

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

RECEIVED
OFFICE OF ZONING
2013 APR 24 AM 11:46

Christopher H. Collins
202 457 7841
chris.collins@hklaw.com

April 24, 2013

VIA HAND DELIVERY

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210S
Washington, DC 20001

Re Application No. 18533--Supplemental Submission

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18533
EXHIBIT NO. 37

Dear Members of the Board

At the close of the public hearing on April 9, the Acting Chair continued the hearing until April 30 (subsequently extended to May 7), and requested that the Applicant submit the following information

1 Any other briefing materials on the issue of whether a rear yard variance is required in this instance

The undersigned has discussed this issue further with the Zoning Administrator, who confirmed orally on an April 23, 2013 that rear yard variance relief would be required in this case, based upon the Board's decision in Appeal No. 18152 of ANC 1D ("Mt. Pleasant Library"). This position is at odds with both OP's interpretation of the location of the required rear yard, and the Applicant's interpretation of the location of the required rear yard. Accordingly, the Applicant submits the following

a The Applicant believes that the Board's method of determining the location of the rear lot line in the Mt. Pleasant Library appeal is not applicable to the facts of this case. The Board's Order in that case, as well as an enlarged portion of the Baist Atlas Plat for that site, are attached hereto as Tab A. That appeal involved, in part, a determination of which lot line of an irregularly-shaped lot constitutes the rear lot line. The Board's determination in that case hinged upon whether the Zoning Administrator's choice of the southern lot line as the rear lot line under the specific facts of that case was reasonable or unreasonable. In that case, the Board found the

Board of Zoning Adjustment
District of Columbia
CASE NO. 18533
EXHIBIT NO. 37

Zoning Administrator's choice of the southern lot line as the rear lot line to be unreasonable, and overturned his decision on that issue. The Board applied a specific test to determine which lot line was the more reasonable rear lot line, drawing a line perpendicular to the front lot line at the midpoint, and determining that the western lot line was the rear lot line. Both the southern and western lot lines in that appeal were skewed in relation to the front lot line, and were at right angles to each other.

Applying only the test used by the Board in the Mt Pleasant library case to determine the rear lot line in this case would not produce a reasonable result. Using that test, the lot line adjacent to the townhouse on Lot 170 would become the rear lot line. The "rear line of the building" would need to be set back 15 feet from that lot line, and only that lot line (because there can only be one "rear lot line"). The lot line chosen by the Applicant as the rear lot line in this case would then become a side lot line, and the proposed building would be permitted to extend all the way back to that line. Thus, a substantial portion of the building would be permitted to extend farther back on the lot than the "rear line of the building" that would result in applying the Mt Pleasant Library test to the facts of this case. The Applicant's proposed rear lot line is parallel to the rear lot line that would result from application of the Mt Pleasant test, and utilizing the traditional "farthest most back line" for the rear yard setback of the building would produce a more reasonable result. Thus, use of the Mt Pleasant Library test is not reasonable under the facts of this case.

b Tab B of this letter includes the plats and aerial photographs of a sampling of irregularly-shaped sites in the downtown area that were previously submitted under Tab I of the Statement of the Applicant (Ex 26). Superimposed on these plats and photographs are lines depicting in each instance the "required" location of the rear line of the building (according to the Office of Planning's interpretation in this case), in order to provide a minimum required rear yard that extends across the entire width of the lot from one side to the other. Note also that the existing building locations in a number of these examples would not satisfy the rear lot line location test established by the Board in the Mt Pleasant Library case.

c Tab C of this letter includes the Office of Planning report and supplemental report in Application No 16943, along with the building plat of that proposed project. The plat shows the irregular shape of that lot and the proposed location of the rear line of the building in that instance, both of which are similar to the instant case. As indicated on page 4 of the October 15, 2002 OP report in that case, "OP questioned whether the rear yard measurement should extend through the entire section. The Zoning Administrator confirmed that the rear yard requirements should also be considered in this area." OP's subsequent report of November 7, 2002 indicated that "the Zoning Administrator has now decided that the rear yard should be measured from the furthest lot line." This material, together with the materials included in Exhibit H of the Statement of the Applicant (Ex 26) in this

case, shows that five prior Zoning Administrators have considered the proper location and method of measurement of the required rear yard in lot configurations similar in nature to the lot in this case, and that all five have made determinations similar to that being requested by the Applicant in this case. Note also that the rear lot line location test adopted by the Board in the Mt. Pleasant Library case would not allow this determination. This building is the first example shown under Tab B hereto.

d. Filed herewith as a separate document is a Supplemental Statement of the Applicant, addressing the rear yard variance issue. If it is determined that a rear yard variance is required, then due to the unusual circumstances of this case, the Applicant respectfully requests that the Board waive its rules pursuant to Section 3100.5 (as it has done in prior instances) to consider a request for an amendment to the application in order to review the rear yard variance issue at the public hearing. The waiver will not prejudice the rights of any party, and is not otherwise prohibited by law. Tab D of this letter includes a number of examples in which the Board waived its rules to allow an application to be amended at the public hearing.

2. A brief statement on whether the Board may make a determination on whether a rear yard variance is or is not required in this instance.

The Board has exercised its authority on numerous occasions in this regard. Specifically, the Board has reviewed an Applicant's request for zoning relief in a number of cases, and has determined either that the requested relief is not necessary in whole or in part, or that additional or alternative relief is necessary. Several examples are included under Tab E. Included in those examples are the following.

- Order No. 17459 - In this self-certified application for a residential recreation space variance, the Zoning Administrator subsequently advised the Applicant that a parking variance was also required. The Applicant amended its application to include the parking variance, but maintained at the BZA hearing that such variance relief was not required. The Board concurred with the Applicant that parking variance relief was unnecessary.
- Order No. 16826 - This application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. However, the Board determined at the public hearing that one of the two requested special exceptions was not required, and that another different special exception was required.
- Order No. 16690 - This Zoning Administrator-certified application for variance and special exception relief was amended by the Board at the public hearing to eliminate the need for the variance relief.

The Applicant in this case is not asking the Board to "consider [an] informal request for advice" per Section 3100.7. Rather the Applicant is asking the Board to determine, under the specific facts of this case, whether rear yard variance relief is required. The Board has made similar determinations on a number of prior occasions, and the Applicant respectfully requests that the Board exercise its authority to make this determination in this case.

3. Proposed conditions to the application, with an opportunity for the Office of Planning and the Department of Transportation to respond.

Tab F of this letter is the Applicant's proposed conditions of approval. This list is a compilation of information from the Applicant's proposed TDM measures, and input from DDOT and the ANC. Several of the conditions of the ANC report in support of this application do not relate to the relief being requested. Accordingly, they are not included in the draft conditions, and would be improper for the Board to include as conditions. However, as explained at the public hearing, the Applicant intends to honor the commitments made to the ANC regarding maintenance of the small landscaped park in public space, as well as the financial contribution to restore the mural on a neighboring building.

4. A draft order, to be presented in the alternative regarding whether a rear yard variance is or is not required in this instance.

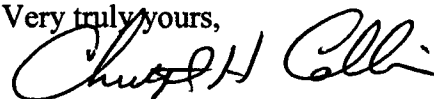
Tab G includes two draft orders - one without rear yard variance relief, and the other with rear yard variance relief, as requested by the Vice Chair at the public hearing.

5. The Applicant's rebuttal testimony and closing statement.

Tab H contains the Applicant's proposed rebuttal testimony in response to the information presented by OP, DDOT and others to date, and the Applicant's closing statement. The Applicant reserves the right to give additional rebuttal testimony and comments on any further testimony or evidence presented by OP, DDOT or others at the public hearing.

Thank you

Very truly yours,



Christopher H. Collins

District of Columbia Board of Zoning Adjustment
April 24, 2013
Page 5

Enclosures

cc Office of Planning, by hand
District Department of Transportation, by hand

#22967158_v1