

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No 17973 of the District of Columbia Public Library, pursuant to 11 DCMR 3103.2, for a variance from the off-street parking requirements of subsection 2101.1, in order to construct a new full-service neighborhood library in the R-2 District at premises 115 Atlantic Street, S.W. (Square 6172W, Lot 813).

HEARING DATE: September 1, 2009
DECISION DATES: October 6, 2009 and October 27, 2009

DECISION AND ORDER

This application was filed on May 22, 2009 by the District of Columbia Public Library (“Applicant” or “DCPL”). The application originally requested an area variance from the off-street parking requirements of 11 DCMR § 2101.1, and two area variances from the open court width requirements of § 406. The latter variances became unnecessary due to changes in design, therefore the only relief requested by the application was the variance to allow a reduction in the number of accessory parking spaces required for a public library in the R-2 zone district.

The Board of Zoning Adjustment (“BZA” or “Board”) held a public hearing on the application on September 1, 2009. At the close of the hearing, the Board requested additional information and set the decision date for October 6, 2009. Prior to the decision date, the Board received a request from the interested Advisory Neighborhood Commission (“ANC”), 8D, to postpone the decision on the application to allow the ANC more time to work with the Applicant to refine the design of the project. The ANC’s request was granted and the decision date re-set for October 27, 2009, at which time the Board voted 3-1-1 to grant the parking variance.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 28, 2009, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”) and Department of Transportation (“DDOT”), ANC 8D, Single Member District 8D07, and the Councilmember for Ward 8. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and provided such notice to the Applicant, the ANC, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 8D was automatically a party to this application. There were no

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requests for party status.

Government Reports. OP filed a report with the Board on August 25, 2009 recommending approval of the requested parking variance. OP opined that the topography of the subject property was an exceptional condition leading to practical difficulties in providing the required number of parking spaces. Discussing the third prong of the variance test, OP stated that any adverse impacts would be mitigated by the seven spaces to be provided and the availability of other parking in the area.

DDOT did not submit a separate report, but relayed, through OP's report, that it had no comments on the application.

The U.S. Commission of Fine Arts ("CFA") sent a letter to the Applicant that was placed in the record of the proceedings on this application. The CFA approved the revised concept design of the library. The CFA did not make a recommendation for or against the granting of the parking variance, but did suggest completely eliminating on-site parking.

ANC Reports. Chronologically, the first document from ANC 8D in the record is a resolution adopted on May 22, 2009, which contains several questions, of both a procedural and a substantive nature, directed to the Applicant and concerning the subject property and the subject proposal. This document makes no mention of the requested parking variance. Exhibit No. 27.

On August 31, 2009, the Board received a letter from the ANC requesting an extension of time to address and respond to the Applicant's Pre-Hearing Statement and attachments. Exhibit No. 31. This ANC letter does not discuss the parking variance.

There are two more ANC resolutions in the record, one dated September 1, 2009, and the other dated September 15, 2009. These resolutions are attached to the ANC's filing on September 28, 2009, containing a cover letter along with an extensive document entitled "Conclusions of Law and Opinion." ("Statement"). Both of these resolutions make essentially the same points. They both complain of the Applicant's planning process and alleged lack of meaningful engagement with Ward 8 residents, as well as state that the ANC would prefer to retain and renovate the existing library building on the subject property. Neither resolution, however, refers to, or takes any position on, the parking variance. Exhibit No. 34, Attachments D.2 and D.3 to Statement.

There is also in the record a fourth ANC resolution dated September 24, 2009, requesting a continuance of the case before the Board pending a meeting between ANC 8D and the Applicant, at which Councilmember Barry would be present. This brief, one-paragraph resolution does not mention the parking variance. Exhibit No. 34, Attachment D.1 to Statement.

The Statement of the ANC (filed on September 28, 2009) sets forth the ANC's legal arguments against the requested zoning relief and the library's design. It argues that there is no practical difficulty in complying with the Zoning Regulations, and emphasizes that any such difficulty is

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self-imposed by the Applicant's design choices. The Statement also sets forth seven ways in which the ANC claims the proposed project will impair the public good, thus failing the third prong of the variance test.¹ The Statement concludes by recommending denial of the parking variance (as well as the then-still-requested court width variances), citing a failure to meet the variance test and "overwhelming public opposition to the ... proposed library design." Exhibit No. 34, Statement at 6.

On September 28, 2009, the Board received another ANC filing, which was undated, but denoted Exhibit No. 33 in the record. This filing requested a postponement of the Board's decision on the application in order to allow time for the ANC to "re-develop constructive dialogue with the D.C. Public Library" in order to try to reach some consensus with respect to design issues and the need for the variance. With regard to the variance relief, the filing specifically states that the application fails to meet all three prongs of the variance test. Exhibit No. 33.

On October 22, 2009, the ANC filed with the Board a letter dated October 20, 2009, ostensibly amending an earlier letter of August 24, 2009,² in order to meet the criteria necessary to be accorded great weight. The October 20th letter states essentially the same points stated in Exhibit No. 33. The October 20, 2009 letter again asks the Board to postpone its decision on the application to allow further dialogue between the Applicant and the ANC. Exhibit No. 38.

On October 23, 2009, the ANC filed its final document with the Board – a letter dated October 22, 2009 – in which it characterized the behavior of the Applicant toward the ANC as "inadequate, disrespectful, and dismissive." The ANC requested that the Board either deny the variance or again postpone its decision until the Applicant meets with the public "in good faith" to discuss design issues and the possibility of renovating the existing building. Exhibit No. 39.

Persons in Support or Opposition. There is an opposition letter in the record from Ward 8 Councilmember Marion Barry. At the hearing, five persons testified in opposition to the application and one person testified in support.

FINDINGS OF FACT

The Subject Property and the Surrounding Neighborhood

1. The subject property is located in an R-2 zone district, at address 115 Atlantic Street, S.W., Square 6172W, Lot 813, at the southwest corner of Atlantic Street, S.W. and South Capitol Terrace, S.W.

¹The Statement also argues a lack of undue hardship, but this criterion applies only to use variance requests. It is inapplicable to the area variance which the Applicant requests, and so is not relevant, nor discussed, in this Order.

²There is no ANC letter dated August 24, 2009 in the record, but it is likely that the October 20th letter is referring to Exhibit No 33, which is the earlier letter requesting a postponement, but lacking the specific criteria necessary for great weight. Exhibit No. 33 was date-stamped by OZ on September 28, 2009, but appears to have been faxed to OZ on August 25, 2009, making it likely that it was written on August 24, 2009.

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2. The subject property has an area of approximately 29,793 square feet, with a northern frontage of approximately 150 feet along Atlantic Street and an eastern frontage of approximately 127 feet along South Capitol Terrace.
3. Across Atlantic Street are multiple dwellings and commercial buildings, in an R-5-A zone district to the northwest and a C-2-A district to the northeast.
4. Across South Capitol Terrace is a parking lot located behind commercial buildings in a C-2-A zone district and fronting on South Capitol Street.
5. To the west and south, the subject property is adjacent to a series of one-family detached dwellings.
6. The property is currently improved with a one-story with basement neighborhood library building constructed in 1959 and with a retaining wall of significant height along the entire rear and most of the western edge of the property.
7. The existing library building contains approximately 17,000 square feet of gross floor area and occupies approximately 38% of the lot.
8. The existing library provides space for a maximum of approximately 15 accessory parking spaces in an unstriped parking area at its rear, although currently some of this area is occupied by a dumpster.

The Proposed Project

9. The Applicant proposes to demolish the existing structure and construct a new, three-story library building, 34.8 feet in height, and including approximately 22,000 square feet of gross floor area.
10. The new library will be a public service use, providing traditional library services to the public, as well as rooms available for meetings and other community functions, and an outdoor amphitheater and community gathering space.
11. The new library building will have a horizontally-oriented central mass and three attached smaller volumes, or “pavilions.” The pavilions will be attached to, and extend from, the main horizontal mass of the building and are necessitated by the programmatic need of the library to separate three different patron populations. The smallest of these pavilions will extend eastward toward South Capitol Terrace from the second floor of the building, near its rear, and will house the children’s area of the library. The other two pavilions, both larger, will extend northward toward Atlantic Street from the third floor of the building. One will contain a teen reading/browsing room, and the other will contain an adult reading/study area and adult conference rooms.
12. The central building mass and the pavilions will have exterior walls of floor-to-ceiling glass

supported by vertically-mounted timber “fins.”

13. Due to the slope of the property toward Atlantic Street, the children’s pavilion is only approximately 4 feet, 9 inches above grade, but the undersides of the other two pavilions are significantly above grade, leaving useable outdoor space beneath them.
14. Under the two larger pavilions will be an outdoor amphitheater and gathering space, as well as a bicycle parking area.
15. The new building will provide seven off-street parking spaces, including one space reserved for the use of vehicles used by persons with a disability, but due to its gross floor area, is required to provide 21 off-street parking spaces, necessitating a variance for 14 spaces. 11 DCMR § 2101.1.
16. The seven parking spaces to be provided will be relocated from the rear of the site to be near the entrance of the new building, along the South Capitol Terrace frontage.
17. Facing the new parking lot, the new building will have a service entrance to be used for deliveries.
18. The dumpster now located in the parking area behind the existing building will no longer be used, but will be replaced with roll-out trash containers unobtrusively stored elsewhere on the property.
19. The new library building will meet the standards of the Americans with Disabilities Act (“ADA”) as well as the certification standards of the United States Green Building Council’s Leadership in Energy and Environmental Design (“LEED”) standards for a LEED Silver Rating.

The Variance Relief

Exceptional conditions

20. The property is subject to a steep grade change, with the elevation dropping approximately 40 feet from the southwest to the northeast corner.
21. A large area within the property (all along the rear, the southwest corner of the property, and approximately half-way up its western boundary) is shored up by the existing retaining wall, reaching 16 feet in height.
22. The area above the retaining wall is treed and abuts the neighboring properties.
23. Approximately 20% of the buildable area on the subject property is lost due to the steep slope and the presence of the retaining wall.

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24. A no-build zone of 12 feet next to the retaining wall must be maintained so as not to disturb the wall's footings.
25. There is a building restriction line along South Capitol Terrace which is set 15 feet in from the property's eastern boundary.
26. The presence of the building restriction line removes an area 15 feet wide and approximately 127 feet long – an area of just over 1,900 square feet – from the buildable area on the property.
27. The programmatic need to separate the three patron populations by age group results in the three-pavilion design, which reduces the ground area available for parking.
28. Separate areas within the library for the different age groups are an institutional necessity in library design because the use of the library by one group, for example, young children, may compromise the library experience for a different group, such as adults.
29. The three individual pavilion areas are each attached to the building's main volume by a short hallway, allowing for sufficient separation while preserving clear sight lines. Such sight lines are important because they enable parents standing within the main part of the building to see their children while the youngsters are in the children's pavilion.
30. By separating each pavilion from the main volume of library space, as opposed to incorporating separate areas for each age group within one large, box-like building, there is more external wall surface area, allowing more windows and more natural lighting, enhancing both the use of the library and its environmental sensitivity.
31. The design of the two larger pavilions extending from the third floor of the main volume of the building enables the library to provide the community with a covered outdoor amphitheater and neighborhood gathering space. These areas reduce the ground area available for parking, but arise from the programmatic need of the library to be a multi-functional building, able to service the public in many ways.

Practical Difficulties

32. The proposed building and 14 more parking spaces cannot fit within the limited buildable area on the property.
33. Adding 14 more parking spaces would use up approximately 2,400 square feet – nearing a tenth of the entire site, including the non-buildable area.
34. The retaining wall blocks off a large portion of the property, but it is substantial and serves the purpose of shoring up the land behind it. Removal of the wall would be difficult, costly, and potentially dangerous and destabilizing to both the environment and the dwellings located behind and above the subject property.

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35. The retaining wall and the 12-foot no-build zone between it and the building constrain the buildable area, but also serve to maintain a distance between the rear of the proposed building and the closest rear yards.
36. No parking spaces are permitted within the approximately 1,900-square-foot area between the property's eastern boundary and the building restriction line. 11 DCMR § 2116.4.
37. The Green Building Act of 2006 requires that all new District of Columbia public buildings, such as the proposed library, must achieve at least a LEED Silver Rating.
38. The existence of the bio-retention pond reduces the ground area available for parking, but helps the building achieve the mandated LEED Silver Rating.
39. There is not enough area under the building to fit an underground garage, with the necessary ramp and turning radii. Underground parking would also be prohibitively costly and would reduce the funds available for the building and the upgraded and modernized library facilities to be offered.

No substantial detriment to public good or impairment of Zone Plan

40. The existing library has functioned adequately at this site since 1959 with its current parking space area and arrangement, which have been hampered by a lack of striping and the presence of a dumpster.
41. Directly across South Capitol Terrace is a parking lot used by commercial buildings fronting on South Capitol Street, reducing the demand for on-street parking, which is available along the subject property's two street frontages.
42. Metrobus service is available along Martin Luther King Avenue, S.W., one block to the west, and along South Capitol Street, S.W., one block to the east. Twelve bus routes serve the area around the junction of South Capitol Street and Atlantic Street, including some that connect with Metrorail.
43. The proposed library will be a neighborhood facility to which many patrons are expected to walk or bicycle and a bicycle parking area will be provided.
44. A public library is a matter-of-right use in this R-2 zone. 11 DCMR §§ 201.1(o) & 300.3(a).

CONCLUSIONS OF LAW

The Variance Standard

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or

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shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6-641.07(g)(3) (2008 Supp.), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of the structures existing on the property itself. See, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). And, characterization of a use as a public service may also be significant in determining whether the requisite “exceptional situation or condition” exists. *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979). Finally, relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3) (2008 Repl.), 11 DCMR § 3103.2.

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting an area variance, therefore, it had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the zone plan as embodied in the Zoning Regulations and Map.

Exceptional Conditions

The subject property exhibits the exceptional conditions contemplated by the first prong of the variance test. Its topography is steeply sloped with the higher ground approximately 40 feet above the lowest point on the property. The rear, higher portion of the property is shored up by a concrete retaining wall up to 16 feet tall. The area behind the retaining wall, though technically a part of the property, is inaccessible and unbuildable, reducing the buildable area of the property by approximately one-fifth. Removing the wall was considered, but is very costly and does not make more area available for parking without a large amount of earth removal and re-grading. Removing the retaining wall could destabilize the ground under the neighboring lots and cause other negative environmental impacts. The wall therefore will be retained and a 12-foot buffer area of no construction will be maintained between the building walls and the retaining wall so as not to disturb the latter’s footings.

The buildable area on the property is further reduced by another approximately 1,900 square feet due to the existence of the building restriction line 15 feet in from the property line along South Capitol Terrace. No part of the building and no parking spaces are permitted to be within this 1,900 square foot area. See, 11 DCMR § 199.1, Definition of “Line, building.” (“[A] line beyond which property owners have no legal right to extend a building or any part of a building

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... also applied to building restriction lines when recorded on the records of the Surveyor of the District of Columbia.”), and 11 DCMR § 2116.4.

The new library will be a public service use, and, as such, is subject to a somewhat reduced scrutiny in this area variance analysis. The Board is empowered to apply a more flexible standard in determining whether the prongs of the variance test are met. *National Black Child Development Institute, Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984), citing *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979). A public service entity requesting an area variance must, however, make two showings respecting its choice of design: how the design constitutes an institutional necessity and how its features result in the need for the variance sought. *Draude v. D.C. Bd. of Zoning Adjustment*, 527 A.2d 1242, 1256 (D.C. 1987).

The Applicant’s chosen design contains the three separate pavilions, each attached to the main building area by a short hallway. These pavilions are institutionally necessary to safely and efficiently segregate the three age groups of children, teens, and adults. Each of these groups may use the library for different purposes, and each may cause a different level of noise or other disturbance, potentially undermining the library use of the other groups. To maximize the library experience for each group, such separation is necessary. It would perhaps be possible to segregate the groups within a building with one main volume, but walls or other divisions would be necessary, eliminating the sightlines provided by the pavilion design. Further, the pavilion design allows a greater expanse of window space, and therefore more natural light, which might not be achievable with a design using a more monolithic building within which the three groups would be divided. The pavilion design also allows two of the pavilions to extend only from the third floor, creating useable, covered outdoor space. This space is necessary for some of the library’s other programmatic needs, such as providing a community gathering space and amphitheater.

The pavilions, although necessary for a successful library experience for patrons, are one factor leading to the need for the parking variance. The area underneath the two larger pavilions, while ideal for a gathering space, cannot be used for parking due to the way the space is carved up and the existence of the pillars supporting the pavilions. The programmatic needs of the library are therefore another exceptional condition of the property from which arises practical difficulties in complying with the Zoning Regulations. *Monaco*, at 1099.

Practical Difficulties

The buildable area left available on the property is sufficient to place the proposed building and the seven parking spaces to be provided, but the Applicant would encounter significant practical difficulties in including another 14 parking spaces. One of the goals sought to be achieved with the new library is an increase of gross floor area, therefore, it would be counter-productive to reduce the size of the building to include more surface parking. Reducing the building footprint and adding another floor would put the building over the maximum 40-foot height allowed in the

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R-2 zone. 11 DCMR § 400.1. The three-pavilion design allows the library to accomplish all its stated public service goals, but due to the design, as well as the other exceptional conditions of slope and restricted area, there is simply not enough room on the property for another 14 parking spaces, whether on the surface or below ground, and the latter is prohibitively costly as well. Moreover, diverting funds for an underground garage would cut into the funds available for the building and the upgrading of the interior of the library facility and its inventory.

No Substantial Detriment to Public Good or Impairment of Zone Plan

Although the Applicant would face serious practical difficulties in complying with the zoning requirement of 21 off-street parking spaces, the lack of 14 of these spaces is mitigated by the large amount of parking available in the neighborhood. On-street parking is available on both street frontages and there is a parking lot immediately across South Capitol Terrace which reduces the use of on-street parking by drivers visiting commercial establishments. Metrobus service is available on the two nearby major thoroughfares – Martin Luther King, Jr. Avenue, just one block west of the property, and South Capitol Street, just one block east of the property. Also, importantly, the proposed library is a *neighborhood* library intended to serve the local area, many of whose patrons will walk or bicycle to the building.³ The existing library building has an unstriped parking area where, with the dumpster, and depending on the positioning of the vehicles, perhaps even fewer than seven vehicles could fit. The library has successfully served the local area for the last 50 years with this less-than-optimal parking arrangement. The new library will now provide a striped, improved, and more-conveniently located parking lot – a much more optimal arrangement.

Public libraries are matter-of-right uses in R-2 zone districts and the proposed library needs no zoning relief other than the requested parking variance.

The Board concludes that the application meets all three prongs of the area variance test. The subject property's exceptional conditions render infeasible, if not impossible, the provision of the required number of on-site parking spaces. The new, updated library building will enhance the neighborhood, and no substantial detriment to the public good or impairment of the intent and integrity of the Zoning Regulations and Zoning Maps will occur due to the reduction in parking spaces from 21 to seven.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) & 6-623.04 (2008 Supp.) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended granting the parking variance, and the Board agrees.

³A survey done by the Applicant of patrons at the circulation desk showed that approximately 40% of patrons walked to the library, 30% drove, and 30% took the bus. Hearing Transcript at 161, lines 21-22 & 162, lines 1-5.

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ANC 8D has been an active participant in these proceedings, filing many documents with the Board and testifying at the hearing. The ANC opposes the granting of the parking variance and is not in favor of the overall design concept of the library, stating that it is “not compatible with the surrounding Ward Eight neighborhoods.” Exhibit No. 34, Statement at 4. The Board must give great weight to the issues and concerns of ANC 8D, but only to those issues and concerns that are “legally relevant” to the three-prong test for the parking variance. *Bakers Local 118 v. D.C. Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981). Therefore, the ANC’s issues and concerns relating to building design and appearance will be discussed and accorded great weight only insofar as they are relevant to the requested parking variance.

The Board further notes that, in its Statement, the ANC appears to argue that the Applicant’s claimed practical difficulties are self-imposed and brought about by its design choices.⁴ A “self-imposed hardship” may defeat a use variance, but “self-imposed practical difficulties” are merely a factor to be considered by the Board in analyzing an area variance request, such as the Applicant’s. *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990). (“Prior knowledge or constructive knowledge or that the difficulty or hardship is self-imposed is not a bar to an area variance.”) In a sense, all, or at least most, area variance requests entail some practical difficulties which could be characterized as “self-imposed.” If the Zoning Regulations require one thing, which is possible to do, and a variance applicant “chooses” to do something else – something non-compliant – he has chosen, *i.e.*, he has “self-imposed,” the need for the variance. Indeed, the *raison d’être* of an area variance is to allow an individual to make this choice and to take the risk that the variance may not be granted.⁵

Turning now to the ANC’s issues and concerns, the Board will deal with each one in turn. The ANC states that the first prong of the variance test is not met, but provides no explanation of why this is so. It merely states that “the condition that the property be ‘extraordinary (sic) unique’ has not been met. The Board disagrees with this conclusion, as explained above, particularly in Findings of Fact Nos. 20-31, and in the Conclusions of Law.

The ANC also claims that the practical difficulties encountered by the Applicant do not arise out of the topography of the property, but that instead, the topography is “irrelevant” given that the maximum lot occupancy permitted is 40%. The ANC concedes that the steep topography renders unbuildable approximately 20% of the property, but argues that the area left on which to

⁴ANC 8D states: “DCPL and the architects had knowledge of what space constraints they were under before setting pen to paper for a new Washington Highlands Library, and despite them chose to move forward with a design that requires the variances being sought.” Exhibit No. 34, Statement at 1. The ANC also states: “the bio-retention pond is a self-imposed constraint” and “it was the choice of DCPL and the architects to draw and plan a structure that breaks zoning codes.” *Id.*, at 1 and 2, respectively.

⁵In this regard, the ANC states several times that the second prong of the variance test is not met because “the design team can avoid the variance request by simply revisiting the design (sic) thus they will not encounter practical difficulties if the zoning regulations are strictly applied.” *See, e.g.*, Exhibits Nos. 33 and 38. But, the point of a variance is to allow an applicant to choose a non-compliant design, for which there may be good reasons, and to request the variance in order to, in effect, bring that design into compliance.

build is enough to avoid the variance as only 40% lot occupancy is permitted anyway. Exhibit No. 34, Statement at 1. The ANC's reasoning does not undermine the variance request, because if only 80% of the property is left on which to build (actually less due to the building restriction line and no-build zone adjacent to the retaining wall) then the Applicant must squeeze a building designed to occupy up to 40% of 100% of the property onto 80% of the property, leaving inadequate room for the required parking and making a parking variance a necessity. Further, an Applicant is entitled to use all of his property and if part of it is rendered unbuildable by topography, the Board may reasonably find that topography creates an exceptional circumstance whether or not there is land enough left on which to build.

The ANC also enumerates seven ways in which it alleges granting the variance will impair the public good pursuant to the third prong of the variance test. Exhibit No. 34, Statement at 4-6. The ANC's first point is entitled "[i]ncongruity of the building design; lack of planning." Exhibit No. 34, Statement at 4. The ANC representative and others in the community felt that the design of the proposed library was incompatible with the surrounding neighborhood. As explained earlier in this Order, the design of the building is driven by the programmatic needs of the library and is necessary to fulfill its public service mission. But, more importantly, the mandate of the variance test that there be no substantial detriment to the public good goes to the granting of the variance itself, not to the design of the building.

As for the "lack of planning" alleged by the ANC, an applicant's outreach efforts may enhance or detract from its community support, but beyond this, they have no relevance within the confines of the three-part variance test.

The ANC's next concern goes to the retaining wall along the rear and western property boundaries. The ANC claims that the Applicant's proposal impairs the public good because not enough analysis has been done concerning the "durability and maintenance needs for the retaining wall." Exhibit No. 34, Statement at 4. The Applicant has taken steps to ensure the safety of the wall, such as the 12-foot no-build zone adjacent to it and it is in the Applicant's best interest to do so. However, although the existence of the wall, as well as the reason for its existence – the slope -- create an exceptional condition under the first prong of the variance test, ensuring the safety of the wall is a construction issue, not itself relevant to the variance test.

The ANC next notes concerns with library patron security, but not in the context of the parking lot, its location, or arrangement. This concern, as well as the seventh ANC concern, awkward meeting space, have not even a tangential relevance to the parking variance request, and so will not be addressed.

The last three ANC issues go to parking and so may bear on the variance request to some extent. The ANC claims that placing the parking at/near the front of the building "hurts" the aesthetics of the building. Exhibit No. 34, Statement at 5. This issue is only marginally relevant to the variance because the variance does not go to the location of the parking, but to the number of spaces provided. Although placing parking at the front of a building may not be optimal from an

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urban planning perspective, the Applicant explained its decision to do so to the Board's satisfaction. *See, e.g.*, Hearing Transcript at 146, lines 12-22 and 147, lines 1-6. Moreover, during at least two of the focus group meetings held by the Applicant with the community, complaint was made about the current location of parking at the rear of the building. Exhibit No. 22, Attachment B. Meeting participants considered the current parking too far from the entrance and somewhat unsafe due to its rear location.

The ANC states that one parking space for person with disabilities is not enough, but regulations controlling the number of such spaces are not within the Board's jurisdiction.

The ANC then claims that there will not be sufficient parking on-site and that this will lead to an "increase in on-street parking traffic." Exhibit No. 34, Statement at 5.⁶ These concerns are directly relevant to the parking variance request. The Applicant will provide one-third of the required off-street parking spaces, but has demonstrated that due to the exceptional conditions on the property, it would encounter significant practical difficulties in providing the other 14 required spaces. An increase in on-street parking may occur if the new, upgraded library draws an increasing number of patrons, but the Board does not find that it will rise to the level of a substantial detriment to the public good. There are no dwellings on South Capitol Terrace across from the property, therefore on-street parking there would not interfere with residential parking. Many patrons will likely not drive to the library, and for those who do, there is sufficient parking available on the property and on adjacent streets. This fact was borne out by the participants in the focus groups held by the Applicant. The Summary of the March 14, 2009 focus group meeting states that "all participants agreed that parking is not hard to find" and the Summary of the April 24, 2009 meeting states that individuals "[a]lways can find a spot to park." Exhibit No. 22, Attachment B.

ANC 8D was an able and vocal opponent of the requested variance, as well as of the proposed design of the new library. The Board, after carefully analyzing the case for the variance, and assessing all the ANC's concerns, must however disagree with its opposition to the requested parking variance.

For all of the above reasons, the Board concludes that the Applicant has satisfied the burden of proof for an area variance from the parking requirements of 11 DCMR § 2101.1, pursuant to § 3103.2. Accordingly, it is **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE CONDITION** that the Applicant shall construct the library on the subject property to conform to the illustration attached to Exhibit No. 37, but is permitted flexibility in the selection of exterior building materials, provided that the exterior building materials finally selected shall have been presented to **ANC 8D**, and further provided that the implementation of such flexibility does not result in the need for further zoning relief.

⁶The ANC's use of the term "on-street parking traffic" appears to denote on-street parking, rather than moving traffic *per se*.

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VOTE ON THE APPLICATION: **3-1-1** (Marc D. Loud, Shane L. Dettman, and Peter G. May to Approve; Meridith H. Moldenhauer to deny; No fifth member participating or voting)

VOTE ON THE CONDITION: **4-0-1** (Marc D. Loud, Shane L. Dettman, Peter G. May, and Meridith H. Moldenhauer to Approve; No fifth member participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: **APR 09 2010**

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.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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