

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18240-A Motion for Reconsideration and Rehearing in Application No. 18240 of District of Columbia Public Library, pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under § 404 to allow an addition to the existing Mount Pleasant library in the R-5-D District at premises 3160 16th Street, N.W. (Square 2595, Lot 830).

HEARING DATE: July 19, 2011
DECISION DATE: September 13, 2011
ORDER DATE: April 4, 2012
**RECONSIDERATION
DECISION DATE:** May 15, 2012

ORDER DISMISSING¹
MOTION FOR RECONSIDERATION AND REHEARING

By order dated April 4, 2012, the Board of Zoning Adjustment (“Board”) granted an application submitted by the District of Columbia Public Library (“DCPL” or “Applicant”) for an area variance from the minimum rear yard requirement under § 404 to allow construction of an addition to an existing public library building at 3160 16th Street, N.W. (Square 2595, Lot 830). Parties in this proceeding are the Applicant and Advisory Neighborhood Commission (“ANC”) 1D, the ANC for the area within which the subject property is located. At the public hearing, the Board denied a request for party status in opposition to the application submitted by Chris Otten, purportedly as a representative of tenants living in apartment buildings near the subject property. The Board’s decision was based on the grounds that the request was untimely, lacked specific authorization for representation, and did not provide an explanation of how the tenants’ interests “would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those other persons in the general public,” as required by § 3106.2(e)(5) of the Zoning Regulations.

¹ Although the oral motion approved by the Board was to “deny” the reconsideration, this Order reflects the Board action as a “dismissal” since the Board did not reach the merits, but found the reconsideration request to be procedurally flawed.

BZA APPLICATION NO. 18240-A
PAGE NO. 2

Motion for reconsideration and rehearing. On April 18, 2012, the Board received from Chris Otten a “motion for reconsideration and rehearing” of the order in the case. The motion stated that the “[p]arties request a reconsideration of the matter to provide a full evidentiary hearing and more thorough analysis of the purported facts and written documentation to the record,” and alleged that the order contained “factually incorrect statements.” (Exhibit 61.)

By submission received April 24, 2012, Chris Otten made a “further filing” to the motion after being notified by the Office of Zoning that his initial submission “needed further filings to request waivers of rules.” In the further filing, Mr. Otten indicated that no waiver of the time requirement was needed because the motion was timely filed. With regard to Mr. Otten’s lack of party status in this proceeding, the filing stated that “all case filings and determinations have been served to parties” in the case. The filing did not address the requirement that only parties may file motions for reconsideration, except to state that documents attached to the filing showed “how the neighbors living around the library project sought representation regarding this case....” According to Mr. Otten, “[t]hey have standing to request a Motion for Reconsideration and Rehearing of [the order] as individuals and through civic agents.” (Exhibit 62.) The filing did not request a waiver of the party requirement.

By letter dated May 4, 2012, the Applicant responded in opposition to the request for reconsideration and rehearing. Grounds for the opposition raised by DCPL were that: (i) the library renovation project was nearly completed; (ii) the motion provided no new evidence that would materially alter the circumstances upon which the Board voted and that could not have been presented at the time of the hearing, as required by § 3126.6 of the Zoning Regulations; and (iii) the motion was submitted individually by Mr. Otten, who was not granted party status in this proceeding, and provided “no evidence that anyone who was granted party status in the case is requesting reconsideration.” (Exhibit 63.)

The Board concurs with the third ground raised by the Applicant and concludes that the motion for reconsideration and rehearing must be dismissed. The Board’s rules of practice and procedure, set forth in chapter 31 of the Zoning Regulations, prescribe the requirements for participation as a party in a proceeding before the Board.² (*See* 11 DCMR §§ 3106.2, 3106.3.) The rule that permits motions relating to written orders of the Board specifies that “[a]ny *party* may file a motion for reconsideration or rehearing of any decision....” (emphasis added). (11 DCMR § 3126.2.) The Board previously determined that Mr. Otten did not meet the requirements for party status in this proceeding. The filings by Mr. Otten now at issue did not seek a waiver of the requirement that a motion for reconsideration or rehearing must be filed by a party; nor did the filings provide good cause for any waiver.

For the reasons stated above, it is hereby **ORDERED** that the motion for reconsideration and

² Board rules allow participation as either a “party” or as a “person” in support of or in opposition to an application. (*See, e.g.*, 11 DCMR §§ 3117.4, 3117.5.) After his own request for party status was denied, Mr. Otten participated in the public hearing as a witness for ANC 1D, which, as the affected ANC, was automatically a party in this proceeding. ANC 1D has not requested reconsideration or rehearing of the Board’s decision in this case.

BZA APPLICATION NO. 18240-A
PAGE NO. 3

rehearing is **DISMISSED**.

Vote taken on May 15, 2012

VOTE: 5-0-0 (Lloyd J. Jordan, Rashida Y.V. MacMurray, Nicole C. Sorg, and Jeffrey L. Hinkle to **Dismiss**; Michael G. Turnbull to dismiss by absentee ballot)

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: August 7, 2012

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.