

STATEMENT IN SUPPORT OF APPEAL OF THE ISSUANCE BY THE ZONING
ADMINISTRATOR FOR THE DISTRICT OF COLUMBIA, DEPARTMENT OF
CONSUMER AFFAIRS, OF BUILDING PERMIT NO. B94022
FOR THE CONSTRUCTION OF A SINGLE FAMILY DWELLING
ON LOT 6 IN SQUARE 1397 AT 4840 DEXTER STREET, N.W.

This Statement of Reasons is submitted on behalf of the Appellant, The Dexter Street Trust, the owner of property adjoining the Subject Property.

The Property. The Subject Property is located at 4840 Dexter Street, N.W., Washington D.C., 20007, and is known of record as Lot 6 in Square 1397. The Property is classified within the R-1-A zone district and is subject to the requirements of the Wesley Heights Overlay zone district. The property is improved with a single family dwelling constructed approximately 50 years ago.

Michael and Allyson Banks purchased the Subject Property in December 2005. On May 24, 2006, Mr. and Mrs. Banks filed an application for Building Permit to construct a new single family dwelling on the Subject Property. That application was assigned Tracking Number 4683-B-6. The Department of Consumer and Regulatory Affairs issued Building Permit Number B94022 on January 17, 2007.

Exceptions to Administrative Decisions. The Appellant appeals from the approval and issuance of Building Permit No. B94022 for the construction of a new single family dwelling and private garage on the Subject Property. The Appellant submits that the Zoning Administrator's decision to issue Building Permit No. 94022 was erroneous for the following reasons:

1. Building Height. The proposed new single-family dwelling exceeds the maximum permitted height in the WH/R-1-A zone. That zone district permits a maximum building height of 40 feet and 3 stories. 11 D.C.M.R. § 400.1. "Story" is defined by 11 D.C.M.R. § 199.1 to mean "the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured. *For the purposes of determining the maximum number of permitted stories, the term "story" shall not include cellars, stairway or elevator penthouses, or other roof structures...*"

The approved plans show a four-level single-family dwelling with a walk-out condition on the lowest level. Appellant submits that this is a basement, as a "cellar," which, according to the above definition, shall not be counted as a "story." A "cellar" is that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade. 11 D.C.M.R. § 199.1. A "basement," on the other hand, is "that portion of a story, the ceiling of which is more than four feet (4 ft.) above the adjacent finished grade." *Id.* A large portion of the lowest level of the proposed structure has a ceiling height which is more than four feet above the adjacent finished grade. Appellant is unaware of the existence of any calculation submitted by the applicant showing that, using the perimeter method of calculating the average ceiling height above the finished grade, the lowest story is a cellar. Appellant submits that the lowest level of

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the proposed structure must be counted as a fourth story, which violates the maximum permitted height in the WH/R-1-A zone.

2. Side Yard Setback.

Appellant submits that the plans for Building Permit No. B94022, which include a free-standing private garage, were approved in violation of 11 D.C.M.R. § 2300.2. That provision states that a private garage may be located within a rear yard or beside the main building, but if it is located beside the main building, it must be set back from the side lot line a distance equal to the required side yard and from all buildings a distance of not less than 10 feet. The approved plans show a garage that is neither entirely within the rear yard, or beside the main building and set back as required.

A side yard is defined by 11 D.C.M.R. § 199.1 as “a yard between *any portion of a building or other structure*” and the adjacent side lot line, extending for the full depth of the structure.” 11 D.C.M.R. § 405.9 requires that “side yards shall be provided on lots in Residence Districts [as follows]...” The required side yard in the WH/R-1-A zone district is eight feet (8’). *Id.* The proposed garage set back only three feet (3’) from the property line, in violation of the requirement in 11 D.C.M.R. § 405.9 that a side yard of eight feet (8’) be provided in the WH/R-1-A zone district.

Section 404 of the Zoning Regulations¹ requires that “each structure located in a Residence District shall have a rear yard.” The WH/R-1-A zone district requires a rear yard of at least 25 feet. 11 D.C.M.R. § 404.1. A rear yard is defined as “a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.” 11 D.C.M.R. § 199.1. Section 2300.2 specifically authorizes a private garage to be constructed within a rear yard, or beside the main building, provided that it is set back from the side lot line a distance equal to the required side yard and from all buildings of a distance of not less than 10 feet.

Moreover, Section 2500.2 of the Zoning Regulations states that an accessory building may be located “*only* in a rear yard” (emphasis added), and the Board of Zoning Adjustment has held, in Appeal No. 17414 “Section 2300.2 mandates that a private garage must be ‘removed from the side lot line a distance equal to the required side yard.’” If the applicant intended for their proposed garage to be located within the rear yard, it must be set back a distance of at least eight feet from the side lot line. It is not.

3. Wesley Heights Overlay Tree Protections.

Although the Subject Property is not located within a Tree and Slope Protection Overlay, it is located within the Wesley Heights Overlay, one of the purposes of which is to “preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.” 11 D.C.M.R. § 1541.3(c). The proposed development on the Subject Property,

¹ Title 11, District of Columbia Municipal Regulations (D.C.M.R.).

however, threatens at least two Special Trees within the District of Columbia and the Wesley Heights overlay. The retaining walls proposed and the significant re-grading of the Subject Property encroach on both the scaffold root system and the critical root zone of a white oak on the Appellant's property and a tulip poplar on the Subject Property such that both trees will be in severe danger of collapse during and after construction of the proposed improvements. Causing damage to trees on public property or property owned by another is a criminal offense in the District of Columbia, punishable by up to 90 days in jail or fines of up to \$15,000.00 per tree. D.C. Code § 22-3310. Despite the urging of members of the Urban Forestry division of the District of Columbia, to protect the trees on the Subject Property in accordance with the purposes of the Wesley Heights Overlay, the Zoning Administrator approved the location of the improvements on the Subject Property. Appellant submits that this violates Section 1541.3(c) of the Zoning Regulations.

The Appellant will prove its case relying on: (1) the plain language of the Zoning Regulations; (2) testimony of the Appellant and expert witnesses designated on the attached Witness list; (3) documents itemized in the Exhibit List and attached hereto; and (4) such additional evidence and testimony as deemed necessary.

CONCLUSION

For the reasons stated herein and for the reasons provided at the hearing, the appellants respectfully submit that Building Permit No. B94022 should be revoked.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP



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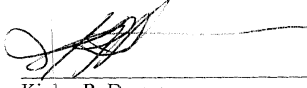
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 2007, a copy of the foregoing was mailed, first-class, postage pre-paid, to the following:

Michael and Allyson Banks
3805 Taylor Street
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Kinley R. Dumas

WITNESS LIST

1. Richard Frank, Archway Builders
2. Keith Pitchford, Pitchford Associates
3. Mark Stires, Bowman Consulting Group
4. Justine Kingham, AIA
5. Janet Brown
6. Michael Brewer
7. Ann H. Brown

EXHIBIT LIST

1. Building Permit No. B94022 issued January 17, 2007
2. Architectural Plans prepared by GTM Architects for "Banks Residence, 4840 Dexter Street, N.W., Washington, DC" dated November 8, 2006.
3. Building Permit Site Plan and Stormwater Management Plan prepared by CAS Engineering for 4840 Dexter Street, N.W. dated 11/2005 and revised on 9/28/06.
4. Pitchford Associates letter to Ann H. Brown dated November 3, 2006.
5. Bowman Consulting Group letter to Ann H. Brown dated January 29, 2007.

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