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of Zoning Adjustment
District of Columbia
CASE NO. 18933
EXHIBIT NO. 37A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18152 of Advisory Neighborhood Commission (ANC) 1D, pursuant to 11 DCMR §§ 3100 and 3101, from an August 17, 2010 decision of the Department of Consumer and Regulatory Affairs (“DCRA”) in the issuance of Building Permit No. B1001861 to allow the renovation and expansion of the existing Mount Pleasant library in the R-5-D District at premises 3160 16th Street, N W (Square 2595, Lot 830)

HEARING DATES: January 11, 2011, February 1, 2011
DECISION DATES: March 1, 2011, April 5, 2011, June 7, 2011, June 21, 2011

DECISION AND ORDER

This appeal was filed on October 12, 2010, with the Board of Zoning Adjustment (the “Board”) by Chris Otten and Gregg Edwards¹. The appeal challenged DCRA’s decision to issue a building permit authorizing the District of Columbia Public Library (“DCPL”) to renovate and expand the existing Mount Pleasant Library. The Appellant claims that the permit was unlawful for several reasons, the primary one being that the permit was based upon DCRA’s improperly designating the southern lot line as the rear lot line of the property. After dismissing certain portions of the appeal as beyond its jurisdiction, and after allowing the parties an opportunity to be heard, the Board found that that DCRA had erred in its designation of the rear lot line, but had not erred with respect to its determinations regarding parking, loading, and court width. Thus, the Board found that the appeal should be granted in part and denied in part. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on January 11, 2011. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to Mr. Otten and Mr. Edwards, to ANC 1C and ANC 1D, to DCPL, and to DCRA.

¹ Although Mr. Otten and Mr. Edwards filed the initial appeal, Advisory Neighborhood Commission (“ANC”) 1D substituted itself as the Appellant in this case, and designated Mr. Edwards as its representative. (*See*, Exhibit 26.) Thus, the caption of the appeal was amended to identify ANC 1D as the Appellant, and throughout this Decision and Order, it is understood that the Appellant is ANC 1D.

Parties

The Appellant in this case is Advisory Neighborhood Commission 1D (the “ANC” or the “Appellant”) ANC Commissioner Greg Edwards spoke for the ANC during the proceedings

As the owner of the subject property, DCPL is automatically a party under 11 DCMR § 3199.1 and will hereafter be referred to as DCPL or the Library. Jeff Bonvechio, Director of the D C Public Libraries Capital Construction Office, was present during the hearing.

DCRA was represented by its Office of the General Counsel.

The Board also granted Intervenor status to Chris Otten based upon his oral motion, and to Evelyn Brewster, the President of the 16th Street Residents’ Association (Exhibit 28) and Yasmin Romero-Castillo, President of the Mount Pleasant Street Tenants’ Association (Exhibit 27). Both Associations are comprised of tenants who reside at properties in close proximity to the Mount Pleasant Library. The Board consolidated Ms. Brewster and Ms. Romero-Castillo into one party proponent of the appeal.

Continuances

As noted, the public hearing was first set for January 11, 2011. However, the Board granted Appellant’s continuance request over opposition from DCPL and DCRA, and continued the hearing to February 1, 2011. Appellant requested a second continuance on the February 1 date. However, the Board denied this request, finding a lack of good cause for the continuance.²

Scope of the Hearing

At the January 11 hearing, the Chair indicated that no testimony would be permitted concerning compliance with the Building Code or the Americans with Disabilities Act because the Zoning Act limits the Board’s jurisdiction to actions taken by District officials in carrying out and enforcing the Zoning Regulations. *See, Appeal No. 17329 of Georgetown Residence Alliance*, 53 DCR 5932 (2006). However, the Board later granted Appellant’s request to enlarge the appeal to encompass claims relating to court size and loading space requirements (Exhibit 32). Thus, on February 1, 2011, the Board heard the merits of the appeal, i.e., whether the Zoning Administrator (“ZA”) erred in his determinations regarding parking, loading, court width, and the rear yard designation.

Closing of the Record

The Board closed the record at the end of the public hearing except to allow post-hearing

² The continuance request stemmed partly from Appellant’s request to conduct discovery (Exhibit 26). However, the Board denied both the continuance and discovery requests, since its rules of practice and procedure, as contained in Chapter 31 of 11 DCMR, do not provide for discovery.

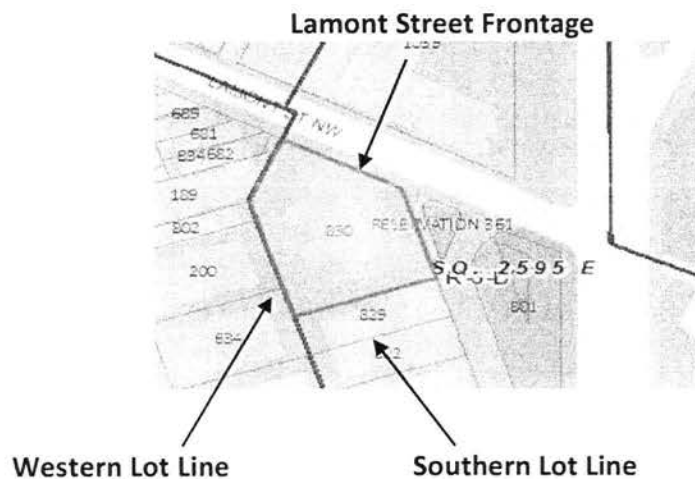
memorandums from the parties that were submitted into the record. (Exhibits 42, 43, and 44.)

FINDINGS OF FACT

The Property

1. The subject property is located at 3160 16th Street, N.W., Square 2595, Lot 830, in the R-5-D Zone.
2. The property is improved by the Mount Pleasant library, a building that was built in 1925 and is listed in the District of Columbia Inventory of Historic Sites. (Exhibit 18.)
3. The existing library is considered a “historic resource” under the Zoning Regulations. (*See*, 11 DCMR § 2120.)
4. The existing library building has a gross floor area of 18,012 square feet.
5. The property is an irregularly shaped five-sided lot.
6. Three of these sides are relevant to this appeal. These sides will be referred to as the Lamont Street frontage, the southern lot line, and the western lot line. The following figure identifies each segment.³

Figure 1



7. The existing library building has frontage on both 16th Street (92.42 feet) and Lamont Street (107.7 feet).

³ This illustration was taken from the Office of Zoning's electronic zoning map. The lines were added for the sole purpose of relating the text to the illustration. The lines are not intended to identify the actual spatial relationship between the three segments.

- 8 The Zoning Regulations allow the property owner to select the “street frontage” of a property where a lot abuts more than one street (See, 11 DCMR § 199 1.) Street frontage is “the property line where a lot abuts upon a street ” (*Id*)
- 9 An irregularly shaped open court extends from the end of the building to the northwest corner of the property (Exhibit 42)

The Proposed Project

- 10 DCPL proposes an interior renovation of the existing building, as well as the construction of an addition
- 11 The proposed addition will add 6,973 square feet of gross floor area to the building, thus expanding the gross floor area of the structure to 24,985 square feet, or by about 38% (Exhibit 18)
- 12 The open court at the property, when renovated, will be approximately 25 feet wide (Transcript, February 1, 2011, p 216)
- 13 The proposed project does not include any parking spaces
- 14 The proposed project does not include any loading docks
- 15 DCPL chose Lamont Street as the street frontage for the project
- 16 The Zoning Regulations define “yard, rear” in part as “the yard between *the rear line of a building* or other structure and *the rear lot line*” (emphasis added) (11 DCMR 199 1)
- 17 A 15-foot rear yard is required in the R-5-D Zone. See, 11 DCMR § 404.1
- 18 DCPL wished to use the southern lot line as the rear lot line because the distance between that line and the resulting rear building line would satisfy this 15-foot requirement (See, Exhibit 18, Tab C, a survey plat showing the 15-foot setback.)
- 19 If a line were drawn from the middle of the Lamont Street frontage to the southern lot line, the line would go off on an acute angle of approximate 30 degrees
- 20 If a perpendicular line were drawn from the middle of the Lamont Street frontage to the end of the property, the line would intersect the western lot line
- 21 There is no setback between the western lot line and the rear building line

Events leading up to the Issuance of the Permit

22. On March 12, 2009, counsel for the DCPL met with the ZA to seek his confirmation that the southern lot line could be used as the rear lot line.
23. On March 26, 2009, the ZA issued a zoning determination letter to DCPL "confirming [his] conclusions on the rear yard setback" (Exhibit 18, Tab E)
24. Conclusion number six stated that "the proposed lot line is opposite the Lamont Street frontage "
25. The letter further concluded that a rear yard located between the southern lot line and the rear building line "will ensure that adequate light and air would be provided in" an adjacent apartment house (Conclusion No 8), and "will result in a larger yard and a greater percentage of unoccupied land area on the lot than any other alternative" (Conclusion No. 9)

The Building Permit

26. A building permit was issued to DCPL on August 13, 2010, authorizing the interior renovation of the existing library, as well as a "9,000 square foot addition" to the existing structure (Exhibit 18, Tab A) As noted in Finding of Fact 11, the reference to a 9,000 square foot addition was erroneous, as the addition was actually 6,973 square feet

The Appeal

27. An appeal was filed on October 12, 2010, challenging DCRA's decision to issue the building permit

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D C Official Code § 6-641 07(g)(1) (2008 Repl), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The decision in this case is DCRA's issuance of the building permit. The alleged zoning errors were the ZA's determinations regarding parking requirements, loading requirements, minimum court width requirements, and rear yard setback requirements. Therefore this Order will refer to DCRA as the entity that issued the permit and the ZA as the person who made the interpretations complained of. As will be explained below, the Board concludes that, the ZA did not err with respect to determinations regarding minimum parking, loading, and court width requirements. However the ZA did err regarding his determination that the southern lot line was the rear lot line of the property. In fact, the western lot line was the rear lot line and the

resulting rear yard had less than the 15 feet depth required by § 404.1 Therefore DCRA should not have issued the building permit ⁴

The Parking Claim

The Appellant alleges that the ZA erred because he concluded that the addition did not require the provision of any off-street parking ⁵ The Appellant is incorrect in this respect

While it is true that the proposed project includes no parking spaces construction of the addition does not require additional parking This property is a “historic resource” within the meaning of 11 DCMR § 2120.2 because it “is a building listed in the District of Columbia Inventory of Historic Sites” As such, under § 2120.3 of the Regulations, no additional parking is required unless the gross floor area of the historic resource is increased by 50% or more (11 DCMR § 2120.3) Since the addition only increases the gross floor area by about 38% (Finding of Fact 11), no additional parking is required As noted in Finding of Fact 26, the building permit’s reference to a 9,000 square foot addition was erroneous

The Loading Claim

The Appellant alleges that DCRA also erred because it issued a permit without having received a loading plan from DCPL Again, Appellant is incorrect. No loading plan was required because no loading requirements existed for this project

Because this building was constructed prior to May 12, 1958, the loading requirement resulting from any addition is governed by 11 DCMR 2200.6, which in relevant part provides

When the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition or additions of . gross floor area, loading berths, loading platforms, and service/delivery loading spaces *shall be provided for the addition*

(Emphasis added)

Thus the loading requirements for this building are not based upon its entire gross floor area, but only upon the gross floor area of the addition.

The loading schedule for all uses is appended to § 2201.1. That schedule does not specifically set a loading requirement for a public library use Therefore, the library use falls into the catch-all category of “Any Other Use in All Districts” There is no loading requirement in the “Any Other Use” category unless the addition has a gross floor area of at least 30,000 square feet or

⁴ This error has been cured as a result of the Board’s decision in Application No 18240, which granted the application of DCPL for a variance from the rear yard depth requirement

⁵ The schedule of parking spaces required for public libraries is stated in the table appended to 11 DCMR § 2101.1

more. As noted, the gross floor area of the addition is 6,973 square feet (Finding of Fact 11) Thus, there is no loading requirement for the addition and, it follows, no need to submit a loading plan

The Court Width Claim

The Appellant alleges that the DCRA erred because the permit allowed DCPL to violate the minimum court width requirements. This claim must also be rejected As explained in the Findings of Fact, the open court at the proposed project will be approximately 25 feet (Finding of Fact 12) The Appellant challenged this measurement. However, the Board accepts the ZA's testimony on methodology used to measure the width The ZA testified exactly how he arrived at the 25-foot measurement He quoted from the Regulations, stating "[I]n the case of a non-rectangular court [as this one, the minimum width is] the diameter of the largest circle that may be inscribed in a horizontal plane within the court." (Hearing Transcript, February 1, 2011, p. 214.) Applying this methodology to the court resulted in a width of approximately 25 feet. Since § 406 1 requires a minimum width of only 10 feet, there is no doubt that the court width complies with the Zoning Regulations (11 DCMR § 406 1)⁶

Rear Lot Line Designation

The Board concludes that the ZA erred by designating the southern lot line as the rear lot line and finds that the western lot line was the rear lot line.

The Board agrees with the ZA that in order to determine the location of a rear yard it is first necessary to determine the location of the "rear lot line" Once that point is known the depth of the resulting yard can be determined (See 11 DCMR 199.1, defining "Yard, rear, depth of" as "the mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title ") The Board also agrees with the ZA that any prior designation of the front of a building does not bind the property owner as to future additions so long as the existing building will remain conforming The Zoning Regulations do not prohibit this result and the flexibility it affords is consistent with the intent of the regulations

In this case, DCPL chose Lamont Street for the building's street frontage The ZA's letter states that the southern lot line is "opposite" the Lamont Street frontage This may be true in a general sense, but if a line were drawn from the middle of the Lamont Street frontage to the selected southern lot line, the result is a line that inexplicably veers off at an acute angle The Zoning Regulations contemplate that any line should be drawn perpendicularly from its starting point If such a perpendicular line is drawn from the Lamont Street frontage, the line intersects the western lot line The Board therefore concludes that a rear lot line must be directly opposite the chosen street frontage This means that even when a lot has more than four sides there can be only one possible location for a rear lot line In this case, that location is the western lot line

⁶ Again, the library falls into the catch-all category of "all other structures" – "3 inches per foot of height of court, but not less than 10 ft " (11 DCMR § 406 1)

DCRA argues that the Board should defer to the ZA's judgment in this case because the Zoning Regulations are silent as to how a rear lot line is identified. Certainly deference is due when the ZA selects a reasonable approach. For example, in the instance where a building was bounded on either side by row dwellings and the finished grade is not apparent, the Board concluded that it was reasonable to calculate the lower level's contribution to gross floor area either by using the "perimeter wall method" or by using the "grade-plane method". See, *Appeal No 17109 of Kalorama Citizens Ass'n, affirmed on relevant ground, reversed on different ground, Kalorama Citizens Ass'n v District of Columbia Bd of Zoning Adjustment*, 934 A 2d 393, 399 (D.C. 2007). The BZA concluded that since "[b]oth methods appear reasonable the choice of which is most appropriate is within the Zoning Administrator's discretion." Order at 14.

In this appeal, the ZA selected the southern lot line as the rear lot line because the resulting rear yard would have less adverse impact on the light and air of an adjacent property and would result in the most unoccupied land area. The Board finds this methodology to be unreasonable. First, as noted, the choice of a lot line that was not directly opposite the Lamont Street frontage is inconsistent with the intent of the Zoning Regulations that a line of measurement should be drawn at a 90 degree angle from its starting point. Second, the selection and use of the type of factors relied upon here would involve the ZA in policy making functions that fall outside his "responsibility for administratively interpreting and enforcing the Zoning Regulations." See *Reorg. Order No. 55, Pt. III F, D.C. Code § 185 (1973)*, see, e.g. *Tenley and Cleveland Park Emergency Committee v District of Columbia Bd of Zoning Adjustment*, 550 A 2d 331, 341 n22 (D.C. 1988), *cert. denied*, 489 U.S. 1082 (1989) (Zoning Administrator has "no power to implement the Comprehensive Plan"). Since the method used by the ZA for identifying that rear lot line for the subject property was not reasonable, no deference was due him.

The Board therefore concludes that the western lot line, and not the southern lot line, is the rear lot line for the purposes of determining the location of the rear yard of the subject property. The distance between the western lot line and the rear building line is less than the 15 feet required by § 404.1. Therefore, DCRA erred in issuing the building permit and the Board sustains this portion of the appeal.⁷

CONCLUSION

For reasons discussed above, it is hereby **ORDERED** that the appeal is **GRANTED** with respect to the rear yard claim and **DENIED** with respect to parking, loading, and court width claims.

⁷ An order granting the DCPL a variance from the rear yard depth is published in this same edition of the *D.C. Register*.

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Vote taken on June 21, 2011.

VOTE: 5-0-0 (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G Turnbull voting to **Deny** the appeal with respect to the parking, loading, and court width claims)

VOTE: 3-2-0 (Michael G Turnbull, Lloyd J. Jordan, and Jeffrey L. Hinkle, voting to **Grant** the appeal with respect to the rear yard claim; Meredith H. Moldenhauer and Nicole C. Sorg being opposed)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

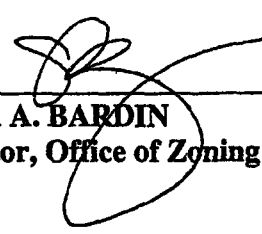
FINAL DATE OF ORDER: APR 04 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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PAGE NO. 2

Yasmin Romero-Castillo
President, The 3145 Mount Pleasant Street
Tenants' Ass'n
3354 Mount Pleasant Street, N.W., # 9
Washington, D.C. 20010

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning