face they are like any other owner's requirements for executing a desired project. DCPL correctly notes that the Court of Appeals has sometimes stated that an entity oriented to public service

³ OP p. 2, DCPL p. 9-1-0.

⁴ DCPL p. 9; OP p. 2.

⁵ DCPL p. 10, OP pp. 2-3.

can be treated with a bit more leniency than a commercial entity or private landowner.⁶ But as those cases themselves indicate, the asserted project needs of such an entity are still subject to close scrutiny in light of the requirements of the Zoning Regulations; the mere fact that a variance is sought by an agency of the District government does not mean that “anything goes”. Indeed anyone who has followed land use matters in DC as long as I have knows that there is a strong policy interest on the part of the public in ensuring that the DC and Federal governments are required to play by the same zoning rules as everyone else. I recall that a provision to that precise effect regarding the District government was included in the Comprehensive Plan in the 1980’s.

So the Board cannot properly simply adopt DCPL’s program “mandates” as its own, but must carefully explore whether the agency’s implacable insistence on imposing a one-size-fits-all plan on this existing facility, with its obvious costs in terms of loss of open space, is warranted. The Board must seriously explore whether redesign should be considered, in view of the adverse effects on zoning integrity, the sincerely expressed views of the community that the library is intended to serve, and the arguments that have been advanced that there are alternative ways to reasonably approximate DCPL’s program objectives.

Thank you for your attention.

⁶ DCPL p. 8.