

Testimony re: BZA Case 18240

Mt. Pleasant Library Request for a Rear Yard Variance

Ellen M. McCarthy

Good afternoon, Madam Chair and members of the Board of Zoning Adjustment. My name is Ellen McCarthy, and I am the Director of Planning and Land Use at the law firm of Arent Fox LLP. I have more than thirty-five years of experience in planning and land use, with more than twenty-five years of that in Washington DC, including seven years at the DC Office of Planning.

Today I will address how, in my professional opinion, the application by the D.C. Public Library meets the requirements in the DC Zoning Regulations for variance relief.

As the Board is aware, there are three "tests" established in the Zoning Regulations that must be met in order to qualify for the variance. The applicant must show (1) that the property has unique characteristics, which (2) create a serious practical difficulty in complying strictly with the Regulations. Last (3), the applicant must demonstrate that the requested relief can be granted without impairing the purpose and intent of the Zone Plan and without adverse impact on neighboring property.

Let us first deal with the uniqueness of the property. As the Office of Planning notes in its report, the site area of the Mt. Pleasant Library, at 16,576 sf, is extremely small compared to most other library sites, severely constraining the options for where to place the addition, which is essential, given the substandard size of the existing facility.

In addition, the site is very oddly-shaped, with five sides of several unequal lengths. The corner of the parcel, where Lamont and 16th Streets meet, is an obtuse angle, approximately 130°, and the entrance of the building was located at that apex, making it, as the Board discovered in its 3-2 vote on the appeal related to the rear yard, difficult to even determine where the rear yard is, let alone to set it aside. A review of the DC Zoning Map and DC Property Quest has not located any other site that is configured as this one is.

Other factors helping to establish its uniqueness include the designation of the building, an original Carnegie Library, as a contributing building in the Mt. Pleasant Historic District. This places serious constraints on where an addition can be placed. Additionally, as a DC Government construction project, the Mt. Pleasant Library must be approved by the Commission of Fine Arts, which rejected a previous alternative to put the addition on the eastern side of the building that would not have necessitated rear yard relief.

Last, there is a seven story apartment building, the Park Marconi, which is located with one side of the building immediately on the property line shared with the Library, putting all of its windows at risk. The location of that building, along with the encroachment of the Mt. Pleasant

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Apartment building over the Library's property line, contribute to the uniqueness of the property, and severely constrain the options for locating an addition.

The second "test" for a variance is to demonstrate that the unique characteristics of the property create a serious practical difficulty in adhering to the strict application of the Zoning Regulations. As I indicated above, one practical difficulty is that, given the unusual and unique characteristics of the property, it is difficult to even determine what the rear yard is, let alone provide a conforming one. In addition, the very small size of the site makes it quite difficult to fit the adopted Program for the DC Public Library. The program includes a meeting room for a minimum of 100 people, and calls for a total facility of approximately 22,000 sf. Programs at the Mt. Pleasant Library, particularly the story hours for children, which are held in English and Spanish, are very popular and draw a large crowd, providing further justification for a meeting room that size. In addition, because a number of the residents of Mt. Pleasant do not have computers, it was essential to enhance the library's technology availability. As noted in the pre-hearing statement, as a public service, the Library is subject to somewhat reduced scrutiny in demonstrating the requirements for a variance. The public service entity needs to show that its design constitutes an institutional necessity, and indicate how that necessity results in the need for a variance. As the Library's witness and the architects have shown in their testimony today, the Program for DCPL's modernization initiative was based on national models, the recommendations of a recognized library consultant and the extensive experience of DCPL staff, and was officially adopted by the Board of Library Trustees. The program includes 80,000 books, an extensive array of computers and other technology, activity space for children and youth and a meeting room to accommodate at least 100 persons, preferably with separate entrance so that it can function even when the library is not open. This is the program which has guided the 10 branch libraries completed or under construction currently. Not only is this designed to meet the general public's need, but the additional spaces and elements are particularly needed at this site. DCPL also has an obligation to treat all neighborhoods approximately equally with respect to the services and space provided.

Due to the historic symmetrical character of building, the CFA and HPRB precluded putting the addition on the western side. However, the Park Marconi Apartment building is right on the property line to the east of the building. If the Library placed the addition on that side of the building, the residents would have no light and air. Therefore, it was necessary to keep the setback from the Park Marconi. That was an important consideration in the Library originally defining that as the rear yard. However, with that space unable to house the addition, and the space on the west side of the library unable to be used because of CFA and preservation objections, that means that the proposed location is the only possibility.

Further compounding the practical difficulty of strict adherence to the Zoning Regulations is the need for an access ramp. The ramp can only fit on the west side of the building. Given the height of the first floor of the Library, and the maximum slope permitted for a ramp under the ADA regulations, the ramp must be quite long, and will only fit on the western side of the building.

Clearly, all these factors – the institutional necessity of following the adopted Library program, the small lot, the odd configuration, the at-risk windows on the apartment on the east side of the building, the historic character of the existing structure and the CFA prohibition on locating the addition on the west side of the building – combine to create a serious practical difficulty for the Library in locating the addition in any location other than where currently proposed, and therefore, justify the relief requested.

The final “test” is whether the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Relieving the Library of the rear lot requirement will not cause any detriment to the public good for several reasons. First of all, the Library is in itself a public good, and the proposed addition will provide substantial public benefits, in terms of increased space and amenities.

The current placement of the addition will not adversely affect neighboring properties. All of the neighboring properties will continue to enjoy light and air, because of the distance from the building area of the library and their building faces. In fact, the relief sought will allow the addition to be placed where it will least impact the property with at-risk windows that sits directly on the shared property line.

The opponents of the Library’s expansion have repeatedly raised the specter of a public safety risk from fire. This issue has been directly addressed by the former Chief of DC Fire and Emergency Services, as well as the Fire Marshal, the officials specifically charged with protecting the public from fire danger. DC FEMS officials were well-aware of the arguments raised by the opponents, but determined that there was no reason to object to the Library’s design when they approved it, after lengthy and careful study. The jeopardy that the opponents predict is based on observations about fire in general, and continued references to fire codes that are not used by the District of Columbia, and not to any specific circumstances dealing with this particular site and design.

Whether or not the Library has a rear yard has no impact on fire safety for surrounding buildings, as corroborated by DC Fire and Emergency Medical Services. In an e-mail to Councilmember Graham, on June 2, 2010, former Chief Rubin stated:

I visited the Library site along with the Fire Marshal last evening to supplement the plans review process and to consider the concerns expressed by the external consultants discussing the need for an access road in the rear of the building. I do not see the need nor can I support this suggestion as improving the fire operations and life safety requirements for any of the buildings that are adjacent to the library. The very small area that would be added will not allow for the placement of fire & emergency apparatus, so therefore portable ladders will be required if elevated rescues are in fact needed from these buildings. By fully sprinkling the library building the risk of it becoming a significant hazard is reduced dramatically.

The Library building itself is sprinklered and covered with fireproof material, so there is no danger to library patrons, and no danger that the library will have a fire which could spread to other buildings. The multi-family buildings which are located on Mt. Pleasant Street and do not

have fire suppression equipment installed are not in conformity with the building code, so as they are renovated, they will be required to have fire suppression equipment, per the code.

FEMS has specifically stated that they do not fight fires with trucks at the rear of buildings, and as long as they can get hoses to the rear if necessary, that is sufficient. As is quite evident from the site plan presented by the architects, there is rear access for hoses to any building which might be affected by the construction of the library addition.

It should be noted that the fire that affected the Deauville occurred with no addition to the Library in place; therefore, it is not logical to argue, as the opponents have, that the past fires show that any addition will constitute a fire danger over the present situation. Indeed, past fires show that the presence of rear vehicular access is irrelevant. At its core, the argument of the opponents is absurd – it suggests that wherever there is an unsprinklered building, without rear alley access, the neighboring property should be forced to leave space open on its own lot, merely to compensate for the lack of investment by the owner of the older property, despite the fact that the obsolete building will be required to install modern fire control whenever it is renovated.

Last, the proposed zoning relief will not impair intent, purpose or integrity of the zone plan. The Zoning Regulations specifically note, in Section 350.1, with respect to the R-5-D zone in which the Library is located, that the R-5 districts permit institutional and public buildings compatible with residential uses. The zone does not require any side yard, nor does the zone for the adjacent buildings along Mt. Pleasant Street, C-2-A. There are a number of zone districts in the Zoning Regulations which only restrict lot occupancy for residential uses (C-1, C-2-A, C-2-B, C-2-C), several commercial zones (C-3-A and above that permit waiver of rear yards as a special exception) and several zones (C-R and all W zones except W-0) that only require rear yards above the plane where residential uses begins, meaning that the Zoning Regulations do not see the lack of a rear yard as inconsistent with the requirement that zoning protect the “public health, safety . . . and general welfare.” (Section 101.1) Clearly limited relief from the rear yard requirement is not inconsistent with the zone plan. The purposes for rear yards in R-5-D zones, primarily light and air, are being met under the current design for the Library.

With respect to the purpose of the rear yard requirement in the Regulations, it should be pointed out that relieving the Library of its rear yard requirement enables the Library to provide a side yard with a 15 foot setback from the windows of the adjacent Park Marconi Apartments. This eliminates what might have been an adverse impact on that neighboring property, since the Board has ruled that this setback did not qualify as a rear yard. Indeed, the Library is obliged by Sections 774.3 and 774.4 of the Regulations to provide sufficient separation to provide light, air and privacy. The requested zoning relief permits that for the Park Marconi, while still making it possible to meet the Library’s requirements.

In summary, in my professional opinion, the application before you today meets all the requirements of the Zoning Regulations for granting relief from the rear yard requirement. The property is unique because of a confluence of factors relating to its small size, odd shape, the historic designation of the existing structure, the prohibition

of the location of the addition on the west side of the building by the Commission of Fine Arts and the need for a substantial distance for the access ramp and the need to set back from the neighboring building on the east with windows on the property line. These factors create practical difficulties in meeting the programmatic needs of the DC Public Library, were the Zoning Regulations to be applied strictly, and relief can be granted without impairing the public good or the integrity of the zone plan.