

# Exhibit C

## David C. Landsman

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**From:** David C. Landsman <david@casengineering.com>  
**Sent:** Tuesday, April 24, 2012 5:35 AM  
**To:** 'Surabian, Jay (DCRA)'; 'LeGrant, Matt (DCRA)'; 'LeGrant, Matt (DCRA)'  
**Cc:** 'MKress@sandyspringbuilders.com'; 'RManell@sandyspringbuilders.com'; 'Reid, Rohan (DCRA)'; 'Sabbakhan, Rabbiah A. (DCRA)'; 'curt@casengineering.com'; 'carolyn.brown@hklaw.com'; Steven Sher (steven.sher@hklaw.com)  
**Subject:** RE: 2334-38 King PI NW Retaining Wall Letter (11-022)  
**Attachments:** 11022\_12\_0423-DCRA(ZoningReply).pdf; 11022\_12\_0423-Exhibits.pdf

**Importance:** High

Tracking:	Recipient	Read
	'Surabian, Jay (DCRA)'	
	'LeGrant, Matt (DCRA)'	
	'LeGrant, Matt (DCRA)'	
	'MKress@sandyspringbuilders.com'	
	'RManell@sandyspringbuilders.com'	Read: 4/24/2012 5:40 AM
	'Reid, Rohan (DCRA)'	
	'Sabbakhan, Rabbiah A. (DCRA)'	
	'curt@casengineering.com'	
	'carolyn.brown@hklaw.com'	Read: 4/24/2012 6:07 AM
	Steven Sher (steven.sher@hklaw.com)	Read: 4/24/2012 6:22 AM

Thanks Jay and thanks for your and Matt's time on 4/12 to discuss. Please see attached, our revised justification letter and exhibits. Once we've received your confirmation, we'll submit to permit the walls separately.

Thanks,  
Dave

David C. Landsman, LEED Green Associate  
*Project Manager*  
CAS Engineering  
108 W. Ridgeville Boulevard, Suite 101  
Mount Airy, MD 21771  
(301) 607-8031 x14 phone; -8045 fax  
(301) 788-0599 cell  
[david@casengineering.com](mailto:david@casengineering.com)

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**From:** Surabian, Jay (DCRA) [mailto:[jay.surabian@dc.gov](mailto:jay.surabian@dc.gov)]  
**Sent:** Tuesday, April 10, 2012 12:38 PM  
**To:** David C. Landsman; LeGrant, Matt (DCRA); LeGrant, Matt (DCRA)  
**Cc:** MKress@sandyspringbuilders.com; RManell@sandyspringbuilders.com; Reid, Rohan (DCRA); Sabbakhan, Rabbiah A. (DCRA); curt@casengineering.com; carolyn.brown@hklaw.com  
**Subject:** RE: 2334-38 King PI NW

Dave-

I want to clarify an important point. Your letter seems to say that you only counted the areas of retained fill over 4' in depth in the required rear yard in your occupancy calculations, but that is not consistent with the ZA's interpretation of the regulations.

Any part of the wall, geogrid, or retained fill that is over 4' above grade is prohibited in the required yard (per §2503.2). Where the wall, geogrid, or retained fill are less than 4' above grade, they are permitted in the required yard but are subject to a 50% occupancy limit (per §199.1). This means that your drawings and calculations need to depict and account for the geogrid and retained fill that is less than 4' above grade.

Please make sure your calculations are consistent with this interpretation.

Jay A. Surabian  
Assistant Attorney General  
Office of the Attorney General of the District of Columbia  
Office of the General Counsel for the Department of Consumer and Regulatory Affairs  
1100 4th Street, SW, 5th Floor  
Washington, DC 20024  
(202) 442-8403 phone  
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**From:** David C. Landsman [mailto:[david@casengineering.com](mailto:david@casengineering.com)]

**Sent:** Monday, April 09, 2012 9:54 AM

**To:** LeGrant, Matt (DCRA); LeGrant, Matt (DCRA); Surabian, Jay (DCRA)

**Cc:** MKress@sandyspringbuilders.com; RManell@sandyspringbuilders.com; Reid, Rohan (DCRA); Sabbaghan, Rabbiah A. (DCRA); curt@casengineering.com; carolyn.brown@hklaw.com

**Subject:** RE: 2334-38 King PI NW

**Importance:** High

Matt/Jay,

Per our meeting last Thursday, 4/5/12, please find our justification letter and referenced exhibits attached to this email for your review. Steve will bring you a hard copy of the attached information this afternoon.

FYI, we obtained separate permits without the retaining walls on Friday (B1207072 and B1207074). We are anxious to wrap up the retaining walls and will permit these separately after we've resolved discussions with you.

Thanks,  
Dave

David C. Landsman, LEED Green Associate  
*Project Manager*

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**From:** carolyn.brown@hklaw.com [mailto:[carolyn.brown@hklaw.com](mailto:carolyn.brown@hklaw.com)]  
**Sent:** Tuesday, April 03, 2012 5:15 PM  
**To:** matthew.legrant@dc.gov; steven.sher@hklaw.com  
**Cc:** MKress@sandyspringbuilders.com; RManell@sandyspringbuilders.com; [david@casengineering.com](mailto:david@casengineering.com); rohan.reid@dc.gov; rabbiah.sabbakhan@dc.gov; jay.surabian@dc.gov; [curt@casengineering.com](mailto:curt@casengineering.com)  
**Subject:** RE: 2334-38 King PI NW

Thanks, Matt. We'll see you all then at your offices.

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**From:** LeGrant, Matt (DCRA) [mailto:[matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)]  
**Sent:** Tuesday, April 03, 2012 3:52 PM  
**To:** Brown, M Carolyn (WAS - X75990); Sher, Steven E (WAS - X77278)  
**Cc:** MKress@sandyspringbuilders.com; RManell@sandyspringbuilders.com; [david@casengineering.com](mailto:david@casengineering.com); Reid, Rohan (DCRA); Sabbakhan, Rabbiah A. (DCRA); Surabian, Jay (DCRA); [curt@casengineering.com](mailto:curt@casengineering.com)  
**Subject:** RE: 2334-38 King PI NW

Carolyn Brown:

I suggest we meet this Thursday April 5<sup>th</sup> at 11 am. At that time we can discuss the permit amendment proposals and the questions you have raised below.

Best Regards,

**Matthew Le Grant**

Zoning Administrator

Dept of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th St SW - Room 3100

Washington, DC 20024

Phone: 202 442-4652

FAX: 202 442-4871

Email: [matt.legrant@dc.gov](mailto:matt.legrant@dc.gov)

Web: <http://dcra.dc.gov/DC/DCRA/Permits/Certificates+of+Occupancy+and+Zoning>

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**From:** carolyn.brown@hklaw.com [mailto:[carolyn.brown@hklaw.com](mailto:carolyn.brown@hklaw.com)]  
**Sent:** Tuesday, April 03, 2012 11:22 AM  
**To:** LeGrant, Matt (DCRA); [steven.sher@hklaw.com](mailto:steven.sher@hklaw.com)  
**Cc:** MKress@sandyspringbuilders.com; RManell@sandyspringbuilders.com; [david@casengineering.com](mailto:david@casengineering.com); Reid, Rohan (DCRA); Sabbakhan, Rabbiah A. (DCRA); Surabian, Jay (DCRA); [curt@casengineering.com](mailto:curt@casengineering.com)  
**Subject:** RE: 2334-38 King PI NW

Matt --

As we discussed by phone this morning, our team has had a chance to review our options and would like to take the following steps to ensure continued construction on the King Place houses in light of your notices of revocation, which are not yet in effect. Our goal is to take corrective measures so the notices become moot. Ideally, we would also obviate the need to issue a stop work order for the retaining wall, fill and geogrids, although I understand that you feel the need to proceed with those expeditiously. We propose to do the following:

1. Amend the existing permits and have them re-issued as four separate permits (to be filed within next 24-48 hrs):

- Permit for construction of house at 2334 King Place
- Permit for construction of house at 2338 King Place
- Permit for construction of retaining wall (with fill and geogrids) at 2334 King Place *not to exceed the current height of four feet.*
- Permit for construction of retaining wall (with fill and geogrids) at 2338 King Place *not to exceed the current height of four feet.*
- *Once the amended permits are issued, I understand that any stop work orders issued for the retaining walls can be lifted immediately.*

2. Meet with you and DCRA to determine the exact parameters of a revised retaining wall that will comport with your interpretation of the *Economides* decision and make the Chew family whole. We need to find a solution to restore the yard they expected under the approved plans and permit. Some questions we have thus far are:

- Can we terrace the retaining walls as long as no individual section is higher than four feet above grade?
- Where do we measure the grade?
- What type of retaining wall (w fill/geogrids) is permissible outside the required rear yard?

3. The wall check has been completed by Snider & Associates and Ed Snider should be filing it within the next few days. We will make sure to provide you a copy.

Could you please suggest some times for us to meet? Ideally it would be this week -- perhaps tomorrow or Friday. Thanks.

Carolyn

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**From:** LeGrant, Matt (DCRA) [mailto:[matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)]  
**Sent:** Monday, April 02, 2012 2:05 PM  
**To:** Brown, M Carolyn (WAS - X75990); Sher, Steven E (WAS - X77278)  
**Cc:** [MKress@sandyspringbuilders.com](mailto:MKress@sandyspringbuilders.com); [RMandell@sandyspringbuilders.com](mailto:RMandell@sandyspringbuilders.com); [david@casengineering.com](mailto:david@casengineering.com); Reid, Rohan (DCRA); Sabbakhan, Rabbiah A. (DCRA); Surabian, Jay (DCRA)  
**Subject:** RE: 2334-38 King Pl NW

Carolyn Brown:

Please see the attached "Notices to Revoke Building Permit..." for the two subject addresses. The permits are being revoked based on the following analysis:

**The location of the required rear yard**

Under 11 DCMR § 404.1, a 25 foot rear yard is required in an R-1-B zone. To determine the location of the required rear yard of a property, I consulted

the definitions of “rear yard” and “depth of rear yard” in the Zoning Regulations. Those terms are defined as:

**Yard, rear** - 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.

**Yard, rear, depth of** - the mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title.

In measuring the depth of the required rear yard, the measurement begins at the rear wall of the building and runs to the rear lot line. *See Appeal no. 17414 of Geraldine Rebach and Jeffrey Schonberger*, p. 5-6 (November 16, 2006). Thus, for both Lots 23 and 24, the required rear yard begins at the end of the covered porch portion of the buildings and extends 25' towards the rear lot lines. The required rear yard extends across the full width of each lot.

### **Structures in a required rear yard**

Generally, the Zoning Regulations do not permit structures in a required yard; however, there are a few exceptions to this rule. The exceptions relevant to this discussion are found in the definition of the term “yard” and in 11 DCMR §§ 2503.2, 2503.3. Those three provisions were enacted in the same rulemaking in Zoning Commission Order No. 148 (February 2, 1977). Those provisions state:

**Yard** - an exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title.

2503.2 A structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title. Any railing required by the D.C. Construction Code, Title 12 DCMR, shall not be calculated in the measurement of this height.

2503.3 A fence or retaining wall constructed in accordance with the D.C. Construction Code may occupy any yard required under the provisions of this title.

When read together those provisions: 1) prohibit structures over 4 feet above grade in a required yard; 2) permit structures less than 4 feet above grade in

a required yard, subject to a 50% occupancy limit; and 3) permit fences and retaining walls (regardless of height) in a required yard, subject to the provisions of the D.C. Construction Code.

### **Retaining wall exception is not applicable**

I have determined that these exceptions are not applicable to the structure to be built in the rear yards of both Lots 23 and 24. Under *Appeal no. 17285 of Patrick J. Carome* (March 24, 2006) ("Economides"), a retaining wall that supports an artificially-elevated flat surface, is not a mere retaining wall, but is a "platform structure". The Zoning Regulations specifically list a "platform" as a type of structure. *See* 11 DCMR § 199.1 (definition of "structure"). Accordingly, the exception for retaining walls under 11 DCMR § 2503.3 is not applicable to such platform structures.

Like the platform structure in Economides, Wall 2 is being built on Lots 23 and 24 with geogrid sheets and back filled with compacted fill dirt to create a level backyard for the enjoyment of the homeowners. Thus, Wall 2 is not being built to prevent an earth slide, but to shore up an artificially elevated platform. *See Economides* at p. 7. Accordingly, the exception for retaining walls under 11 DCMR § 2503.3 is not applicable to the structure in the rear yard of Lots 23 and 24.

In Economides, the Board determined that the wall, the geogrid sheets, *and* the compacted fill dirt were all part of the non-compliant platform structure. Thus, the areas of compacted fill dirt, even without the geogrid sheets, are subject to the above noted zoning regulations. In looking at the structure in the rear yard of Lots 23 and 24, I reach the same conclusion. Portions of the wall, the geogrid sheets, and the compacted fill dirt are proposed to be built in the required rear yards of both Lots 23 and 24.

In light of this, I conclude that the platform structure is being built in excess of 4 feet above the existing grade and is therefore prohibited in any part of a required rear yard under 11 DCMR § 2503.2.

Please feel free to contact me if you have any questions.

Best Regards,

**Matthew Le Grant**

Zoning Administrator

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Government of the District of Columbia

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**From:** [carolyn.brown@hklaw.com](mailto:carolyn.brown@hklaw.com) [mailto:[carolyn.brown@hklaw.com](mailto:carolyn.brown@hklaw.com)]  
**Sent:** Thursday, March 22, 2012 6:35 PM  
**To:** LeGrant, Matt (DCRA)  
**Cc:** [steven.sher@hklaw.com](mailto:steven.sher@hklaw.com); [MKress@sandyspringbuilders.com](mailto:MKress@sandyspringbuilders.com); [RManell@sandyspringbuilders.com](mailto:RManell@sandyspringbuilders.com); [david@casengineering.com](mailto:david@casengineering.com)  
**Subject:** 2334-38 King PI NW

Matt,

As discussed, attached please find our updated letter, with attachments. Please feel free to call us with any questions or comments.

Best regards,

Carolyn Brown

**Mary Carolyn Brown | Holland & Knight**  
Partner  
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Phone 202.862.5990 | Fax 202.955.5564  
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April 23, 2012

Government of the District of Columbia  
Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, SW  
Room 3100  
Washington, DC 20024  
(202) 442-4652 phone  
*Via email*

Attn: Matthew Le Grant, Zoning Administrator  
Jay Surabian, Attorney General

Re: **CAS Job No. 11-022/11-246**  
2334 & 2338 King Place, NW  
Lots 23 & 24, Square 1394  
Retaining Wall Rear Yard Coverage Compliance

Dear Mr. Le Grant and Mr. Surabian,

Pursuant to your email (Mr. Surabian) on April 10, 2012 and our subsequent discussions at your offices, we have prepared the following narrative, drawings and computations to support the zoning compliance of retaining walls as presented on the revised grading concepts. We are requesting your confirmation that these retaining walls are in compliance prior to preparing structural plans and submitting for separate retaining wall permits.

In light of your email, we have revisited the proposed retaining walls and the proposed earth fill that must rely on the retaining walls to be in place. Existing conditions for the project, prior to construction activities, are illustrated on Exhibit A for your reference. To demonstrate the portion of fill that is dependent on the retaining walls, we have included a grading design for a scenario without retaining walls; see Exhibit B (included with prior transmittal and justification). This grading design reflects conditions that could be created without the construction of retaining walls. The design creates a level area at the immediate rear of each house. The grade then slopes down to the rear and side lot lines. The grade is based on a maximum slope of 2:1 as provided for under DDOE Regulations (2003 Standards and Specifications for Soil Erosion and Sediment Control, 37.0 Standards and Specifications for Land Grading). For comparison, the previously-approved site plan showing the rear of the lots is included in Exhibit C (included with prior transmittal and justification). We have revised the proposed grading and retaining wall heights to ensure that no part of the wall, geogrid, or retained fill that is over 4 feet above the grade is within the required rear yard (per 11 DCMR 2503.2); see Exhibit F (Exhibits D and E have been removed as they are no longer valid). The proposed plan, with an overlay illustrating the areas where the difference between the unretained slope and the area of fill under the approved plan is more than 4 feet, is included in Exhibit G. To clearly show the separation between fill possible without the retaining wall and fill requiring the retaining wall, cross-sections are provided in Exhibit H.

During our discussions, you indicated that areas of fill necessitating the retaining wall that are 4 feet deep and greater, retaining walls 4 feet and greater above grade and geogrid 4 feet and greater above grade are not allowed in the required rear yard. We have re-graded the rear yard to eliminate these conditions throughout the entire required rear yard.

You also indicated that areas of fill necessitating the retaining wall less than 4 feet deep, retaining walls less than 4 feet above grade and geogrid less than 4 feet above grade are permitted in the required rear yard but are subject to a 50% occupancy limit (per 11 DCMR 199.1). These areas are identified in Exhibit F to accompany the calculations for rear yard occupancy that follow, separately for each lot:

2334 King Place, NW (Lot 24, Square 1394)

Lot width = 50 ft.  
Required rear yard = 25 ft.  
Required rear yard area = 1,250 sf  
Areas of fill within required rear yard  
(all less than 4 feet) above the line of  
potential unretained fill  
and/or retaining wall  
and/or geogrid = 585 sf  
Rear yard occupancy = 46.8%

2338 King Place, NW (Lot 23, Square 1394)

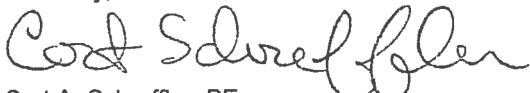
Lot width = 50 ft.  
Required rear yard = 25 ft.  
Required rear yard area = 1,250 sf  
Areas of fill within required rear yard  
(all less than 4 feet) above the line of  
potential unretained fill  
and/or retaining wall  
and/or geogrid = 525 sf  
Rear yard occupancy = 42.0%

Per the Regulations, and the Economides decision of the Board of Zoning Adjustment, as upheld by the D.C. Court of Appeals, we have measured the required rear yard from the back of the porch (the rearmost portion of each house) toward the rear lot line.

It is our professional opinion that the above calculations reflect the areas of fill less than 4-ft. deep that will necessitate a retaining wall, retaining walls and geogrid within the required rear yard areas. The portion of the required rear yard covered by these areas is well under the allowed rear yard occupancy of 50%.

We respectfully request that you confirm that the conceptual grading and retaining walls shown on Exhibit F are in compliance with DC Zoning Regulations (DCMR Title 11). Once we've obtained your confirmation we will apply for separate retaining wall permits and construct the walls.

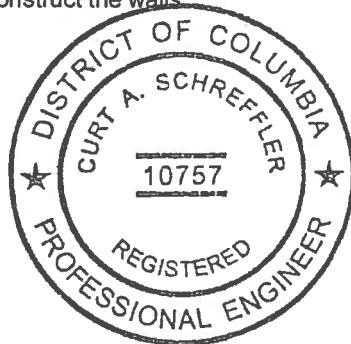
Sincerely,



Curt A. Schreffler, PE  
President



David C. Landsman  
Project Manager



Cc: Sandy Spring Builders (R. Mandell, M. Kress & P. Leibovitz)  
Holland & Knight (S. Sher & C. Brown)